

# ***NORTH CAROLINA REGISTER***

**VOLUME 33 • ISSUE 20 • Pages 1986 – 2081**

**April 15, 2019**

**I. IN ADDITION**

State Board of Elections - Order..... 1986 – 2031

**II. PROPOSED RULES**

**Administration, Department of**

Department..... 2032

**Public Safety, Department of**

Alcoholic Beverage Control Commission ..... 2032 – 2037

**Environmental Quality, Department of**

Environmental Management Commission ..... 2037 – 2049

**Occupational Licensing Boards and Commissions**

Dietetics/Nutrition, Board of ..... 2049 – 2056

Funeral Service, Board of ..... 2056 – 2061

**III. TEMPORARY RULES**

**Environmental Quality, Department of**

Coastal Resources Commission ..... 2062 – 2064

**IV. RULES REVIEW COMMISSION**

..... 2065 – 2077

**V. CONTESTED CASE DECISIONS**

Index to ALJ Decisions..... 2078 – 2081

**PUBLISHED BY**

*The Office of Administrative Hearings  
Rules Division  
6714 Mail Service Center  
Raleigh, NC 27699-6714  
Telephone (919) 431-3000  
Fax (919) 431-3104*

*Julian Mann III, Director  
Molly Masich, Codifier of Rules  
Dana McGhee, Publications Coordinator  
Lindsay Woy, Editorial Assistant  
Cathy Matthews-Thayer, Editorial Assistant*

## **Contact List for Rulemaking Questions or Concerns**

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

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

Office of Administrative Hearings

Rules Division

1711 New Hope Church Road

(919) 431-3000

Raleigh, North Carolina 27609

(919) 431-3104 FAX

contact: Molly Masich, Codifier of Rules

[molly.masich@oah.nc.gov](mailto:molly.masich@oah.nc.gov)

(919) 431-3071

Dana McGhee, Publications Coordinator

[dana.mcgee@oah.nc.gov](mailto:dana.mcgee@oah.nc.gov)

(919) 431-3075

Lindsay Woy, Editorial Assistant

[lindsay.woy@oah.nc.gov](mailto:lindsay.woy@oah.nc.gov)

(919) 431-3078

Cathy Matthews-Thayer, Editorial Assistant

[cathy.thayer@oah.nc.gov](mailto:cathy.thayer@oah.nc.gov)

(919) 431-3006

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

Rules Review Commission

1711 New Hope Church Road

(919) 431-3000

Raleigh, North Carolina 27609

(919) 431-3104 FAX

contact: Amber Cronk May, Commission Counsel

[amber.may@oah.nc.gov](mailto:amber.may@oah.nc.gov)

(919) 431-3074

Amanda Reeder, Commission Counsel

[amanda.reeder@oah.nc.gov](mailto:amanda.reeder@oah.nc.gov)

(919) 431-3079

Alexander Burgos, Paralegal

[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)

(919) 431-3080

Julie Brincefield, Administrative Assistant

[julie.brincefield@oah.nc.gov](mailto:julie.brincefield@oah.nc.gov)

(919) 431-3073

### **Fiscal Notes & Economic Analysis**

Office of State Budget and Management

116 West Jones Street

(919) 807-4700

Raleigh, North Carolina 27603-8005

(919) 733-0640 FAX

Contact: Carrie Hollis, Economic Analyst

[osbmruleanalysis@osbm.nc.gov](mailto:osbmruleanalysis@osbm.nc.gov)

(919) 807-4757

NC Association of County Commissioners

215 North Dawson Street

(919) 715-2893

Raleigh, North Carolina 27603

contact: Amy Bason

[amy.bason@ncacc.org](mailto:amy.bason@ncacc.org)

NC League of Municipalities

(919) 715-4000

150 Fayetteville Street, Suite 300

Raleigh, North Carolina 27601

contact: Sarah Collins

[scollins@nclm.org](mailto:scollins@nclm.org)

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

545 Legislative Office Building

300 North Salisbury Street

(919) 733-2578

Raleigh, North Carolina 27611

(919) 715-5460 FAX

Jason Moran-Bates, Staff Attorney

Jeremy Ray, Staff Attorney

**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2019 – December 2019

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	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	270 <sup>th</sup> day from publication in the Register
33:13	01/02/19	12/06/18	01/17/19	03/04/19	03/20/19	04/18/19	05/01/19	09/29/19
33:14	01/15/19	12/19/18	01/30/19	03/18/19	03/20/19	04/18/19	05/01/19	10/12/19
33:15	02/01/19	01/10/19	02/16/19	04/02/19	04/22/19	05/16/19	06/01/19	10/29/19
33:16	02/15/19	01/25/19	03/02/19	04/16/19	04/22/19	05/16/19	06/01/19	11/12/19
33:17	03/01/19	02/08/19	03/16/19	04/30/19	05/20/19	06/20/19	07/01/19	11/26/19
33:18	03/15/19	02/22/19	03/30/19	05/14/19	05/20/19	06/20/19	07/01/19	12/10/19
33:19	04/01/19	03/11/19	04/16/19	05/31/19	06/20/19	07/18/19	08/01/19	12/27/19
33:20	04/15/19	03/25/19	04/30/19	06/14/19	06/20/19	07/18/19	08/01/19	01/10/20
33:21	05/01/19	04/09/19	05/16/19	07/01/19	07/22/19	08/15/19	09/01/19	01/26/20
33:22	05/15/19	04/24/19	05/30/19	07/15/19	07/22/19	08/15/19	09/01/19	02/09/20
33:23	06/03/19	05/10/19	06/18/19	08/02/19	08/20/19	09/19/19	10/01/19	02/28/20
33:24	06/17/19	05/24/19	07/02/19	08/16/19	08/20/19	09/19/19	10/01/19	03/13/20
34:01	07/01/19	06/10/19	07/16/19	08/30/19	09/20/19	10/17/19	11/01/19	03/27/20
34:02	07/15/19	06/21/19	07/30/19	09/13/19	09/20/19	10/17/19	11/01/19	04/10/20
34:03	08/01/19	07/11/19	08/16/19	09/30/19	10/21/19	11/21/19	12/01/19	04/27/20
34:04	08/15/19	07/25/19	08/30/19	10/14/19	10/21/19	11/21/19	12/01/19	05/11/20
34:05	09/03/19	08/12/19	09/18/19	11/04/19	11/20/19	12/19/19	01/01/20	05/30/20
34:06	09/16/19	08/23/19	10/01/19	11/15/19	11/20/19	12/19/19	01/01/20	06/12/20
34:07	10/01/19	09/10/19	10/16/19	12/02/19	12/20/19	01/16/20	02/01/20	06/27/20
34:08	10/15/19	09/24/19	10/30/19	12/16/19	12/20/19	01/16/20	02/01/20	07/11/20
34:09	11/01/19	10/11/19	11/16/19	12/31/19	01/21/20	02/20/20	03/01/20	07/28/20
34:10	11/15/19	10/24/19	11/30/19	01/14/20	01/21/20	02/20/20	03/01/20	08/11/20
34:11	12/02/19	11/06/19	12/17/19	01/31/20	02/20/20	03/19/20	04/01/20	08/28/20
34:12	12/16/19	11/21/19	12/31/19	02/14/20	02/20/20	03/19/20	04/01/20	09/11/20

This document is prepared by the Office of Administrative Hearings as a public service and is not to be deemed binding or controlling.

## **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.



STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE  
STATE BOARD OF ELECTIONS

*IN THE MATTER OF:*                     )  
INVESTIGATION OF                     )  
ELECTION IRREGULARITIES            )  
AFFECTING COUNTIES                 )  
WITHIN THE 9TH                        )  
CONGRESSIONAL DISTRICT            )

**ORDER**

THIS MATTER CAME BEFORE THE STATE BOARD OF ELECTIONS ("State Board") upon the State Board's own motion at a public evidentiary hearing held February 18, 2019 through February 21, 2019 in the manner prescribed by a Notice of Hearing and Amended Order of Proceedings issued February 4, 2019. At the evidentiary hearing, congressional candidate Jeff Scott appeared *pro se*; congressional candidate Dan McCready appeared through counsel, Marc E. Elias (admitted *pro hac vice*), Jonathan Berkon (admitted *pro hac vice*), and John R. Wallace; congressional candidate Dr. Mark E. Harris appeared and was represented by counsel David B. Freedman, Dudley A. Witt, Alex C. Dale, and Christopher S. Edwards; judicial candidate Vanessa Burton appeared and was represented by Sabra J. Faires and William R. Gilkeson, Jr.; and judicial candidate Jack Moody appeared and was represented by Timothy R. Haga. The Mark Harris for Congress Committee was represented by John E. Branch, III. Additional candidates were provided notice of the evidentiary hearing, but did not appear.

After receiving testimony and other evidence submitted over a four-day hearing, and after reviewing written submissions and hearing arguments from the parties, and having weighted the representations of agency staff, the State Board finds, concludes and orders the following:

## I. INTRODUCTION

A new election is the gravest remedy available to this State agency that has, for a century, supervised elections meant to ensure “[a]ll political power is vested in and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.” N.C. CONST. art. I, § 2.

And yet, the substantial record before the State Board of Elections in this case lead this Board to unanimously conclude that the 2018 General Election for North Carolina’s 9th Congressional District was corrupted by fraud, improprieties, and irregularities so pervasive that its results are tainted as the fruit of an operation manifestly unfair to the voters and corrosive to our system of representative government. A new election is necessary not only in the congressional contest, but also in two local contests caught in the long shadow of uncertainty caused by absentee ballot fraud funded principally by the Mark Harris for Congress Committee. Tampering, obstruction and disguise have obscured the precise number of votes either unlawfully counted or excluded, but substantial evidence supports our conclusion that the absentee ballot scheme and other irregularities cast doubt on the outcome of each contest subject to this Order.

## II. PROCEDURAL HISTORY

1. In the November 6, 2018 General Election, North Carolina's Ninth Congressional District ("CD-9") spanned eight counties along the State's central southern border. Moving west to east, CD-9 included a portion of Mecklenburg County; all of Union, Anson, Richmond, Scotland, and Robeson Counties; and substantial parts of Cumberland and Bladen Counties. In that election, the candidates seeking to represent CD-9 in the 116<sup>th</sup> Congress were Republican nominee Mark Harris, Democratic nominee Dan McCready, and Libertarian nominee Jeff Scott.

2. After counties canvassed the votes, Harris led McCready by an apparent margin of 905 votes, which constituted slightly more than one-quarter of one percent of all ballots tallied in that contest.

3. The number of returned absentee by mail ballots far exceeded the margin between Harris and McCready, with more 10,500 tallied districtwide.

4. On November 27, 2018, the date designated by statute for canvass of federal, judicial and multicounty contests, the State Board of Elections and Ethics Enforcement unanimously declined to canvass the 2018 General Election for CD-9 after a briefing from agency investigators and counsel in closed session. The State Board of Elections and Ethics Enforcement — the predecessor to the present State Board of Elections — recessed its canvass

meeting for three days to allow agency staff time to review investigatory information. Following additional briefings from agency investigators and staff, that Board on November 30, 2018, again declined to canvass results for CD-9, citing “claims of numerous irregularities and concerted fraudulent activities related to absentee by-mail ballots and potentially other matters in Congressional District 9.” The Board voted 7-2 to hold an evidentiary hearing “pursuant to its authority under G.S. §§ 163A-1180 and 163A-1181 to assure that the election is determined without taint of fraud or corruption and without irregularities that may have changed the result of an election” and to stay the issuance of certificates of elections in three other contests in which the apparent outcome could have been reversed by returned or non-returned absentee by mail ballots in Bladen and Robeson counties: Seat 2 on the District Court in Judicial District 16B, Bladen County Commissioner District 3, and Bladen Soil and Water Conservation District Supervisor.

5. On December 1, 2018, the Board, through Chair J. Anthony Penry, issued subpoenas to various entities, including the Mark Harris for Congress Committee (“Harris Committee”). After Mr. Penry resigned, Governor Roy Cooper appointed Joshua D. Malcolm as Chair on December 3, 2018.

6. On December 3, 2018, noting the compelling need for public disclosure in the stay of certification, Chair Malcolm instructed the State Board’s executive director to “undertake a review of materials that may be

produced on a rolling basis in a manner reasonably calculated to serve the public interest without compromising the investigation.” The State Board began posting materials through a website portal that provided public access to thousands of pages of evidentiary documents, investigative reports, and election records, including a substantial number of records regarding alleged absentee ballot fraud in Bladen County referred to state and federal prosecutors after the 2016 General Election. The referral was made by the State Board at a public hearing in December 2016 subsequent to a staff investigation.

7. On December 17, 2018, Chair Malcolm issued an Order of Proceedings that prescribed procedures for the evidentiary hearing, established a briefing schedule, and noticed a hearing date of January 11, 2019, among other things.

8. In the fall of 2018, a three-judge panel of the Superior Court of Wake County held that creating the State Board of Elections and Ethics Enforcement violated the constitutional separation of powers, but acted on December 11, 2018, to allow that Board to remain in place until noon on December 28, 2018. *See* Order Extending Stay, *Cooper v. Berger et al.*, 18 CVS 3348 (N.C. Super. Ct. Wake County, December 11, 2018).

9. On December 27, 2018, the General Assembly enacted Session Law 2018-146, establishing a State Board of Elections composed of five

gubernatorial appointees. The enactment included a provision directing that the new State Board would be appointed effective January 31, 2019.

10. At noon on December 28, 2018, the State Board of Elections and Ethics Enforcement was dissolved by Court order, and Governor Cooper transmitted a letter to chairs of the North Carolina Democratic Party and the Republican Party of North Carolina requesting their recommendations for interim members to avoid a month in which the Board would lack seated members. *See* Letter from the Office of the Governor to State Democratic Party Chair Wayne Goodwin and State Republican Party Chair Robin Hayes (Dec. 28, 2019). Appointment of an interim State Board would have allowed for the evidentiary hearing to proceed as scheduled on January 11, 2019.

11. On December 30, 2019, however, the State Republican Party notified the Governor of its intent to initiate legal action to block any interim appointments made to the State Board, contending that the Board must remain vacant until January 31, 2019. *See* Letter from John M. Lewis, State Republican Party's General Counsel, to William C. McKinney, Office of the Governor's General Counsel (Dec. 30, 2019).

12. On January 3, 2019, citing the absence of a seated State Board, candidate Mark Harris initiated legal proceedings to compel the issuance of a certificate of election. *See* Petition for Writ of Mandamus and Appeal from the Failure of the State Board to Act, *Harris v. Bipartisan State Board of Elections*

*and Ethics Enforcement*, 19 CVS 0025 (N.C. Super. Ct. Wake County).

13. On January 11, 2019, the United States House of Representatives' Committee on House Administration, by and through its Chair, Zoe Lofgren, transmitted a letter to the State Board's executive director, stressing the Committee's duty under Clause 1(k) of House Rule X to review the election returns and qualification of each member and specifying that a state's "certificate is not ultimately determinative of the House's course of action as . . . the final arbiter of who is the rightful claimant to its seats." See Letter from Rep. Zoe Lofgren, Chair of the Committee on House Administration, to Kim Westbrook Strach, Executive Director of the State Board of Elections (Jan. 11, 2019).

14. On January 22, 2019, Senior Resident Superior Court Judge Paul C. Ridgeway held a hearing on the Petition for Mandamus and the Appeal in *Harris*. Following arguments by the parties, Judge Ridgeway ruled in open court that the State Board of Elections and Ethics Enforcement possessed statutory authority to initiate proceedings necessary to ensure the election was without fraud or corruption; that the Board had acted within its lawful authority to delay certification during the pendency of those proceedings; and that Harris had failed to establish any clear legal right to certification before the Board concluded its review. The Court, therefore, denied the Petition and the Appeal. See Order, *Harris*, 19 CVS 0025 (N.C. Super. Ct. Wake County,

January 25, 2019).

15. On January 31, 2019, Governor Cooper appointed all members of the new State Board of Elections, who held an organizational meeting that afternoon to select Robert B. Cordle to serve as Chair and Dr. Stella E. Anderson to serve as Secretary.

16. On February 4, 2019, Chair Cordle issued a Notice of Hearing and Amended Order of Proceedings that prescribed the procedures and evidentiary standards that would govern the hearing announced for February 18, 2019. The Order also established a process by which affected candidates could request to compel the attendance of individuals who they may wish to call as witnesses. On February 8, 2019, Chair Cordle granted all requests for witness subpoenas and issued additional investigative subpoenas to a selection of entities, including the Harris Committee, requiring productions identical to those required under subpoenas issued by the predecessor State Board of Elections and Ethics Enforcement.

17. The Board held a public evidentiary hearing between February 18 and February 21, 2019, in the courtroom of the North Carolina State Bar in Raleigh.

18. At the end of the hearing, the Board voted unanimously to order a new election for CD-9, Bladen County Commissioner District 3, and Bladen Soil and Water Conservation District Supervisor. The Board continued its



hearing as to Seat 2 on the District Court in Judicial District 16B to allow agency staff additional time to review a number of factors distinctively relevant to that contest, and a separate Order will be entered as to that matter. The Board further allowed affected candidates to submit proposed findings of fact and conclusions of law by February 27, 2019.

## II. FINDINGS OF FACT

**A. In the months after the State Board declined to certify a winner in the contest for CD-9, and before the Board held its evidentiary hearing, the Board staff conducted a investigation into the irregularities and improprieties affecting elections in certain counties within that congressional district.**

19. The Board employs an executive director, in-house investigations team, data analysts, and counsel who carry out the work of Board investigations. During their investigation into election irregularities affecting counties within CD-9, Board staff uncovered overwhelming evidence that a coordinated, unlawful, and substantially resourced absentee ballot scheme operated during the 2018 General Election in Bladen and Robeson Counties.

20. In the absence of seated Board members, between December 28, 2018, and January 31, 2019, agency staff continued their collection and review of communications, financial records, and other documents produced under more than a dozen subpoenas.

21. As part of the Board staff's thorough review, Board investigators attempted to interview 401 voters, successfully interviewed 142 voters, and

also interviewed 30 subjects and other witnesses.

22. Subpoenas issued by the predecessor Board and by the present State Board yielded records in excess of one hundred thousand pages, including communications, financial information and phone records.

23. Three distinct categories of irregularities occurred in Bladen and Robeson Counties during the 2018 General Election: (1) absentee by mail irregularities in Bladen and Robeson Counties; (2) disclosure of early voting results in Bladen County; and (3) a lack of office security in the Bladen County Board of Elections Office ("Bladen CBE").

24. The absentee by mail irregularities were enabled by a well-funded and highly organized criminal operation, coordinated by Leslie McCrae Dowless Jr. and others, and funded principally by the Harris Committee through its consulting firm Red Dome Group. Bladen County Sheriff James McVicker and other candidates also paid Dowless.

**B. The number of absentee ballots in some manner affected by the operation run by Dowless, exceeded the apparent margin between Harris and McCready based on unofficial results.**

25. After the 2018 General Election, districtwide, the apparent results of CD-9 were as follows: Harris 139,246, McCready 138,341, and Scott 5,130. Accordingly, Harris led by a margin of 905 votes, or 0.3% of the total number of votes tallied.

26. Districtwide, the apparent absentee by mail votes were as follows: Harris 4,027, McCready 6,471, and Scott 153.

27. In Bladen County, where Dowless and his workers were found to have concentrated their activity, the apparent absentee by mail votes were as follows: Harris 420, McCready 258 , and Scott 6.

28. In Robeson County, where Dowless and his workers were also active, the apparent absentee by mail votes were as follows: Harris 259, McCready 403, and Scott 18.

29. In the 2018 General Election, Bladen CBE received 1,369 requests for absentee by mail ballots purportedly submitted by or on behalf of voters residing in the portion of Bladen County within CD-9. Some portion of these requests were fraudulently submitted under forged signatures, including a deceased voter. Bladen CBE sent absentee by mail ballots to 1,323 voters and did not send absentee by mail ballots to 46 voters for whom or by whom request forms were purportedly submitted.

30. Of the 1,323 absentee by mail ballots sent to Bladen County voters within CD-9, 728 (55.03%) were returned, and 595 (44.97%) were not returned.

31. In the 2018 General Election, the Robeson County Board of Elections ("Robeson CBE") received 2,321 requests for absentee by mail ballots purportedly submitted by or on behalf of voters in Robeson County, the entirety of which is located within CD-9. Robeson CBE sent absentee by mail ballots

to 2,269 voters and did not send absentee by mail ballots to 52 voters for whom or by whom request forms were purportedly submitted.

32. Of the 2,269 absentee by mail ballots sent to Robeson County voters, 776 (34.20%) ballots were returned, and 1,493 (65.80%) were not returned.

**C. Board Investigators found significant absentee by mail irregularities in Bladen and Robeson Counties.**

33. In April 2017, Harris personally hired McCrae Dowless to conduct an absentee ballot operation leading up to and during the 2018 elections.

34. In June 2017, Harris hired the consulting firm Red Dome Group. Thereafter, McCrae Dowless was paid by Harris Committee through Red Dome. Red Dome would bill the Harris Committee for these expenses.

35. Other candidates and organizations, including but not limited to Bladen County Sheriff candidate James McVicker, paid Dowless for absentee ballot operations during the 2018 elections.

36. Dowless hired workers he paid in cash to collect absentee request forms, to collect absentee ballots, and to falsify absentee ballot witness certifications.

37. Initially, Dowless told workers he would pay them \$150.00 per 50 absentee ballot request forms collected and \$125.00 per 50 absentee ballots collected, but he also sometimes paid other amounts per ballot or a flat

weekly rate.

38. Dowless's absentee ballot operation was arranged into two phases: (1) the collection of absentee by mail request forms; and (2) the collection of absentee ballots.

***1. Phase One of Dowless's operation involved paying individuals to collect and submit absentee by mail request forms, some of which were fraudulent.***

39. In addition to using blank forms to solicit voters to request to vote absentee by mail, Dowless and his workers prepared request forms utilizing forms obtained from previous elections to "pre-fill" the form so that workers could return to those voters and have the voters sign the request form. The pre-filled section would sometimes include voters' Social Security numbers, driver's license numbers, and dates of birth.

40. "Phase One" of Dowless's operation was arranged into four known components. First, Dowless's workers obtained absentee by mail request forms from voters. Second, Dowless's workers returned absentee by mail request forms to Dowless for payment. Third, Dowless would photocopy and retain copies of all absentee by mail request forms for later use in subsequent elections or for other purposes. Fourth, Dowless or his workers would deliver absentee by mail request forms to the appropriate CBE Office.

41. In the 2018 General Election, at least 788 absentee by mail request forms in Bladen County were submitted by McCrae Dowless or his workers.

42. In the 2018 General Election, at least 231 absentee by mail request forms in Robeson County were submitted by McCrae Dowless's workers, though an email suggests the number may have been at least 449. The records logs maintained by Robeson CBE did not appear complete, so a correct count could not be made. In the 2018 General Election, county boards of elections were not required by law or rule to maintain logs of absentee request forms.

43. Red Dome Group principal Andy Yates testified that Dowless called him regularly to provide updates on the number of absentee by mail requests he had collected, and that another Red Dome contractor provided Dowless lists of voters who had been sent ballots.

44. On September 24, 2018, at 10:10:25 a.m., Andy Yates emailed Beth Harris the following:

Of the absentees that have been sent out in Robeson so far, after reviewing them with McCrae [sic], we believe that 181 of them are from his list. They have more yet to turn into the BofE in Robeson. McCrae's team has generated a total of 449 requests in Robeson and will be generating more.

Ex. 30.

45. Lisa Britt worked for Dowless during the 2018 General Election. She testified that Dowless's operation included efforts to "pre-fill" absentee by mail request forms based on information previously obtained and retained by Dowless, who developed the practice of saving photocopies of absentee by mail request forms that he and his workers collected during past elections.

Absentee by mail request forms were copied at an office used by Dowless and his workers. Copies were maintained without redactions, such that Dowless possessed sensitive voter data, including voters' Social Security numbers, driver's license numbers, dates of birth, and signatures. Lola Wooten previously worked in an absentee ballot operation distinct from the operation conducted by Dowless. However, Wooten and Dowless communicated frequently by phone during the 2018 general election and Britt, along with others, assisted and/or observed Wooten making photocopies of absentee by mail request forms brought by Wooten to Dowless's Office.

46. Because Dowless maintained photocopies of completed absentee by mail request forms from prior elections—including voters' signatures and other information used to verify the authenticity of a request—Dowless possessed the capability to submit forged absentee by mail request forms without voters' knowledge and without detection by elections officials.

47. Dowless's workers were deployed primarily in Bladen and Robeson Counties, though additional activities were carried out in other counties.

48. Dowless paid Britt and other workers based on the number of voters for whom they secured absentee by mail request forms: for every 50 request forms, the amount was between \$150.00 and \$175.00, plus additional money for gas and food, Britt testified. We find her testimony credible.

49. Dowless would pay Britt and other workers in cash once they had submitted 50 absentee by mail request forms to him.

50. Harris testified he was aware that Dowless paid his workers based on the number of absentee by mail request forms each worker collected and returned to Dowless. Harris explained that his Committee would pay Dowless around \$4 or \$4.50 per request form. Harris further testified that he had asked Dowless during their initial meeting, “don’t you pay [your workers] hourly?” [to which Dowless responded], “[n]o, if you pay people hourly down here they’ll just sit under a tree.” We find Harris’ testimony on this issue credible.

51. Andy Yates testified, and the Board finds it credible, that he was aware Dowless “wouldn’t always turn [absentee by mail request forms] in as soon as he got them.” There is substantial evidence that Dowless engaged in the practice of collecting then withholding absentee by mail request forms, submitting them to the elections office at times strategically advantageous to his ballot operation. Dowless would track which ballots had been mailed by elections officials using publicly available data.

52. Some portion of the absentee by mail request forms submitted by Dowless and his workers were forged. Britt admitted that she had completed the top portion of an absentee by mail request form submitted on behalf of a deceased individual, James Spurgeon Shipman. Britt denied having forged Shipman’s purported signature at the bottom of the request form, which was



signed months after Shipman had died, and Britt claimed not to know who had forged Shipman's signature on the bottom of the form.

53. Dowless and his workers engaged in a systematic effort to avoid detection of their unlawful activities.

54. Britt forged the signature of her mother, Sandra Dowless, on a number of witness certifications on the absentee by mail container envelopes. Dowless told Britt that she had witnessed too many absentee by mail container envelopes under her signature, and Britt began forging her mother's signature.

55. Dowless and his workers discussed and enacted strategies designed to avoid raising any "red flags" with elections officials. Dowless was aware that Britt was forging Sandra Dowless's signature at the time the forgeries occurred.

56. During the general election, some voters discovered that absentee by mail request forms were submitted on their behalf, but without their knowledge, consent, or signature, to the Bladen CBE. At least two of these forms were submitted by Dowless employee Jessica Dowless along with other forms she was directed to deliver by Dowless.

57. In October 2018, the State Board of Elections Office sent a mailing to every voter who had requested an absentee ballot in Bladen County for the general election. The letter informed voters of their rights and warned voters that ballot collection efforts were unlawful. The mailing stated elections

officials would never come to a voter's home to collect their absentee by mail ballot. Of the letters sent, 184 were returned as undeliverable. It is unknown whether some portion of the 184 associated absentee by mail requests may have been fraudulent or undeliverable due to hurricane damage.

***2. Phase Two of Dowless's operation involved paying workers to collect absentee by mail ballots, some of which were unsealed and unvoted, and deliver them to Dowless.***

58. Dowless and his workers sought and obtained information from local county board of elections staff to determine when individual voters had been sent absentee by mail ballots in response to their request forms, so that Dowless or his workers could return to voters' homes shortly after absentee by mail ballots were received.

59. Some absentee by mail ballots unlawfully collected by Dowless and his workers were not properly witnessed by two witnesses or a notary public. Dowless's workers would sign the witness certification when they had not witnessed the voter mark his or her ballot in their presence.

60. Dowless and his workers collected at least some of the absentee by mail ballots unsealed and unvoted.

61. After Dowless's workers collected absentee by mail ballots from voters, they would deliver the absentee by mail ballots to Dowless in order to collect their payment in cash.

62. Dowless frequently instructed his workers to falsely sign absentee by mail ballot container envelopes as witnesses, even though they had not witnessed the voter mark the ballot in their presence. During the 2018 General Election, the Witness' Certification section printed on the absentee return envelope reads as follows:

I certify that: • I am at least 18 years old • I am not disqualified from witnessing the ballot as described in the WARNING on the flap of this envelope • The Voter marked the enclosed ballot in my presence, or caused it to be marked in the Voter's presence according to his/her instruction • The Voter signed this Absentee Application and Certificate, or caused it to be signed • I respected the secrecy of the ballot and the Voter's privacy, unless I assisted the Voter at his/her request

The following was printed on the flap of the absentee ballot envelope in the 2018 General election: "Fraudulently or Falsely completing this form is a Class I felony under Chapter 163 of the N.C. General Statutes."

63. In some cases, Dowless's workers fraudulently voted blank or incomplete absentee by mail ballots at Dowless's home or in his office. Kimberly Robinson testified that she turned over her unmarked ballot to Lisa Britt and Ginger Eason, workers paid by Dowless. We find her testimony credible.

64. In some cases, ballots that had been collected unsealed and unvoted were returned to the county board of elections bearing fraudulent witness signatures and were accepted and counted.

65. Dowless and his workers engaged in various practices to avoid detection by election officials. Those practices included: (1) delivering small batches of ballots to the post office; (2) ensuring that ballots were mailed from a post office that was geographically close to where the voter lived; (3) ensuring that witnesses signed and dated absentee by mail container envelopes with the same date as the voter; (4) ensuring that witnesses signed in the same color ink as the voter, which included tracing over existing signatures to ensure conformity; (5) ensuring that stamps were not placed in such a way as to raise a red flag for local elections administrators; (6) taking some collected ballots back to the voter for hand-delivery to the local Board of Elections; and (7) limiting the number of times a witness's signature appeared on the ballot; and (8) forging witness signatures on ballot envelopes.

66. From past experience, Dowless considered certain practices to be "red flags" that could trigger suspicion by elections officials. Dowless was careful to keep an arms' length distance from certain actions he directed his workers to do, such as falsely witnessing ballots, filling out ballots, and tracing over signatures of witnesses to match the ink color of the voter. Dowless had publicly made false statements to conceal his ballot collection activities by denying he "ever touched a ballot" or instructed any of his workers to collect. Ex. 35. Both Mark Harris and Andy Yates testified that Dowless specifically told that neither he nor his workers ever collected ballots. Lisa Britt and Kelly

Hendrix both testified that ballot collection was a part of Phase Two as directed by Dowless.

67. Lisa Britt testified, and we find it credible, that Dowless once scolded her for placing stamps on absentee by mail container envelopes in an idiosyncratic way that might alert local elections officials to Dowless's unlawful operation (i.e. affixing the stamp upside-down). Britt understood Dowless's warning to mean that placing the stamps in a particular way might alert elections officials that someone was unlawfully handling and mailing absentee by mail ballots on behalf of voters.

68. In order to avoid detection of Dowless's operation, Britt and Dowless's other workers would sign the witness certifications on absentee by mail container envelopes using the same color ink that the voter had used, and copying the same date that appeared next to the voter's signature, even if the witness certification was completed on some other date. Britt testified, and we find it credible, that the strategy was instituted to "throw off the elections board." At times when a certification was signed in a different color ink than the voter's, Dowless's workers would, at his direction, trace over the witness signature and date using ink similar in color to the ink used by the voter.

69. Britt explained the ballot collection and witnessing process as follows. If a voter did not have the witnesses for the ballot, the workers would take the ballots back to Dowless. They were paid to collect the ballots, but

were not paid as much for collecting ballots as for request forms.

70. Britt testified regarding her payment arrangement with Dowless for the collection of absentee by mail ballots. She said she believed they had been paid \$125 for 50 ballots, and that she worked about two or three weeks picking up ballots at that rate. Once they realized it was harder to convince voters to turn over their absentee by mail ballots than request forms, they were just paid a flat weekly rate of about \$200 per week. We find her testimony credible.

71. Ginger Eason and Cheryl Kinlaw similarly admitted in videotaped interviews that they were paid by Dowless to push votes for Harris, and to return collected ballots to Dowless, who had stacks of ballots on his desk throughout the 2018 General Election. Exs. 103, 104.

72. Britt testified the workers were sent back out to voters' homes once their ballots came back in the mail, to explain to the voters, that if the ballot wasn't correctly witnessed by two voters that the board of elections would reject and the vote would not count. If the voter had two witnesses available when she arrived, the voter would use his or her two witnesses. But in the event that they didn't have someone available to witness their signature on the ballot container envelope, the workers would explain to the voter they could witness it for the voter, or have it witnessed and mail it for the voter. We find her testimony credible.

73. Britt claimed that she did not fill in or vote any of the absentee by mail ballots that she personally collected, but she admitted, and we find, that she had filled in races on ballots that were collected by Dowless's other workers.

74. Affected voter Kimberly Robinson's testimony corroborated Britt's admission that Dowless and his associates had collected unsealed and unvoted absentee by mail ballots. Robinson testified that, after she received an absentee by mail ballot in the mail in the fall of 2018, Britt and Ginger Eason came to her home in a van and took her unsealed, unvoted ballot. Robinson explained that she signed the ballot container envelope, and that Ginger Eason signed the ballot container envelope as a witness in front of her, but that no one signed as the second witness. Robinson explained that she gave Britt and Eason her blank absentee by mail ballot because "McCrae usually helped me out," by voting her ballot, since she "didn't know who to vote for" or "much about politics." We find her testimony credible.

75. Multiple affiants and other witnesses similarly reported that Dowless and his associates collected or attempted to collect absentee by mail ballots, including unsealed and/or unvoted ballots. *See* Ex. 107 (C. Eason Aff.); Ex. 10 (D. Montgomery Aff.); Ex. 8 (E. Shipman Aff.); Ex. 9 (E. Shipman Suppl. Aff.); Ex. 84 (press reports of statements by affected voters Kirby Wright and Doris Hammonds).

76. We find that Dowless and his workers collected absentee ballots in violation of North Carolina law.

77. We find that Dowless and/or his workers marked the ballots of other individuals in violation of North Carolina and federal law.

78. Other absentee by mail ballots voted in the General Election were otherwise unlawful. For example, Lisa Britt, who testified that she currently is and was at all relevant times on probation for a felony offense involving the sale of “pills” and was therefore ineligible to vote, voted in the November 2018 General Election. Britt claimed that Dowless told her that, because her probation was not out of Bladen County, that she was still eligible to vote in Bladen County.

79. Dowless appeared at the evidentiary hearing on this matter but refused to testify when called as a witness by the State Board’s staff. Through counsel, Dowless stated that he would not testify unless granted immunity in the manner allowed under Chapter 163. The State Board declined to grant immunity, and Dowless did not testify. As provided in its Amended Order of Proceedings, the State Board may draw, and does now draw, an adverse inference from Dowless’s refusal to testify or to be interviewed by the State Board’s investigators throughout the duration of its investigation. Dowless’s refusal to testify supports our findings otherwise supported by other testimony heard by Dowless on February 18, 2019, including that Dowless or those



working at his direction engaged in unlawful activities during the 2018 General Election, including witness tampering and intimidation, absentee ballot harvesting, forgery, and a scheme to obstruct the conduct of the 2018 General Election.

**D. Harris personally hired McCrae Dowless to conduct an absentee ballot operation leading up to and during the 2018 elections.**

80. Prior to hiring Dowless to work for his 2018 campaign, Mark Harris was aware of the absentee by mail voting results in Bladen County in the 2016 Republican Primary Election. In Bladen County during the 2016 Republican Primary Election, Todd Johnson received 221 absentee by mail votes, Mark Harris received 4 absentee by mail votes, and incumbent Robert Pittenger received 1 absentee by mail vote.

81. In an email bearing the subject line “Anomalous Voting in Bladen County” sent to Mark Harris and Beth Harris on June 7, 2016, John Harris, their son, explained why the available data from the 2016 Republican Primary led him to conclude that “absentee by mail votes look very strange.” *See* Ex. 53. John Harris’s email pointed out to Mark Harris and Beth Harris three anomalies in Bladen absentee mail voting. First, Todd Johnson received a significantly disproportionate share of absentee by mail votes in comparison to Johnson’s share of one-stop and Election Day votes. Second, Bladen County featured an unusually high number of absentee by mail votes overall—

approximately 22% of all absentee by mail votes cast in CD-9, compared to only 2% of Election Day and one-stop votes cast in CD-9. Third, there was a disproportionately large share of African American voters among Bladen County absentee by mail voters relative to other counties. *See id.*

82. In an interview conducted after the Board had declined to certify the CD-9 election, Mark Harris stated that he learned that Dowless conducted Todd Johnson's absentee mail ballot program in Bladen County a couple weeks after the June 6, 2016 Republican primary election from a friend, Judge Marion Warren. Harris stated that according to Judge Warren, "McCrae was a guy from Bladen County. He was a good old boy that knew Bladen County politics, that he, you know, did things right, and that he knew election law as better -- better than just about anybody he knew of." Ex. 38, Tr. 3:7-3:11.

83. On March 8, 2017, Mark Harris sent a text message to former Judge Marion Warren. The text message followed up on a previous conversation regarding a proposed trip to Bladen County during which Judge Warren would connect Mark Harris to the key people that could help him carry that part of the county in a future U.S. House CD-9 race. Mark Harris specifically referenced McCrae Dowless in this text message, describing him as "the guy whose absentee ballot project for Johnson could have put me in the U.S. House this term, had I known, and he had been helping us." Ex. 61.

84. On April 6, 2017, Mark Harris met Dowless at Bladen County

Commissioner Ray Britt's furniture store in Bladen County and discussed Dowless's absentee ballot program.

85. Prior to hiring Dowless, Mark Harris was warned by his son that Dowless may have engaged in the unlawful collection of ballots during the 2016 Republican primary election.

86. On April 6, 2017 or April 7, 2017, Mark Harris and Beth Harris spoke with John Harris over the telephone about Dowless's absentee ballot program, at which time John Harris stated his concerns about Dowless to Mark Harris, including that Dowless had engaged in collecting ballots in 2016 and John Harris testified that his general sense that Dowless was "kind of a shady character." John Harris also reminded Mark Harris about the analysis that John Harris had set forth in his June 7, 2016, email regarding absentee ballot results for Johnson in Bladen County in 2016, including that ballots had popped up in "batches," strongly suggesting that Dowless and his affiliates were collecting bundles of ballots and mailing them *en masse*.

87. John Harris testified that McCrae Dowless told Mark Harris that he never touched absentee ballots, but that John Harris did not believe Dowless because the numbers did not add up and relayed this information to Mark Harris during the April 6, 2017 or April 7, 2017 phone call. We find this testimony credible.

88. On April 7, 2017, John Harris, Mark Harris and Beth Harris exchanged a series of emails following the April 6, 2017 or April 7, 2017 phone call between the three regarding Dowless. In those emails, John Harris specifically informed Mark Harris and Beth Harris that he was “fairly certain” Dowless’s operation was involved in illegal activities, namely “that they collect the completed absentee ballots and mail them all at once.” John Harris provided the text of and citation to the relevant North Carolina law that makes such practice illegal. Ex. 55. John Harris’s conclusion was based, at least in part, on evidence in public voting data showing that ballots had been returned in batches to the Bladen County Board of Elections office, leading John Harris to believe that Dowless and his affiliates had been mailing stacks of ballots at a time. *See id.*

89. Mark Harris was aware that Dowless had a prior criminal conviction before he hired Dowless. He denied knowledge of any convictions related to perjury or fraud.

90. Mark Harris hired Dowless on or around April 20, 2017.

91. John Harris provided credible testimony that Dowless offered his father, Mark Harris, the choice between “a gold plan, a bronze plan, and a silver plan,” with the different plans being tethered to the amount of people that Dowless would be able to employ or put “on the ground.”

92. On April 20, 2017, Mark Harris wrote a check for \$450.00, drawn on Harris's personal checking account, and made payable to the terminated North Carolina independent expenditure political committee Patriots for Progress. Ex. 60. Mark Harris testified that Dowless directed him to write a check to Patriots for Progress in order to retain Dowless's services. We find his testimony on this issue credible.

93. On May 4, 2017, Mark Harris wrote a second check for \$2,890.00, drawn on Harris's personal checking account, and made payable to Patriots for Progress. *See* Ex. 60. Mark Harris testified that the second check to Patriots for Progress was to fund start-up costs for Dowless's operation, including workers and office space. We find his testimony on this issue credible.

**E. Dowless's Operation was Well-Funded. The Harris Committee Funded Dowless's Operation Through Payments to Red Dome.**

94. Andy Yates testified that he and Red Dome officially started with the Harris Committee at the beginning of July 2017, but that Dowless had already been hired by the Harris campaign began earlier in 2017 in that Harris and Dowless had already agreed upon Dowless's fees. We find this testimony credible.

95. Beginning in July 2017, all fees and payments to Dowless were made through Red Dome.

96. During both the primary and the general election, Red Dome submitted invoices to the Harris Committee and was reimbursed for payments made to Dowless.

97. All members of the Harris Committee's staff, except for Mark and Beth Harris, were paid by the Harris Committee through Red Dome.

98. In total, the Harris Committee paid Red Dome \$525,088.95 between August 1, 2017, and November 26, 2018. Ex. 142.

99. For the 2018 General Election, the Harris Committee paid Red Dome \$289,980.50 between May 3, 2018, and November 26, 2018. *See id.*

100. Andy Yates testified, and we find it credible, that as of the date of his testimony, the Harris Committee still had outstanding invoices from Red Dome that were unpaid or partially unpaid, which totaled approximately \$51,515.50. *See* Ex. 28 at 24 (Yates testified that \$11,000 was still owed on this partially paid invoice); *id.* at 27 (\$7,881.50); *id.* at 28 (\$32,634.00).

101. In total, Red Dome paid Dowless \$131,375.57 between July 3, 2017, and November 7, 2018. *See* Board's Preview of Evidence at slide 15.

102. For the 2018 General Election, Red Dome paid Dowless \$83,693.57 between June 8, 2018, and November 7, 2018. *Id.*

103. Approximately \$15,000 of the \$131,375.57 that was paid to Dowless by Red Dome was for work performed by Dowless for other clients of Red Dome.

104. Yates testified the Harris Committee paid Dowless a flat fee of \$1,625 per month for the general election, plus additional sums to fund payments made to Dowless's workers and other expenses Dowless incurred on behalf of the Harris Committee. This was an increase from the \$1200 per month that the Harris Committee paid Dowless for the primary election. The total sum paid by the Harris Campaign to Dowless exceeded the sum paid to other significant individuals, including the campaign manager.

105. Additional sums paid to Dowless were based on verbal representations made by Dowless of his expenses.

106. Red Dome and the Harris Committee relied on Dowless's representations of his expenses and took Dowless's verbal representations at face value.

107. Andy Yates testified that no documentation was required of Dowless for payment of his expenses or for proof of activities regarding his absentee ballot program, and no documents were sent or received by Red Dome to verify Dowless's activity.

108. In addition to the absentee ballot activities already described, Dowless paid individuals to put out and take up yard signs and to work at local festivals and parades. He also paid individuals to work the polls in Bladen, Robeson and Cumberland Counties during early voting, on the day of the primary, and on the day of the general election. An unknown portion of the

payments from Red Dome to Dowless funded this activity. Red Dome also paid and/or reimbursed Dowless for the cost of office space, as well as associated costs for utilities, internet, office supplies, office staff and paper copies or office copier expenses.

109. John Harris testified that he spoke with Andy Yates about general concerns that John Harris had about Mark Harris's decision to hire Dowless, including that Dowless was a "shady character." John Harris also testified that he did not describe his concerns regarding Dowless to Yates in as stark of terms as he had described his concerns about Dowless to Mark Harris. We find his testimony credible.

110. Andy Yates was aware that Dowless had a prior criminal conviction before he began making payments to Dowless. He denied knowledge of any convictions related to perjury or fraud.

111. Between July 3, 2017, and November 7, 2018, Bladen County Sheriff Jim McVicker paid Dowless \$5,000 for what is alleged to have been get-out-the-vote activity. *See* Board's Preview of Evidence at slide 16.

112. The McVicker Committee also contracted with Red Dome for services related to phone services, robocalls, and ring-less voicemail. In total, McVicker paid Red Dome a total of \$8,000 in the 2018 election cycle.



**F. The Harris Committee failed to comply fully with subpoenas lawfully issued by this State Board and its predecessor.**

113. The Harris Committee failed to comply fully with subpoenas issued by the State Board of Elections and Ethics Enforcement on December 1, 2018, and identical subpoenas by the State Board of Elections on February 6, 2019, despite repeated invitations to supplement its production.

114. Each subpoena was identical in scope, and required production of “emails, text messages” and other records in the possession of the Harris Committee regarding absentee voting efforts and Dowless, among other items. The covered period ran from January 2016 through December 1, 2018.

115. On December 4, 2018, agency counsel assisted the Harris Committee, at the Committee’s request, by suggesting preliminary search terms, but counsel “emphasized . . . that the initial list of search terms would not, and could not, limit the scope of the subpoena.” Ex. 56.

116. The Harris Committee, through counsel, initially produced certain records running from July 2017 forward. On January 15, 2019, agency counsel transmitted correspondence challenging the legal basis on which the Harris Committee refused to produce records dated before July 2017. *Id.* On February 8, 2019, the Harris Committee supplemented its production with additional responsive records that predated July 2017.

117. On February 17, 2019, agency counsel requested written

confirmation that the Committee had “provided any documents related to absentee ballot activity, Dowless, or planning related to future absentee ballot activities, dated on or after March 1, 2017,” and cited the subpoena. *Id.* The Harris Committee, through its counsel John Branch, confirmed the same:

[T]his will confirm that we produced all responsive, non-objectionable (per the attorney-client privilege, the attorney work product doctrine, or the spousal privilege) documents related to absentee ballot activity, Dowless, or planning related to future absentee ballot activities from March 1, 2017 to December 1, 2018 which we found using the agreed-to methods of searching for the documents (i.e. the State Board’s queries) and the quality control efforts we undertook to make sure, to the best extent we reasonably could, that all responsive documents were found.

*Id.*

118. At no time before the evidentiary hearing, however, did the Committee produce responsive communications between John Harris and Mark Harris regarding the nature and legality of Dowless’s operation (Exs. 54 and 55) or communications between Mark Harris and Judge Marion Warren in which Harris sought to secure a connection to “the guy whose absentee ballot project . . . could have put me in the US House this term, had I known, and he had been helping us” (Ex. 61). Indeed, the Committee only attempted to supplement its production to include communications with John Harris after it became clear that John would testify, and mere minutes before the State called John as its witness.

119. Late in the evening after John Harris testified, the Committee supplemented its production with more than 800 pages, including

communications with Judge Warren (Ex. 61).

120. Among other reasons cited for the Committee's failure to make a complete production, counsel John Branch indicates that the Committee had operated under a mistaken understanding of its obligations under the subpoenas. We find the explanation unpersuasive, as the productions were clearly responsive. The Harris Committee failed to comply fully with the lawful subpoenas by this Board, and that such non-compliance contributes to cumulative doubt cast on the congressional election.

121. This Board cannot allow parties or their counsel to behave in this manner, and the Board will take further action as it deems appropriate separate from this Order.

**G. Expert Findings**

122. Dr. Stephen Ansolabehere, a professor of Government at Harvard University, explained in his report that patterns of absentee by mail voting in the 2018 General Election in Bladen and Robeson Counties differed significantly from the remainder of CD-9 and from elsewhere in the State. *See* Ex. 73. We find this information credible.

123. Dr. Michael Herron, a professor of Government at Dartmouth University, explained in his report that Harris's mail-in absentee support in Bladen County was greater than the absentee by mail support for any other comparable Congressional candidate in any general election since 2012 in

both North Carolina and three comparable states. *See* Ex. 74 at 26-28, 27 t.8. We find this information credible.

124. We find Dr. Stephen Ansolabehere credible in his conclusion that the rates at which voters who requested absentee by mail ballots in Bladen and Robeson counties but did not return their absentee ballots are statistical outliers compared to CD-9 and the rest of the state. Elsewhere in CD-9, of voters who requested an absentee ballot, 10% did not vote at all. But in Bladen County, 337 voters requested an absentee ballot but did not vote at all (approximately 26% of people who requested absentee ballots). In Robeson County, 832 voters requested an absentee ballot but did not vote at all (approximately 36% of people who requested absentee ballots). These were the two highest rates of nonvoting in both CD9 and the state as a whole. *See* Ex. 73, at 63.

125. We also find Dr. Stephen Ansolabehere credible in his conclusion that both frequent voters and occasional voters in Bladen and Robeson had much higher non-return rates than similar voters elsewhere in the state. Elsewhere in CD-9, 9.7% of frequent voters (i.e. voters who voted in more than four of the last six elections) did not return their absentee ballots or otherwise vote. Elsewhere in CD-9, brand new voters who requested an absentee ballot are a little bit less likely to vote than experienced voters: about 14%. However, in Bladen and Robeson Counties in CD-9, 41.7% of frequent voters did not

return their absentee ballots or otherwise vote. A similarly high proportion of new voters (48%) did not return their absentee ballots or otherwise vote. Ex. 73, at 67, 67 t.7. We find this information credible.

**H. Dowless Engaged in Efforts to Obstruct the Board's Investigation and Tamper with Witnesses.**

126. Efforts were made to obstruct the Board's investigation and the testimony to be provided at the hearing.

127. Lisa Britt testified that Dowless blindsided her with a videotaped interview with WBTV reporter Nick Ochsner, which was first aired on or around December 12, 2018. Britt claimed that when she arrived at Dowless's house after work one afternoon, Dowless told her that a friend of his that he had spoken with a few times was coming to take a videotaped statement from Britt regarding the allegations that Dowless and his workers had been collecting ballots. Britt testified that what she said in that interview with Ochsner was not truthful, and it was revealed during the hearing that Britt had previously provided contradictory statements to Board Investigator, Joan Fleming, by the time the interview was filmed. We find her testimony credible.

128. Lisa Britt further testified that on or around February 14, 2019, just one week before the hearing, Dowless asked her to come to his residence where he provided her a slip of paper coaching her on how she should testify

at the hearing. Britt took a picture of the slip of paper and provided that picture by text to Board Investigator, Joan Fleming. That text message, which was moved into evidence, reads:

I can tell you that I haven't done anything wrong in the election and McCrae Dowless has never told me to do anything wrong, and to my knowledge he has never done anything wrong, but I am taking the 5th Amendment because I don't have an attorney and I feel like you will try to trip me up. I am taking the 5th.

Ex. 7. We find her testimony credible, and Britt later produced the original copy of the slip of paper.

129. Britt testified that there was also a meeting at Dowless's house sometime after reports began circulating that Dowless was involved in the absentee by mail irregularities in CD-9, and after the Board declined to certify the results of the CD-9 race, during which Dowless told a group of his workers, including Britt, that, "as long as we stick together, we will be fine." We find Britt's testimony credible. At the same meeting, Dowless stated that there were no films or videos of their activities.

**I. Bladen County Early Voting Results Were Improperly Tabulated on November 3, 2018**

130. Bladen County one-stop early voting results were improperly and unlawfully tabulated at 1:44 p.m. on November 3, 2018. *See* Ex. 18.

131. The physical tape that was printed when early voting results were tabulated displayed early voting results for United States House District 9,

Bladen County Commissioner District 3 and Bladen Soil and Water Conservation District Supervisor. *See* Ex. 18.

132. Early voting judges Michele Maultsby, Coy Mitchell Edwards and Agnes Willis signed the tape on November 3, 2018. *See* Ex. 18.

133. Michele Maultsby, Coy Mitchell Edwards and Agnes Willis testified that they were unaware that it is unlawful to tabulate early voting results before Election Day, stating that they had been incorrectly trained to always tabulate results at the end of early voting. We find their testimony credible.

134. Coy Mitchell Edwards and Agnes Willis viewed early voting results for Bladen County Sheriff on November 3, 2018.

135. At least four other first shift poll workers were present at the one-stop site when results were tabulated and had access to early voting results for United States House District 9, Bladen County Commissioner District 3 and Bladen Soil and Water Conservation District Supervisor. *See* Ex. 19

136. Testimony at hearing described a meeting held between the early voting worker, Agnes Willis, and the director of elections in Bladen CBE, Cynthia Shaw, in which Director Shaw inquired how the early voting results had gotten out into the community. Testimony indicated that the conversation occurred when the early voting worker returned the early voting equipment to the Bladen CBE office shortly after early voting ended

on Saturday, November 3, 2019.

137. During the last day of one-stop early voting in the 2018 Primary Election, and before early voting results could be lawfully tabulated, Dowless represented that Harris had “988 of the votes in Bladen.” Ex. 70. The final sum of absentee by mail votes and one-stop votes canvassed by the Bladen CBE was 889 votes for Harris.

**J. Bladen County Board of Elections Office Security Concerns**

138. The Bladen County Board of Elections shares office space with the Bladen County Veterans Affairs Administration. Non-elections personnel had access to Board of Elections office space. Ex. 65.

139. The room in the Bladen County Board of Elections office where the results tabulation computer is located is directly across a common hallway from an office occupied by Veterans Affairs staff. *See* Ex. 65.

140. A photo taken by a county board member and sent to investigators on November 6, 2018, shows that the key to the ballot room, which is labeled with a keychain marked “Ballot Rm,” hung on a wall in an area of the Board of Elections Office accessible to non-elections personnel. The photo was sent by text message with the message: “Same spot they have always been.” Ex. 63.

141. Another picture of those same keys, which was taken by a Board investigator on November 29, 2018, shows the keys hung on the same wall Ex. 64.



142. A photo taken by Board investigators shows the ballot room left open, with the keys to the room left unattended in the door. Ex. 66.

143. The Bladen County Board of Elections unanimously voted to update security by resolution passed on June 12, 2018, but the Board's request for funding was inexplicably denied by the Bladen County Board of Commissioners and no updates were made. *See* Ex. 68.

144. In October of 2018 the United States Department of Homeland Security conducted a review of the physical security at the Bladen County Board of Elections office in 2018 and provided a list of options to mitigate existing vulnerabilities, increase resilience and implement protective measures. *See* Ex. 67.

**K. Fraud, improprieties, and irregularities occurred to such an extent that they taint the results and cast doubt on the fairness of contests held for Congressional District 9, Bladen Soil and Water Conservation District Supervisor, and Bladen County Commissioner, District 3 in the 2018 General Election.**

145. The fraud, improprieties, and irregularities identified in Paragraphs 1 through 144, *supra*, operate cumulatively under the unique circumstances of this case to taint the results and cast doubt on the fairness of contests held for Congressional District 9, Bladen Soil and Water Conservation District Supervisor, and Bladen County Commissioner, District 3 in the 2018 General Election.

146. Indeed, Harris himself testified as follows near the conclusion of the State Board's evidentiary hearing on this matter:

Through the testimony I have listened to over the past three days, I believe a new election should be called. It has become clear to me that the public's confidence in the Ninth District seat [in the] general election has been undermined to an extent that a new election is warranted.

We find his assessment of public confidence credible.

### III. CONCLUSIONS OF LAW

147. Sufficient notice of the evidentiary hearing and of other procedural rights was provided to all candidates who competed for election to the U.S. Representative for North Carolina's Ninth Congressional District; Seat 2 on the District Court in Judicial District 16B; Bladen County Commissioner District 3; and the Bladen Soil and Water Conservation District Supervisor. All candidates were afforded due process and the opportunity to present and cross-examine witnesses at the evidentiary hearing.

148. The State Board has general supervisory authority over the primaries and elections in the State and the authority to promulgate reasonable rules and regulations for the conduct of such primaries and elections as it may deem advisable. G.S. § 163A-741(a). This includes the authority to "investigate when necessary or advisable, the administration of election laws, frauds and irregularities in elections in any county municipality

or special district.” G.S. § 163A-741(d).

149. The State Board has the authority to “initiate and consider complaints on its own motion” and “take any other action necessary to assure that an election is determined without taint of fraud or corruption and without irregularities that may have changed the result of an election.” G.S. § 163A-1180.

150. That authority includes the power to order a new election when: (1) ineligible voters sufficient in number to change the outcome of the election were allowed to vote in the election, and it is not possible from examination of the official ballots to determine how those ineligible voters voted and to correct the totals; (2) eligible voters sufficient in number to change the outcome of the election were improperly prevented from voting; (3) other irregularities affected a sufficient number of votes to change the outcome of the election; or (4) irregularities or improprieties occurred to such an extent that they taint the results of the entire election and cast doubt on its fairness. G.S. § 163A-1181(a).

151. The findings of fact set forth above reflect numerous irregularities that occurred in the November 6, 2018, general election in Bladen and Robeson Counties, and many of those irregularities occurred as a result of a coordinated, unlawful, and well-funded absentee ballot scheme operated by McCrae Dowless on behalf of Mark Harris. The scheme perpetrated fraud and

corruption upon the election and denied the voters in affected contests “the opportunity to participate in a free and fair election . . . the purity and validity of said election being suspect and doubtful.” *See Appeal of Judicial Review by Republican Candidates for Election in Clay Cty.*, 45 N.C. App. 556, 569 (1980) (hereinafter *Clay County*) (affirming State Board’s order of a new election after absentee ballots were illegally collected, certain ballots showed evidence of having not been sealed, vote buying occurred, and other administrative misconduct occurred).

152. It is neither required nor possible for the State Board to determine the precise number of ballots affected in circumstances such as this. *See Clay County*, 45 N.C. App. at 573 (holding that the State Board would have been “derelict” had it failed to call for a new election when there was no showing that the violations that occurred were sufficient to change the outcome of the election but “a cloud of suspicion ha[d] been cast on all the absentee ballots cast in the election”).

153. As set out in the Findings of Fact, and in light of the unique circumstances set forth therein, including the pervasive, wrongful, and fraudulent scheme undertaken by Dowless and his workers on behalf of Mark Harris and the Harris Committee, this Board concludes unanimously that irregularities or improprieties occurred to such an extent that they taint the results of the entire election and cast doubt on its fairness.

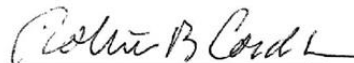
**It is, therefore, ORDERED:**

A new election shall be conducted in Congressional District 9 under the following schedule:

- a. Primary election: May 14, 2019;
- b. Second primary (if necessary): September 10, 2019;
- c. General election (if no second primary): September 10, 2019; and
- d. General election (if second primary): November 5, 2019.

And a new general election for Bladen Soil and Water Conservation District Supervisor and for Bladen County Commissioner, District 3, shall be held on May 14, 2019 as indicated above.

This the 13th day of March, 2019.

  
Robert B. Cordle  
Chair

CERTIFICATE

I, Josh Lawson, general counsel to the North Carolina State Board of Elections, do hereby certify that agency staff posted the foregoing document(s) in the manner directed by Paragraph 6 of the Amended Order of Proceedings issued February 4, 2019, and by Federal Express delivery to the parties indicated below:

<https://dl.ncsbe.gov/index.html?prefix=State Board Meeting Docs/Congressional District 9 Portal/>

Dan K. McCready  
Candidate, U.S. House (2018)  
c/o Marc Elias  
Jonathan Berkon  
700 13th Street, NW, Suite 600  
Washington, D.C. 20005  
John Wallace  
3737 Glenwood Ave.  
Suite 260  
Raleigh, NC 27612

Mark E. Harris  
Candidate, U.S. House (2018)  
c/o David Freedman  
860 West Fifth Street  
Winston-Salem, NC 27101

Alex Dale  
127 Racine Drive  
Wilmington, NC 28403

John Branch  
128 E. Hargett Street, Third Floor  
Raleigh, NC 27601

Jeff Scott  
Candidate, U.S. House (2018)  
1300 Blueberry Ln.  
Charlotte, NC 28226

Russell Priest  
Candidate, Bladen Board of Commissioners  
307 Keith Ave.  
Elizabethtown, NC 28337


Earl Storms  
Candidate, Bladen Soil & Water  
405 Storms Rd.  
Bladenboro, NC 28320

Wayne Edge  
Candidate, Bladen Board of Commissioners  
2202 First Ave.  
Elizabethtown, NC 28337

Tim Gause  
Candidate, Bladen Soil & Water  
137 Marvin Hammond Dr.  
Bladenboro, NC 28320

Charles Wendell Gillespie  
Candidate, Bladen Soil & Water  
874 Dewitt Gooden Rd.  
Elizabethtown, NC 28337

This the 13th day of March, 2019.

  
Josh Lawson,  
General Counsel  
N.C. State Board of Elections

**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 01 – DEPARTMENT OF ADMINISTRATION

*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 Administration intends to repeal through readoption the rules cited as 01 NCAC 09 .0501 and .0502.*

*Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless the agency requests otherwise. The text of the rule(s) are available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://ncadmin.nc.gov/about-doa/administrative-rules-review/proposed-rules-and-public-comment>

**Proposed Effective Date:** August 1, 2019

**Public Hearing:**

**Date:** May 21, 2019

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

**Location:** Conference Room, Capehart-Crocker House, 424 N. Blount Street, Raleigh, NC 27603

**Reason for Proposed Action:** Rules scheduled for readoption pursuant to the periodic review set forth in G.S. 150B-21.3.

**Comments may be submitted to:** Shanon M. Gerger, NC Department of Justice, 1301 Mail Service Center, Raleigh, NC 27699-1301; phone (984) 236-0008; email [adminrules@doa.nc.gov](mailto:adminrules@doa.nc.gov)

**Comment period ends:** June 14, 2019

**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. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- ☐ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact (≥\$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required

## CHAPTER 09 - INTERGOVERNMENTAL RELATIONS

### SECTION .0500 - STATE CLEARINGHOUSE

#### 01 NCAC 09 .0501 FUNCTION

Authority G.S. 113A; 143-341; Federal Executive Order 12372.

#### 01 NCAC 09 .0502 APPLICANT REVIEW

Authority G.S. 143-341; Federal Executive Order 12372.

## TITLE 14B – DEPARTMENT OF PUBLIC SAFETY

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Alcoholic Beverage Control Commission intends to amend the rules cited as 14B NCAC 15A .0101-.0103, .0201-.0204, .0301, .0302, .0401-.0404, .0501, .0601, .0602, .0605, .0801 and .0805; and repeal the rules cited as 14B NCAC 15A .0701 and 15C .0101.*

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

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

**Proposed Effective Date:** September 1, 2019

**Public Hearing:**

**Date:** June 12, 2019

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

**Location:** ABC Commission Hearing Room, 400 East Tryon Road, Raleigh, NC 27610

**Reason for Proposed Action:** To update, modernize, and conform rules related to the operations of the Alcoholic Beverage control Commission, including consolidations of definitions, Commission meeting procedures, distribution and posting of Commission documents, petitions for adoption of rules,

emergency declarations, declaratory rulings, and notice of alleged violations.

**Comments may be submitted to:** Walker Reagan, 400 East Tryon Road, Raleigh, NC 27610, phone (919) 779-8367, fax (919) 661-6165, email walker.reagan@abc.nc.gov

**Comment period ends:** June 14, 2019

**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. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- ☐ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact (≥\$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required

## CHAPTER 15 - ALCOHOLIC BEVERAGE CONTROL COMMISSION

### SUBCHAPTER 15A - ORGANIZATIONAL RULES: POLICIES AND PROCEDURES

#### SECTION .0100 - GENERAL PROVISIONS

##### 14B NCAC 15A .0101 PURPOSE

The purpose of the Alcoholic Beverage Control System is to provide regulation and control of the manufacture, distribution, advertisement, sale, possession and consumption of alcoholic beverages to serve the public health, safety and welfare. It is the objective of the North Carolina Alcoholic Beverage Control Commission at all times to conform to that purpose.

*Authority G.S. 18B-100; 18B-105; 18B-207.*

##### 14B NCAC 15A .0102 LOCATION AND ADDRESS LOCATION, ADDRESSES AND BUSINESS HOURS

The principal office of the North Carolina Alcoholic Beverage Control Commission is located at 400 East Tryon Road, Raleigh, North Carolina 27610. The mailing address is 4307 Mail Service Center, Raleigh, North Carolina 27699-4307. The telephone number is (919) 779-0700. The Commission's email address is

contact@abc.nc.gov. The Commission's website address is https://abc.nc.gov. This office is open to the public during regular business hours, from 8:00 a.m. to 5:00 p.m., Monday through Friday. Permit applications received after 3:00 p.m. will not be processed until the following business day.

*Authority G.S. 18B-100; 18B-207.*

##### 14B NCAC 15A .0103 DEFINITIONS

(a) As used ~~throughout in this Chapter;~~ Chapter, the following terms mean:

- (1) "Administrator" means the principal administrative officer of the ~~Commission;~~ Commission.
- (2) ~~"Agent," "alcohol law enforcement agent,"~~ "Alcohol law enforcement agent" or "ALE agent" means an enforcement agent of the Alcohol Law Enforcement ~~Division; Branch,~~ North Carolina Department of Crime Control and Public Safety; Safety.
- (3) "Applicant" means any person who requests the issuance of a permit from the ~~Commission;~~ Commission, unless the context clearly means otherwise.
- (4) "Brand," in relation to wines, means the name under which a wine is produced and includes trade names or trademarks. A brand shall not be construed to mean a class or type of wine, but all classes and types of wines sold under the same brand label shall be considered a single brand. Differences in packaging such as a different style, type, or size of container shall not be considered different brands.
- (5) "Branded merchandise" means items, including glassware, cups, signs, t-shirts, hats and other apparel, that bears the brand of the alcoholic beverage being served, or the brand of the brewery, winery, or distiller whose alcoholic beverages is being served, at a tasting conducted pursuant to G.S. 18B-1114.1, 18B-1114.5 or 18B-1114.7.
- (6) "Brokerage" means a business that brokers in the State the sale of spirituous liquor on behalf of a spirituous liquor supplier.
- (7) "Brokerage representative" means an individual who promotes spirituous liquor on behalf of a brokerage.
- (8) "Chairman" means the chairman of the ~~Commission;~~ Commission.
- ~~(5)(9)~~ "Contract carrier" means the carriers operated by the contractor on behalf of the state for the purpose of distributing spirituous liquors; "Contractor" means the person or persons responsible for carrying out the storage and distribution of spirituous liquors at the State ABC warehouse.
- (10) "Distiller representative" means an individual who promotes spirituous liquor on behalf of a distiller, or otherwise represents a distiller.



- (6)(11) "Distressed liquor" means liquor which is not saleable due to adulteration or damage to the bottle, label or tax ~~seal~~; seal.
- (7)(12) "Industry Member" means any ~~manufacturer, bottler, importer, vendor, representative or wholesaler of alcoholic beverages; wholesaler, salesman, brewery, winery, bottler, importer, liquor importer/bottler, distiller, distiller representative, brokerage, brokerage representative, supplier representative, rectifier, nonresident vendor, vendor representative, or affiliate thereof, that sells or solicits orders for alcoholic beverages, whether or not licensed in this State.~~
- (8) "Operator" or "Contractor" means the person or persons responsible for carrying out the storage and distribution of spirituous liquors at the state ABC warehouse;
- (9) "Permit" means a written or printed authorization to engage in some phase of the alcoholic beverage industry that is issued by the Commission;
- (10) "Permittee" means a person to whom a permit has been issued by the ~~Commission; and~~ Commission.
- (13) "Rectifier" means a permittee that processes spirituous liquor by cutting, blending, mixing, or infusing with any ingredient that reacts with the constituents of the distilled spirits and changes the character and nature, or standards of identity, of the distilled spirits, but does not include a person who extracts spirituous liquor by original or continuous distillation, or who mixes spirituous liquor with other ingredients for immediate consumption.
- (14) "Retail permittee" or "retailer" means any permittee holding a retail alcoholic beverage permit issued pursuant to the authority of G.S. 18B-1001 but does not include a non-profit or political organization that has been issued a Special One-Time permit pursuant to the provisions of G.S. 18B-1002(a)(2) or (5).
- (14)(15) "State ABC warehouse" means the contractor-operated facility or facilities storing spirituous liquors on behalf of the Commission pursuant to G.S. 18B-204, or, in cases of emergency, the facility or facilities operated by the state for the purpose of storing spirituous liquors.
- (16) "Spirituous liquor supplier" means a distiller, liquor importer/bottler, or rectifier.
- (17) "Supplier representative" means as the term is used in G.S. 18B-1114.7, an individual who promotes on behalf of a spirituous liquor supplier, or otherwise represents a spirituous liquor supplier.
- (18) "Vendor" means any brewery, winery, bottler, malt beverages or wine importer, or nonresident malt beverage vendor or nonresident wine

vendor as those terms are used in G.S. 18B-1113 and 18B-1114.

(19) "Vendor representative" means any person who holds a permit issued pursuant to G.S. 18B-1112.

(20) "Wine" means both fortified wine and unfortified wine.

(b) The definitions in Chapter 18B apply to the rules in this Chapter.

*Authority G.S. 18B-100; 18B-207.*

## SECTION .0200 - STRUCTURE

### 14B NCAC 15A .0201 COMMISSION CHAIRMAN

~~The North Carolina Alcoholic Beverage Control Commission shall be composed of a chairman and two associate members.~~

The ~~chairman~~ Chairman shall have the powers and perform the duties prescribed by the Commission including the authority to appoint, promote, demote, and discharge all subordinate officers and employees of the Commission.

~~The Commission shall have all the authority and duties given it by the provisions of the North Carolina General Statutes.~~

*Authority G.S. 18B-100; 18B-200; 18B-207.*

### 14B NCAC 15A .0202 COMMISSION MEETINGS

The Commission shall meet in monthly sessions open to the public in order to ~~make final decisions on hearing cases, to adopt, amend or repeal alcoholic beverage control rules, and to consider and act upon any other business pending that may come before the Commission.~~ The Commission may call special meetings in addition to the monthly meetings to consider and act upon any ~~unfinished business pending before of~~ the Commission.

The ~~press~~ public shall be notified of the time and place of both monthly and special ~~meetings.~~ meetings on the Commission's website.

The Commission may hold ~~executive closed~~ sessions with regard to personnel ~~matters.~~ matters and other matters as allowed pursuant to G.S. 143-318.11 These sessions are not open to the ~~public nor is the press notified of these sessions.~~ public. Minutes of all Commission meetings shall be kept on ~~file.~~ file and made accessible on the Commission's website.

*Authority G.S. 18B-100; 18B-200; 18B-207.*

### 14B NCAC 15A .0203 ADMINISTRATIVE FUNCTIONS

The principal administrative officer shall be the administrator who executes rules, policies and procedures governing the sale of alcoholic beverages and coordinates the functions of the Commission with local boards and ~~industry.~~ the alcoholic beverage industry.

*Authority G.S. 18B-100; 18B-200(d); 18B-207.*

### 14B NCAC 15A .0204 LEGAL FUNCTIONS

The Legal Division processes cases involving permittees charged with violations of the ABC laws, and represents the Commission in contested cases before the Office of Administrative Hearings.

Legal staff may also serve as hearing officers in cases filed under ~~Article 12 of Chapter 18B~~, pursuant to G.S. 18B-1205.

*Authority G.S. 18B-100; 18B-200(d); 18B-207.*

## **SECTION .0300 - PUBLICATIONS: RECORDS: COPIES**

### **14B NCAC 15A .0301 DISTRIBUTION, INSPECTION AND COPIES OF ABC LAWS**

(a) Distribution of Rules and Statutes. The Commission shall distribute at no charge a one copy of Chapter 18B of the General Statutes and the Commission's Rules to each local ABC board, each ALE agent, ABC officer and local law enforcement officer employed by a contracting agency pursuant to G.S. 18B-501(f), and to each employee of the Commission.

(b) Purchasing Copies of Documents. Copies of the following documents are available from the Commission:

- (1) Chapter 18B of the General Statutes and the Commission's Rules;
- (2) ~~Individual sections of Chapter 18B of the General Statutes;~~
- (3) ~~Individual Commission Rules;~~
- (4)(2) ABC Retail Guide; and
- (5)(3) Public records retained by the Commission.

Copies of the above documents are available at the "actual cost" as defined in G.S. 132-6.2(b) for making the copies and the mailing cost if applicable. The Commission shall provide its "actual cost" of documents specified under Paragraph (b)(1) and (2) of this Rule on the Commission's website. Persons requesting copies of the above documents shall make payment by certified check, cashier's ~~check or money order~~ check, money order, or credit card to the Commission prior to receiving any copies of the above documents.

(c) Online Documents. Copies of Chapter 18B of the General Statutes and Commission rules, forms, minutes and reports shall be made accessible online on the Commission's website without charge.

*Authority G.S. 12-3.1; 18B-100; 18B-207; 132-6.2.*

### **14B NCAC 15A .0302 FEE FOR COMPUTER SERVICES**

Upon request, the Commission shall provide data processing services related to the public information maintained by the ~~Commission, if feasible. Commission that the Commission has the capability to provide. Fees for such services are based on the actual cost to the Commission shall be determined by the Commission in accordance with G.S. 132-6.2(b) and shall be paid in advance by certified check, cashier's check or money order, check, money order, or credit card.~~ The requester shall request and receive a quote from the Commission prior to payment of requested services.

*Authority 18B-100; 18B-207; 132.6.2; 150B-19(5)(e).*

## **SECTION .0400 - RULE-MAKING**

### **14B NCAC 15A .0401 PETITION FOR ADOPTION OF RULES**

(a) Any person wishing to submit a petition requesting the adoption, amendment or repeal of a rule by the Commission shall address the petition to the North Carolina Alcoholic Beverage Control Commission, Chief Counsel, 4307 Mail Service Center, Raleigh, North Carolina 27699-4307.

(b) Contents. The petition shall contain the following information:

- (1) ~~Drafts drafts~~ of proposed rule or amendment, or summary of its contents;
- (2) reasons for the adoption, amendment or repeal of the proposed rule;
- (3) citation of authorities showing the legality of the proposed adoption, amendment or repeal of the rule;
- (4) effect of existing rules or orders;
- (5) any data supporting the proposal;
- (6) effect of existing rules on existing practices in the area ~~involved, including case factors;~~
- (7) ~~names and addresses of persons most likely to be affected by the proposal; involved;~~ and
- (8)(7) name and address of each petitioner.

*Authority G.S. 18B-100; 18B-207; 150B-20(a).*

### **14B NCAC 15A .0402 ADMINISTRATIVE ACTION**

Based on a study of the petition and other relevant supporting material, the Commission shall deny the petition or initiate rule-making proceedings within a reasonable ~~time~~ time, but no later than 120 days following submission of the petition.

- (1) If the Commission ~~determines that the adoption, amendment or repeal of a rule will serve no public interest, it may deny the petition; the Commission denies the petition,~~ it shall notify the petitioner in writing of its decision to deny the petition, stating the reasons for the denial.
- (2) If the Commission ~~determines that the proposed adoption, amendment or repeal of a rule will serve the public interest, grants the petition,~~ it shall initiate rule-making proceedings ~~by issuing a rule-making notice, as provided in this Section.~~ in accordance with Chapter 150B of the General Statutes. In accordance with G.S. 150B-20(c), the Commission may publish the name of the person requesting the rule change.

*Authority G.S. 18B-100; 18B-207; 150B-20.*

### **14B NCAC 15A .0403 NOTICE OF RULE-MAKING HEARINGS; MAILING LIST**

(a) Upon a determination to hold a rule-making proceeding, either in response to a petition or otherwise, the Commission shall give notice to all interested parties of the proceedings in accordance with the requirements of Chapter 150B of the General Statutes.

(b) Mailing List. Any person desiring to be placed on the mailing list for the rule-making notices may file a request in writing, furnishing ~~his name~~ the person's name, email and mailing address

to the Commission. ~~The request shall state the subject areas within the authority of the Commission for which notice is requested.~~  
 (e) ~~Fee Charged. The cost to be on the mailing list for rule making notices shall be fifteen dollars (\$15.00) per year. A notice and invoice will be mailed in February of each year to persons on the mailing list. Persons who do not renew their request to remain on the mailing list by remitting the fee by March 1 of each year will be deleted from the list.~~

*Authority G.S. 18B-100; 18B-207; 150B-21.2.*

**14B NCAC 15A .0404 RULE-MAKING HEARING**

- (a) Location. Unless otherwise stated in a particular rule-making notice, rule-making hearings shall be held in the administrative hearing room of the Commission's ~~Raleigh principal~~ office.
- (b) Oral Presentations. Any person desiring to present oral data, views or arguments on the proposed rule is encouraged to file a written notice of that desire with the ~~Chairman~~ Legal Division of the Commission. The notice of the oral presentation should contain a brief summary of the individual's or organization's views with respect to the proposed adoption, amendment or repeal of a rule, and a statement of the length of time the speaker intends to speak.
- (c) The Chairman shall preside at the rule-making ~~hearing, and hearing and~~ shall ensure that each person participating is given a fair opportunity to present oral arguments, comments and data supporting ~~his~~ the person's position. The Chairman may limit the length of time any speaker may speak.

*Authority G.S. 18B-100; 18B-207; 150B-21.2(e).*

**SECTION .0500 – DECLARED EMERGENCY RULES**

**14B NCAC 15A .0501 REVOCATION OR SUSPENSION OF PERMIT**

~~When the sale of alcoholic beverages is suspended in any area of the state pursuant to a state of emergency as declared by the Governor in accordance with Article 36A of Chapter 14 of the General Statutes, the~~ The Commission may revoke or suspend the permit of any person ~~violating who violates~~ any order or rule of the Governor issued pursuant to that action. G.S. 18B-110 when the sale of alcoholic beverages is suspended in any area of the State pursuant to a state of emergency as declared by the Governor in accordance with Article 1A of Chapter 166A of the General Statutes.

*Authority G.S. 18B-110; 18B-207; 14-288.1 through 14-288.20; 166A, Article 1A.*

**SECTION .0600 - DECLARATORY RULINGS**

**14B NCAC 15A .0601 ISSUANCE: GROUNDS**

Upon request of an aggrieved party, except where the Commission ~~for good cause finds issuance of a ruling undesirable, denies a request in accordance with Rules .0602 or .0603 of this Section,~~ the Commission shall issue a declaratory ruling if the request for such a ruling will:

- (1) determine the validity of a rule previously adopted by the Commission; or

- (2) determine the applicability of a particular statute or rule administered or adopted by the Commission to a given specific fact situation.

*Authority G.S. 18B-100; 18B-207; 150B-4.*

**14B NCAC 15A .0602 REQUEST FOR DECLARATORY RULING**

(a) All requests for a declaratory ruling to contest the validity of a rule adopted by the Commission shall supply the following information:

- (1) name and address of person aggrieved;
- (2) statute or rule to which the request relates;
- (3) a brief statement of the manner in which the person aggrieved is affected or may be affected by the statute or rule;
- (4) names and addresses of additional third persons known to the person aggrieved who may possibly be affected by the requested ruling;
- (5) statement of all material facts;
- (6) statement whether or not the person aggrieved is aware of any pending Commission action or court action that may bear on the applicability of the statute or rule to the person's particular situation;
- (7) statement of the arguments and legal authority supporting the person's position on the applicability of this statute or rule; and
- (8) statement of whether or not a conference is desired and reasons for requesting conference.

The person aggrieved shall sign and verify the request before an officer qualified to administer oaths that the information supplied in the request form is true and accurate.

(b) The request and any supporting materials relevant to the request shall be sent to the North Carolina Alcoholic Beverage Control Commission, Legal Division, 4307 Mail Service Center, Raleigh, North Carolina 27699-4307.

(c) The Commission shall either deny the request, stating the reasons therefore, or issue a declaratory ruling. The Commission shall deny a request for a declaratory ruling when the Commission determines that:

- (1) the request does not comply with the procedural guidelines within Paragraphs (a) and (b) of this Rule;
- (2) the Commission has previously issued a declaratory ruling on substantially similar facts;
- (3) the Commission has previously issued a final agency decision in a contested case on substantially similar facts;
- (4) the facts underlying the request for a declaratory ruling were considered at the time of the adoption of the rule in question;
- (5) the subject matter is one concerning which the Commission is without authority to make a decision binding the Commission or the petitioner;
- (6) the petitioner is not aggrieved by the rule or statute in question or otherwise has no interest in the subject matter of the request;

- (7) there is reason to believe that the petitioner or some other person or entity ~~materially~~ connected to the subject matter of the request is acting in violation of the G.S. 18B or the rules adopted by the Commission; or
- (8) the subject matter of the request is involved in pending litigation, legislation, or rulemaking.

(d) The Commission shall not issue a declaratory ruling when the ~~petitioner~~ petitioner, or his or her ~~request~~ request, is the subject of, or materially related to, an investigation by the Commission or contested case before the Commission.

*Authority G.S. 18B-100; 18B-207; 150B-4.*

#### **14B NCAC 15A .0605 WITHDRAWAL OF REQUEST FOR DECLARATORY RULING**

At any time prior to ~~issuance~~, issuing a ruling, upon a written request the Commission in its discretion may permit an aggrieved party to withdraw the request for a declaratory ~~ruling, any such request for withdrawal to be in writing.~~ ruling.

*Authority G.S. 18B-100; 18B-207; 150B-4.*

### **SECTION .0700 - PERSONNEL POLICIES: COMMISSION**

#### **14B NCAC 15A .0701 DISCIPLINARY ACTION OF EMPLOYEE**

*Authority G.S. 18B-100; 18B-202; 18B-207.*

### **SECTION .0800 - ADJUDICATION: CONTESTED CASES**

#### **14B NCAC 15A .0801 NOTICE OF ALLEGED VIOLATION**

If facts reported by a law enforcement officer indicate a violation of the ABC laws, the Commission shall send a Notice of Alleged Violation to the permittee. The permittee is deemed ~~notified to have received the notice of alleged violation if service of the notice is delivered to~~ made in accordance with the methods of service set forth in G.S. 1A-5(b), including service at the permittee's address as stated on the permit.

*Authority G.S. 18B-100; 18B-203(a)(12); 18B-207.*

#### **14B NCAC 15A .0805 ARTICLE 12 HEARINGS: FINAL ADMINISTRATIVE DECISION; ORDER**

- (a) Right to Submit Proposed Findings. The parties in a hearing conducted under Article 12 shall have an opportunity to file proposed findings of fact and conclusions of law within 30 days of the conclusion of the initial hearing.
- (b) Recommended Decision. If a hearing conducted under Article 12 is presided over by a hearing officer, the hearing officer shall issue a recommended decision that contains proposed findings of fact and conclusions of law. The hearing officer shall serve a copy of the recommended decision upon all parties and the members of the Commission who will make the final administrative decision. Service shall be in the manner prescribed in ~~Rule .0821(c)~~ Rule .0803(c) of this Section.

(c) Exceptions. The parties to a case heard under Article 12 shall have the right to file written exceptions to a recommended decision by the hearing officer. Exceptions shall be filed with the Commission within 30 days of receipt of the recommended decision.

(d) Hearing Conducted by Commission. In lieu of assigning a hearing officer to preside over the initial hearing, the Commission may conduct the initial hearing. After the time for the filing of proposed findings of fact and conclusions of law by the parties has expired, the Commission will issue a final administrative decision and order that determines the issues set forth in any prior pre-hearing order.

(e) Petition to Office of Administrative Hearings. In any case heard by the Commission under Article 12 of Chapter 18B of the General Statutes, if the Commission finds evidence of violations of Article 12 of Chapter 18B, or any other ABC law, it may commence proceedings in accordance with the provisions of ~~Rule .0802~~ Rule .0801 of this Section.

*Authority G.S. 18B-100; 18B-207; 18B-1205; 18B-1207(c).*

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

#### **SECTION .0100 - DEFINITIONS: APPLICATION PROCEDURES**

#### **14B NCAC 15C .0101 DEFINITIONS**

*Authority G.S. 18B-100; 18B-101; 18B-207; 18B-1112; 18B-1113; 18B-1114; 18B-1116.*

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

*Notice is hereby given in accordance with 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 .0614, .2104, .2303, .2305, .2307, .2601-.2603, .2608-.2611, .2614-.2616, .2618 and .2621; and readopt without substantive changes the rules cited as 15A NCAC 02D .0601, .0602, .0604-.0608, .0610-.0613, .0615, .2101-.2103, .2301, .2302, .2304, .2306, .2308-.2311, .2604-.2607, .2612, .2613, .2617, .2619 and .2620.*

*Pursuant to G.S. 150B-21.2(c)(1), the text of rules to be readopted without substantive changes are not required to be published. The text of the rules is available on the OAH website: <http://reports.oah.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:** November 1, 2019

**Public Hearing:**

**Date:** May 22, 2019

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

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

**Reason for Proposed Action:** To receive comments on the proposed readoption of air quality rules in several Sections of 15A NCAC 02D to meet the requirements of G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules.

**15A NCAC 02D .0600 – Monitoring: Recordkeeping: Reporting**  
This Section regulates monitoring, recordkeeping, and reporting of air pollutants emitted into the outdoor atmosphere of North Carolina. 15A NCAC 02D .0601, .0602, .0604-.0608, .0610-.0613, and .0615 are proposed for readoption without substantive changes to clarify requirements that were promulgated in previous rule actions, to update administrative language, general formatting, the format of references, and to introduce gender-neutral language. 15A NCAC 02D .0614 is proposed for readoption with substantive changes to remove unnecessary legal conclusions regarding the rule's effect on compliance with other rules and its effect on the overall authority for the Division of Air Quality and the United States Environmental Protection Agency to conduct enforcement actions.

**15A NCAC 02D .2100 – Risk Management Program**  
This Section consists of rules to manage regulated substances at stationary sources. 15A NCAC 02D .2101-.2103 are proposed for readoption without substantive changes to make minor revisions for consistency with federal requirements and to update administrative language and the format of references. 15A NCAC 02D .2104 is proposed for readoption with substantive changes to remove unnecessary language regarding the Division of Air Quality's authority to conduct enforcement actions.

**15A NCAC 02D .2300 – Banking Emission Reduction Credits**  
This Section regulates the banking of emission reduction credits for stationary sources. 15A NCAC 02D .2301, .2302, .2304, .2306, .2308-.2311 are proposed for readoption without substantive changes to update administrative language and the format of references. 15A NCAC 02D .2303 and .2307 are proposed for readoption with substantive changes to reflect that North Carolina does not currently have nonattainment areas pursuant to 40 CFR 81.334. 15A NCAC 02D .2305 is proposed for readoption with substantive changes for consistency with the recently readopted 15A NCAC 02Q .0303 regarding the "responsible official". Also, several rules in 15A NCAC 02D Section .2300 had provisions removed that are addressed in air quality rules outside the scope of this rulemaking activity.

**15A NCAC 02D .2600 – Source Testing**  
This Section regulates testing methods and methodologies in addition to the procedures for submitting testing protocols and reports. 15A NCAC 02D .2604-.2607, .2612, .2613, .2617, .2619, and .2620 are proposed for readoption without substantive changes to update rule references, general formatting, and to clarify language. 15A NCAC 02D .2601-.2603, .2608-.2611, .2614-.2616, .2618, and .2621 are proposed for readoption with substantive changes to reformat paragraphs, revise language for clarity, add references to current Environmental Protection Agency requirements, and by adding new test methods by the

American Society for Testing and Materials and the United States Environmental Protection Agency.

Pursuant to G.S. 150B-21.2(c)(1), the text of the rules 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:** Patrick Knowlson, 217 West Jones St., Raleigh, NC 1641 Mail Service Center, Raleigh, NC 27699-1641, phone (919) 707-8711, fax (919) 707-8711, email [daq.publiccomments@ncdenr.gov](mailto:daq.publiccomments@ncdenr.gov) (Please type "Group 5 Hearing" in subject line)

**Comment period ends:** June 14, 2019

**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. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- ☐ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact (≥\$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required

**CHAPTER 02 - ENVIRONMENTAL MANAGEMENT**

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

**SECTION .0600 - MONITORING: RECORDKEEPING: REPORTING**

**15A NCAC 02D .0601 PURPOSE AND SCOPE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .0602 DEFINITIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .0604 EXCEPTIONS TO MONITORING AND REPORTING REQUIREMENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .0605 GENERAL RECORDKEEPING AND REPORTING REQUIREMENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .0606 SOURCES COVERED BY APPENDIX P OF 40 CFR PART 51 (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .0607 LARGE WOOD AND WOOD-FOSSIL FUEL COMBINATION UNITS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .0608 OTHER LARGE COAL OR RESIDUAL OIL BURNERS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .0610 FEDERAL MONITORING REQUIREMENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .0611 MONITORING EMISSIONS FROM OTHER SOURCES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .0612 ALTERNATIVE MONITORING AND REPORTING PROCEDURES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .0613 QUALITY ASSURANCE PROGRAM (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .0614 COMPLIANCE ASSURANCE MONITORING**

(a) General Applicability. ~~With the exception of~~ Except as set forth in Paragraph (b) of this Rule, the requirements of this part shall apply to a pollutant-specific emissions unit at a facility required to obtain a permit ~~under~~ pursuant to 15A NCAC 02Q .0500 if the unit satisfies all of the following criteria: unit:

- (1) ~~The unit~~ is subject to an emission limitation or standard for the applicable regulated air pollutant ~~(or a surrogate thereof); pollutant, or a surrogate thereof,~~ other than an emission limitation or standard that is exempt ~~under~~ pursuant to Subparagraph (b)(1) of this Rule;
- (2) ~~The unit~~ uses a control device to achieve compliance with any such emission limitation or standard; and
- (3) ~~The unit~~ has potential pre-control device emissions of the applicable regulated air pollutant that are equal to or greater than 100 percent of the amount, in tons per year, required for a source to be classified as a major source. For purposes of this Subparagraph, "potential pre-control device emissions" means the same as "potential to ~~emit,~~ emit" as defined in 15A NCAC 02Q .0103, except that emission reductions achieved by the applicable control device shall not be taken into account.

(b) Exemptions.

- (1) Exempt emission limitations or standards. The requirements of this Rule shall not apply to any of the following emission limitations or standards:
  - (A) emission limitations or standards proposed by the Administrator of the Environmental Protection Agency after November 15, ~~1990~~ 1990, pursuant to section 111 or 112 of the federal Clean Air Act;
  - (B) stratospheric ozone protection requirements ~~under~~ pursuant to title VI of the federal Clean Air Act;
  - (C) Acid Rain Program requirements pursuant to sections 404, 405, 406, 407(a), 407(b), or 410 of the federal Clean Air Act;
  - (D) emission limitations or standards or other applicable requirements that apply solely under an emissions trading program approved under the rules of ~~this Subchapter and Subchapter 15A NCAC 02Q Subchapters 02D and 02Q of this Chapter~~ and that are incorporated in a permit issued under pursuant to 15A NCAC 02Q .0500;
  - (E) an emissions cap that is approved ~~under pursuant to~~ the rules of this Subchapter and Subchapter 15A NCAC 02Q Subchapters 02D and 02Q of this Chapter and incorporated in a permit issued ~~under pursuant to~~ 15A NCAC 02Q .0500; or
  - (F) emission limitations or standards for which a permit issued ~~under pursuant to~~ 15A NCAC 02Q .0500 specifies a continuous compliance determination method, as defined in 40 CFR 64.1. ~~(This This exemption shall not apply if the applicable compliance method includes an assumed control device emission reduction factor that could be affected by the actual operation and maintenance of the control device (such device, such as a surface coating line controlled by an incinerator for which continuous compliance is determined by calculating emissions on the basis of coating records and an assumed control device efficiency factor based on an initial performance test; in test (in this example, this exemption 15A NCAC 02D .0614 would apply to the control device and capture system, but not to the remaining elements of the coating line, such as raw material usage).~~

- (2) Exemption for backup utility power emissions units. The requirements of this Rule shall not apply to a utility unit, as defined in 40 CFR 72.2, that is municipally-owned if the owner or operator provides documentation in a permit application submitted ~~under~~ pursuant to 15A NCAC 02Q .0500 that:

- (A) ~~The the~~ utility unit is exempt from all monitoring requirements in 40 CFR Part 75 ~~(including 75, including the appendices thereto); thereto;~~
- (B) ~~The the~~ utility unit is operated for the sole purpose of providing electricity during periods of peak electrical demand or emergency situations and will be operated consistent with that purpose throughout the permit term. The owner or operator shall provide historical operating data and relevant contractual obligations to document that this criterion is satisfied; and
- (C) ~~The the~~ actual emissions from the utility unit, based on the average annual emissions over the last three calendar years of ~~operation (or operation, or~~ such shorter time period that is available for units with fewer than three years of ~~operation)~~ operation, are less than 50 tons per year and are expected to remain so.

(c) For the purposes of this Rule, the definitions in 40 CFR 64.1 shall apply with the following exceptions:

- (1) "Applicable requirement" and "regulated air pollutant" shall have the same definition as in 15A NCAC 02Q .0103.
- (2) "Part 70 or 71 permit application" means an ~~application (including application,~~ any supplement to a previously submitted ~~application)~~ application, submitted by the owner or operator to obtain a permit under 15A NCAC 02Q .0500.
- (3) "Part 70 or 71 permit" means a permit issued under 15A NCAC 02Q .0500.
- (4) "Permitting authority" means the Division of Air Quality.

(d) The owner or operator subject to the requirements of this rule shall comply with these requirements:

- (1) 40 CFR 64.3, Monitoring Design Criteria;
- (2) 40 CFR 64.4, Submittal Requirements;
- (3) 40 CFR 64.5, Deadlines for Submittals;
- (4) 40 CFR 64.7, Operation of Approved Monitoring; and
- (5) 40 CFR 64.9, Reporting and Recordkeeping Requirements.

(e) The Division shall follow the procedures and requirements in 40 CFR Part 64.6, Approval of Monitoring, in reviewing and approving or disapproving monitoring plans and programs submitted under this Rule.

(f) Based on the result of a determination made ~~under~~ pursuant to 40 CFR 64.7(d)(2), the Director may require the owner or operator to develop and implement a quality improvement plan. If a quality improvement plan is required, the quality improvement plan shall be developed and implemented according to the procedures and requirements of 40 CFR 64.8, Quality Improvement Plan (QIP) Requirements.

~~(g) Nothing in this Rule shall:~~

- (1) ~~excuse the owner or operator of a source from compliance with any existing emission limitation or standard, or any existing monitoring, testing, reporting or recordkeeping requirement that may apply under federal, state, or local law, or any other applicable requirements. The requirements of this Rule shall not be used to justify the approval of monitoring less stringent than the monitoring that is required under another Rule in this Subchapter or Subchapter 15A NCAC 02Q or Title 40 of the CFR and are not intended to establish minimum requirements for the purpose of determining the monitoring to be imposed under another Rule in this Subchapter or Subchapter 15A NCAC 02Q or Title 40 of the CFR. The purpose of this Rule is to require, as part of the issuance of a permit under 15A NCAC 2Q .0500, improved or new monitoring at those emissions units where monitoring requirements do not exist or are inadequate to meet the requirements of this Rule;~~
- (2) ~~restrict or abrogate the authority of the Division to impose additional or more stringent monitoring, recordkeeping, testing, or reporting requirements on any owner or operator of a source under any provision of this Subchapter or Subchapter 15A NCAC 02Q or the General Statutes;~~
- (3) ~~restrict or abrogate the authority of the Division to take any enforcement action for any violation of an applicable requirement; or~~
- (4) ~~restrict the authority of the Administrator of the Environmental Protection Agency or of any person to take action under Section 304 of the federal Clean Air Act as stated under 40 CFR 64.10.~~

*Authority G.S. 143-215.3(a)(3); 143-215.65; 143-215.66; 143-215.107(a)(4).*

## **15A NCAC 02D .0615 DELEGATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

### **SECTION .2100 – RISK MANAGEMENT PROGRAM**

## **15A NCAC 02D .2101 APPLICABILITY (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .2102 DEFINITIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .2103 REQUIREMENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .2104 IMPLEMENTATION**

(a) The owner or operator of ~~each facility a stationary source covered governed under by~~ this Section shall:

- (1) submit a risk management ~~plan~~ plan, or a revised plan ~~when as~~ required by ~~this Section~~ 40 CFR 68.150, to the Environmental Protection Agency; and
- (2) submit a source certification or, in its absence, submit a compliance schedule ~~consistent with 15A NCAC 2Q .0508(g)(2)~~ to meet the requirements of 15A NCAC 02Q .0508(h)(2).

~~(b) The Division may initiate enforcement action against any facility that fails to comply with the requirements of this Section or any provision of its plan submitted pursuant to this Section.~~

~~(c)(b) The Division may conduct completeness checks, source audits, record reviews, or facility inspections to ensure that facilities covered under this Section are in compliance with the requirements of this Section. In addition, the The Division may shall conduct periodic audits following in accordance with the audit procedures of in 40 CFR 68.220. The Division may take enforcement action if the owner or operator fails to comply with the provisions of 40 CFR 68.220.~~

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10).*

**SECTION .2300 – BANKING EMISSION REDUCTION CREDITS**

**15A NCAC 02D .2301 PURPOSE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .2302 DEFINITIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .2303 APPLICABILITY AND ELIGIBILITY**

(a) Applicability. Any facility that has the potential to emit nitrogen oxides, volatile organic compounds, sulfur dioxide, ammonia, or fine particulate (PM2.5) in amounts greater than 25 tons per year and that is in a federally designated ozone or fine particulate (PM2.5) nonattainment area in North Carolina is eligible to create and bank nitrogen oxides, volatile organic compounds, sulfur dioxide, ammonia, or fine particulate (PM2.5) emission reduction credits.

(b) Eligibility of emission reductions.

- (1) To be approved by the Director as an emission reduction credit, a reduction in emissions shall be real, permanent, quantifiable, enforceable, and surplus and shall have occurred:
  - (A) for ozone after December 31, 2002 for areas previously designated nonattainment according to the 1997 8-hour ozone standard, including the

Charlotte-Gastonia-Rock Hill, NC-SC nonattainment area, the Raleigh-Durham-Chapel Hill nonattainment area, the Rocky Mount nonattainment area, and the Haywood and Swain Counties (Great Smoky Mountains National Park) nonattainment area, and after December 31, ~~2000~~ 2000, for all other nonattainment areas.

(B) for fine particulate (PM2.5) after December 31, 2002 for the areas previously designated nonattainment according to the 1997 PM2.5 standard, including the former Greensboro-Winston-Salem-High Point, NC and Hickory-Morganton-Lenoir, NC nonattainment areas.

(2) To be eligible for consideration as emission reduction credits, emission reductions may be created by any of the following methods:

- (A) installation of control equipment beyond what is necessary to comply with existing rules;
- (B) a change in process inputs, formulations, products or product mix, fuels, or raw materials;
- (C) a reduction in the actual emission rate;
- (D) a reduction in operating hours;
- (E) production curtailment or reduction in throughput;
- (F) shutdown of emitting sources or facilities; or
- (G) any other enforceable method ~~that the Director finds~~ resulting in real, permanent, quantifiable, enforceable, and surplus reduction of emissions.

(c) Ineligible for emission reduction credit. Emission reductions from the following ~~are not~~ shall not be eligible to be banked as emission reduction credits:

- (1) sources covered ~~under by~~ a special order or variance until compliance with the emission standards that are the subject of the special order or variance is achieved;
- (2) sources that have operated less than 24 months;
- (3) emission allocations and allowances used in ~~the a federal emissions budget trading program under 15A NCAC 02D .1419 or .2408; program;~~
- (4) emission reductions outside North Carolina; or
- (5) mobile sources.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(12).*

**15A NCAC 02D .2304 QUALIFICATION OF EMISSION REDUCTION CREDITS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**



**15A NCAC 02D .2305 CREATING AND BANKING EMISSION REDUCTION CREDITS**

(a) The owner or operator of a source seeking to create and bank emission reduction credits shall ~~submit~~ submit, over the signature of the responsible official ~~for a Title V facility or the official identified in 15A NCAC 02Q .0304(j)~~ as defined in 15A NCAC 02Q .0303, for a non Title V facility the following information, which ~~may~~ shall be on an application form provided by the Division:

- (1) the company name, contact person and telephone number, and street address of the source seeking the emission reduction credit;
- (2) a description of the type of source where the proposed emission reduction occurred or will occur;
- (3) a detailed description of the method or methods to be employed to create the emission reduction;
- (4) the date that the emission reduction occurred or will occur;
- (5) quantification of the emission reduction credit as described ~~under in Rule .2304 of this Section;~~ 15A NCAC 02D .2304;
- (6) a demonstration that the proposed method for ensuring the reductions are permanent and enforceable, including any necessary application to amend the facility's air permit or, for a shutdown of an entire facility, a request for permit rescission;
- (7) whether any portion of the reduction in emissions to be used to create the emission reduction credit has previously been used to avoid the requirements of 15A NCAC 02D .0530 (prevention of significant deterioration) or .0531 (nonattainment major new source review) through a netting demonstration;
- (8) ~~any~~ other information necessary to demonstrate that the reduction in emissions is real, permanent, quantifiable, enforceable, and surplus; and
- (9) a complete permit application if the permit needs to be modified to create or enforce the emission reduction credit.

(b) ~~If the Director finds that~~ The Director shall issue the source a certificate of emission reduction credit after the facility's permit is modified, if necessary, to reflect permanently the reduction of emissions, if:

- (1) all the information required to be submitted ~~under by~~ Paragraph (a) of this Rule has been submitted;
- (2) the source is eligible ~~under pursuant to Rule .2303 of this Section;~~ 15A NCAC 02D .2303;
- (3) a complete permit application has been submitted, if necessary, to implement the reduction in emissions; and
- (4) the reduction in emissions is real, permanent, quantifiable, enforceable, and ~~surplus; the Director shall issue the source a certificate of emission reduction credit once the facility's~~

~~permit is modified, if necessary, to reflect permanently the reduction in emissions. The Director shall register the emission reduction credit for use only after the reduction has occurred, surplus.~~

The Director shall register the emission reduction credit for use only after the reduction has occurred.

(c) Processing schedule.

- (1) The Division shall send written acknowledgement of receipt of the request to create and bank emission credits within 10 days of receipt of the request.
- (2) The Division shall review ~~all request requests~~ requests to create and bank emission credits within 30 days of receipt to determine whether the application is ~~complete or incomplete for processing purposes.~~ complete. If the application is incomplete the Division shall notify the applicant of the deficiency. The applicant shall have 90 days to submit the requested information. If the applicant fails to provide the requested information within 90 days, the Division shall ~~return~~ deny the application.
- (3) The Director shall either approve or disapprove the request within 90 days after receipt of a complete application requesting the banking of emission reduction credits. Upon approval the Director shall issue a certificate of emission reduction credit.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(12).*

**15A NCAC 02D .2306 DURATION OF EMISSION REDUCTION CREDITS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .2307 USE OF EMISSION REDUCTION CREDITS**

(a) Persons holding emission reduction credits may withdraw the emission reduction credits and may use them in any manner consistent with this Section.

(b) An emission reduction credit may be withdrawn only by the owner of record or ~~by the Director under~~ pursuant to Rule 15A NCAC 02D .2310 of this Section and may be withdrawn in whole or in part. In the case of a partial withdrawal, the Director shall issue a revised certificate of emission reduction credit to the owner of record reflecting the new amount of the credit and shall revoke the original certificate.

(c) Emission reduction credits may be used for the following purposes:

- (1) as offsets or netting demonstrations required by 15A NCAC 02D .0531 for a major new source or a major modification to an existing major source of:
  - (A) nitrogen oxides or volatile organic compounds in a federally designated ozone nonattainment area, or

- (B) fine particulate (PM2.5) in a federally designated PM2.5 nonattainment area;  
or
- (2) ~~as offsets or netting demonstrations required by 15A NCAC 02D .0531 for a major modification to an existing major source of:~~
  - (A) ~~nitrogen oxides or volatile organic compounds in a federally designated ozone nonattainment area, or~~
  - (B) ~~fine particulate (PM2.5) in a federally designated PM2.5 nonattainment area;~~
- (3) ~~as part of a netting demonstration required by 15A NCAC 02D .0530 when the source using the emission reduction credits is the same source that created and banked the emission reduction credits; or~~
- (4)(2) to remove a permit condition that created an emission reduction credit.

(d) Emission reduction credits generated through reducing emissions of one pollutant shall not be used for trading with or offsetting of another pollutant, ~~for example pollutant. For example,~~ emission reduction credits for volatile organic compounds in an ozone nonattainment area shall not be used to offset nitrogen oxide emissions.

(e) Limitations on use of emission reduction credits.

- (1) Emission reduction credits shall not be used to exempt a source from:
  - (A) ~~prevention of significant deterioration requirements (15A NCAC 02D .0530) for netting demonstrations unless the emission reduction credits have been banked by the facility at which the new or modified source is located and have been banked during the period specified in 15A NCAC 02D .0530. This Subparagraph does not preclude the use of emission reductions not banked as emission credits to complete netting demonstrations.~~
  - (B)(A) nonattainment major new source review (15A NCAC 02D ~~.0531~~) .0531), unless the emission reduction credits have been banked by the facility at which the new or modified source is located and have been banked during the period specified in 15A NCAC 02D .0531. This Subparagraph ~~does~~ shall not preclude the use of emission reductions not banked as emission credits to complete netting ~~demonstrations.~~ demonstrations;
  - (C)(B) new source performance standards (15A NCAC 02D .0524), national emission standards for hazardous air pollutants (15A NCAC 02D .1110), or maximum achievable control technology (15A NCAC 02D .1109, .1111, or .1112); or

~~(D)(C)~~ any other requirement of ~~Subchapter~~ 15A NCAC 02D unless the emission reduction credits have been banked by the facility at which the new or modified source is located.

- (2) Emission reduction credits shall not be used to allow a source to emit above the limit established by a rule in ~~Subchapter~~ 15A NCAC 02D. ~~(If~~ If the owner or operator ~~wants~~ seeks to permit a source to emit above the limit established by a rule in ~~Subchapter~~ 15A NCAC 02D, ~~he needs to~~ he or she shall follow the procedures in 15A NCAC 02D .0501 for an alternative mix of controls ~~[ "bubble" ]~~ [ "bubble" ].

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(12).

### **15A NCAC 02D .2308 CERTIFICATES AND REGISTRY (READOPTIO WITHOUT SUBSTANTIVE CHANGES)**

### **15A NCAC 02D .2309 TRANSFERRING EMISSION REDUCTION CREDITS (READOPTIO WITHOUT SUBSTANTIVE CHANGES)**

### **15A NCAC 02D .2310 REVOCATION AND CHANGES OF EMISSION REDUCTION CREDITS (READOPTIO WITHOUT SUBSTANTIVE CHANGES)**

### **15A NCAC 02D .2311 MONITORING (READOPTIO WITHOUT SUBSTANTIVE CHANGES)**

## **SECTION .2600 - SOURCE TESTING**

### **15A NCAC 02D .2601 PURPOSE AND SCOPE**

(a) The purpose of this Section is to assure consistent application of testing methods and methodologies to demonstrate compliance with emission standards.

(b) This Section shall apply to all air pollution sources.

(c) Emission compliance testing shall ~~be by~~ comply with the procedures of this Section, except as may be otherwise required in ~~Rules .0524, .0912, .1110, .1111, or .1415 of this Subchapter.~~ by:

- (1) 40 CFR Part 60, New Source Performance Standards in 15A NCAC 02D .0524;
- (2) 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants in 15A NCAC 02D .1110; or
- (3) 40 CFR Part 63, Maximum Achievable Control Technology requirements in 15A NCAC 02D .1111.

(d) Applicable source test audit requirements shall comply with the procedures specified in 40 CFR 60.8, 40 CFR 61.13, or 40 CFR 63.7.

~~(d)(c) The Director may approve using test Test methods other than those specified in this Section may be used under Paragraph (i) of Rule .2602 of this Section. pursuant to~~ 15A NCAC 02D

.2602(h)(3). Requests for the use of alternative test methods shall be submitted to the Director at least 45 days prior to testing.

*Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5).*

**15A NCAC 02D .2602 GENERAL PROVISIONS ON TEST METHODS AND PROCEDURES**

(a) The owner or operator of a source shall perform ~~any~~ all required ~~test tests~~ at his or her own expense.

~~(b) The final test report shall describe the training and air testing experience of the person directing the air test.~~

~~(c)(b)~~ The owner or operator of ~~the~~ an air pollution source shall arrange for air emission testing protocols to be provided to the Director prior to air pollution testing. Testing protocols ~~are not~~ shall not be required to be pre-approved by the Director prior to air pollution testing. ~~The~~ If requested by the owner or operator at least 45 days before conducting the test, the Director shall review air emission testing protocols for pre-approval prior to testing if requested by the owner or operator at least 45 days before conducting the test. testing.

~~(d)(c)~~ Any person proposing to conduct an emissions test to demonstrate compliance with an applicable standard shall notify the Director at least 15 days before beginning the ~~test so that the Director may at his option observe the test.~~

~~(e)(d)~~ ~~For compliance determination, the~~ The owner and operator of the source shall provide:

- (1) sampling ports, pipes, lines, or appurtenances for the collection of samples and data required by the test procedure;
- (2) scaffolding and safe access to the sample and data collection locations; and
- (3) light, electricity, and other utilities required for sample and data collection.

~~(f) Unless otherwise specified in the applicable permit or during the course of the protocol review, the results of the tests shall be expressed in the same units as the emission limits given in the rule for which compliance is being determined.~~

~~(g)(e)~~ The owner or operator of the source shall arrange for controlling and measuring the production rates during the period of air testing. The owner or operator of the source shall ensure that the equipment or process being tested is operated at ~~the~~ a production rate that ~~best fulfills~~ meets the purpose of the test. The individual conducting the emission test shall describe the procedures used to obtain accurate process data and include in the test report the average production rates determined during each testing period.

~~(h)(f)~~ The final air emission test report shall be submitted to the Director ~~not~~ no later than 30 days after following sample collection. ~~The owner or operator may request an extension to submit the final test report. The Director shall approve an extension request if he finds that the extension request is a result of actions beyond the control of the owner or operator.~~

- (1) The final test report shall include a signed statement by the responsible official indicating the compliance or noncompliance of the stack test results with the applicable emission standards.

(2) The results of the tests shall be expressed in the same units as the emission limits given in the corresponding compliance rule, unless otherwise specified in the applicable permit or pre-approved air emissions testing protocol.

(3) The final test report shall describe the training and air testing experience of the person directing the test.

(4) The owner or operator may request an extension of time in which to submit the final test report. The Director shall approve an extension request if he or she finds the cause of the delay was unforeseeable and beyond the control of the owner or operator.

(g) Within 15 days of submission of a test report signifying noncompliance, the owner, operator, or responsible official shall submit to the Director a written plan that includes:

- (1) interim actions to minimize emissions pending demonstration of compliance;
- (2) corrective actions in place or proposed to return the source to compliance;
- (3) a proposed date for the compliance retest; and
- (4) changes necessary to update the site-specific test plan prior to a retest.

~~(i)(h)~~ The Director shall make the final determination regarding ~~any~~ a testing procedure deviation and the validity of the compliance test. The Director ~~may;~~ shall:

- (1) ~~Allow~~ allow deviations from a method specified ~~under~~ in a rule in this Section if the owner or operator of the tested source ~~being tested~~ demonstrates ~~to the satisfaction of the Director that the specified method is inappropriate for the source being tested. that the deviation is appropriate.~~
- (2) ~~Prescribe~~ prescribe alternate test procedures on an individual basis ~~when if he finds that the alternative method is necessary to secure more reliable test data.~~
- (3) ~~Prescribe~~ prescribe or approve methods on an individual basis for sources or pollutants for which no test method is specified in this Section if the methods can be demonstrated to determine compliance of permitted emission sources or pollutants.

~~(j)(i)~~ The Director ~~may~~ shall authorize the Division of Air Quality to conduct independent tests of any source subject to a rule in this Subchapter if necessary to determine the compliance status of that source or to verify ~~any~~ test data submitted relating to that source. ~~Any test conducted~~ Test results obtained by the Division of Air Quality using the appropriate testing procedures described in this Section has precedence over all other tests. shall be presumed to be accurate despite differing results from any other test.

*Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5).*

**15A NCAC 02D .2603 TESTING PROTOCOL**

(a) Testing protocols shall include:

- (1) the facility and testing company contact information, including a mailing address, email, and phone number;
- (2) the air permit number and revision including permitted source name and ID number;
- ~~(4)~~(3) an introduction explaining the purpose of the proposed test, including ~~identification of identifying~~ the regulations and permit requirements for which compliance is being demonstrated and the allowable emission limits;
- ~~(2)~~(4) a description of the facility and the source to be tested;
- ~~(3)~~(5) a description of the test ~~procedures (sampling procedures, including sampling equipment, analytical procedures, sampling locations, reporting and data reduction requirements, and internal quality assurance and quality control activities); activities;~~
- (6) source test audit requirements applicable to the proposed test methods;
- ~~(4)~~(7) ~~any all~~ modifications made to the test methods referenced in the protocol; ~~and~~
- (8) the permitted maximum process rate, maximum normal operation process rate, and the proposed target process rate during testing;
- ~~(5)~~(9) a description of how production or process data will be documented during ~~testing~~; testing; and
- (10) the proposed test schedule.

(b) The tester shall not deviate from the protocol or test plan unless the ~~tester~~ owner or operator documents the ~~deviation~~ deviation in the test report.

*Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5).*

**15A NCAC 02D .2604 NUMBER OF TEST POINTS  
(READOPTIOIN WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .2605 VELOCITY AND VOLUME  
FLOW RATE (READOPTIOIN WITHOUT SUBSTANTIVE  
CHANGES)**

**15A NCAC 02D .2606 MOLECULAR WEIGHT  
(READOPTIOIN WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .2607 DETERMINATION OF  
MOISTURE CONTENT (READOPTIOIN WITHOUT  
SUBSTANTIVE CHANGES)**

**15A NCAC 02D .2608 NUMBER OF RUNS AND  
COMPLIANCE DETERMINATION**

Each ~~test test, (excluding excluding fuel samples)~~ sample tests, shall consist of three consecutive repetitions or runs of the applicable test method. method at the same operating condition. If other operating conditions or scenarios are to be tested, then three consecutive runs shall be performed for each of these operating conditions or scenarios. For determining compliance with an applicable emission standard, the average of the results of

all repetitions ~~applies.~~ shall apply. On a case-by-case basis, compliance may be determined using the arithmetic average of two run results if ~~the Director determines that~~ an unavoidable and unforeseeable event happened beyond the owner's or operator's or tester's owner's, operator's, or tester's control and that a third run could be not be completed.

*Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5).*

**15A NCAC 02D .2609 PARTICULATE TESTING  
METHODS**

(a) ~~With the exception~~ Except as allowed under by Paragraph (b) of this Rule, Method 5 of Appendix A ~~of to~~ to 40 CFR Part 60 and Method 202 of Appendix M ~~of to~~ to 40 CFR Part 51 shall be used to demonstrate compliance with particulate emission standards. The owner or operator may request an exemption from using Method 202 and the Director shall approve the exemption if the Director determines ~~that~~ the demonstration of compliance with an applicable emission standard is unlikely to change with or without the Method 202 results included.

(b) Method 17 of Appendix A ~~of to~~ to 40 CFR Part 60 may be used instead of Method 5 if:

- (1) ~~The the~~ The stack gas temperature does not exceed 320° F; ~~F;~~
- (2) ~~Particulate particulate~~ Particulate matter concentrations are known to be independent of temperature over the normal range of temperatures characteristic of emissions from a specified source ~~category;~~ category; and
- (3) ~~The the~~ The stack does not contain liquid droplets or is not saturated with water vapor.

(c) Particulate testing on steam generators that use soot blowing as a routine means for cleaning heat transfer surfaces shall be conducted so ~~that~~ the contribution of the soot blowing is represented as follows:

- (1) If the soot blowing periods are expected to represent less than 50 percent of the total particulate emissions, only one of the test runs shall include a soot blowing cycle.
- (2) If the soot blowing periods are expected to represent more than 50 percent of the total particulate ~~emissions~~ emissions, ~~then~~ then two of the test runs shall each include a soot blowing cycle. ~~Under no circumstances shall all~~ No more than two of the three test runs shall include soot blowing. The average emission rate of particulate matter is calculated by the equation:

$$E_{AVG} = \frac{S(E_S)((A+B)/(A \cdot R)) + E_N((R-S)/R) - (B \cdot S)/(A \cdot R)}{E_N((R-S)/R) - (B \cdot S)/(A \cdot R)}$$

- ~~(3)~~ The average emission rate of particulate matter for steam generators that use soot blowing shall be calculated by the equation:

$$E_{AVG} = \frac{(S \cdot E_S)[(A+B)/(A \cdot R)] + E_N[(R-S)/R] - (B \cdot S)/(A \cdot R)}{(R-S)/R - (B \cdot S)/(A \cdot R)}$$

where:

- (A) ~~E<sub>AVG</sub> equals the average emission rate in pounds per million Btu for daily operating time.~~
- (B) ~~E<sub>S</sub> equals the average emission rate in pounds per million Btu of sample(s) containing soot blowing.~~
- (C) ~~E<sub>N</sub> equals the average emission rate in pounds per million Btu of sample(s) with no soot blowing.~~
- (D) ~~A equals hours of soot blowing during sample(s).~~
- (E) ~~B equals hours without soot blowing during sample(s) containing soot blowing.~~
- (F) ~~R equals average hours of operation per 24 hours.~~
- (G) ~~S equals average hours of soot blowing per 24 hours.~~

E<sub>AVG</sub> = the average emission rate in pounds per million Btu for daily operating time;

E<sub>S</sub> = the average emission rate in pounds per million Btu during soot blowing runs;

E<sub>N</sub> = the average emission rate in pounds per million Btu during non-soot blowing runs;

A = number of hours of soot blowing during soot blowing runs;

B = number of hours without soot blowing during soot blowing runs;

R = average number of hours of operation per 24 hours; and

S = average number of hours of soot blowing per 24 hours.

The Director may approve an alternate method of prorating the emission rate during soot blowing if the owner or operator of the source demonstrates that changes in boiler load or stack flow occur during soot blowing that are not representative of normal soot blowing operations.

- (4) The Director may approve an alternate method of prorating the emission rate during soot blowing if the owner or operator of the source demonstrates that changes in boiler load or stack flow occur during soot blowing are not representative of normal soot blowing operations.

(d) Unless otherwise specified by an applicable rule or federal subpart, the minimum time per test point for particulate testing shall be two ~~minutes~~, minutes and the minimum time per test run shall be one hour.

(e) Unless otherwise specified by an applicable rule or federal subpart, the sample gas drawn during each test run shall be at least 30 dry standard cubic feet.

(f) Method 201 in combination with Method 202 of Appendix M to 40 CFR Part 51 or Method 201A in combination with Method 202 of Appendix M ~~of to 40 CFR Part 51~~ shall be used to determine compliance with PM<sub>2.5</sub> or PM<sub>10</sub> emission standards. If the exhaust gas contains entrained moisture droplets, Method 5 of Appendix A of 40 CFR Part 60 in combination with Method

202 of Appendix M ~~of to 40 CFR Part 51~~ shall be used to determine PM<sub>2.5</sub> or PM<sub>10</sub> emission compliance.

*Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5).*

#### **15A NCAC 02D .2610 OPACITY**

(a) Method 9 of Appendix A ~~of to 40 CFR Part 60~~ shall be used to show compliance with opacity standards ~~when~~ if opacity is determined by visual observation.

(b) Method 22 of Appendix A to 40 CFR Part 60 shall be used to determine compliance with opacity standards ~~when if such~~ these standards are based upon the frequency of fugitive emissions ~~from stationary sources as that are visible during the observation period~~ specified in the applicable rule or by permit condition.

*Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5).*

#### **15A NCAC 02D .2611 SULFUR DIOXIDE TESTING METHODS**

(a) If compliance with a sulfur dioxide emission standard is to be demonstrated for a combustion source through stack ~~sampling~~ sampling, the procedures described in Method 6 or Method 6C ~~of to Appendix A of 40 CFR Part 60 shall be used. When Method 6 of Appendix A of 40 CFR Part 60 is used to determine compliance, compliance shall be determined by averaging six 20-minute samples taken over such a period of time that no more than 20 minutes elapses between any two consecutive samples. ~~The 20-minute run requirement only applies to Method 6 not to Method 6C. Method 6C is an instrumental method and the sampling is done continuously;~~ used as follows:~~

- (1) If Method 6 of Appendix A to 40 CFR Part 60 is used to determine compliance, compliance shall be determined by averaging six 20-minute runs taken over such a period of time that no more than 20 minutes elapse between any two consecutive runs.
- (2) If Method 6C of Appendix A to 40 CFR Part 60 is used to determine compliance, the sampling shall be performed continuously during each run.

(b) Method 8 of Appendix A to 40 CFR Part 60 shall be used to determine compliance with emission standards for sulfuric acid manufacturing plants governed by 15A NCAC 02D .0517 and spodumene ore roasting plants governed by 15A NCAC 02D .0527. Compliance shall be determined by averaging emissions measured from three one-hour test runs, unless otherwise specified in the applicable rule or federal subpart.

(c) For stationary gas turbines, Method 20 of Appendix A to 40 CFR Part 60 shall be used to demonstrate compliance with applicable sulfur dioxide emissions standards.

~~(b)(d)~~ Fuel burning sources not required to use continuous emissions monitoring to demonstrate compliance with sulfur dioxide emission ~~standards,~~ standards may determine compliance with sulfur dioxide emission standards by stack sampling or by analyzing sulfur content of the fuel.

(c) ~~For stationary gas turbines, Method 20 of 40 CFR Part 60 shall be used to demonstrate compliance with applicable sulfur dioxide emissions standards.~~

(d)(e) ~~When compliance is to be demonstrated for a combustion source~~ For a combustion source demonstrating compliance with the sulfur dioxide emission standards by analysis of sulfur in fuel, the sampling, preparation, and analysis of fuels shall be according to the following American Society of Testing and Materials (ASTM) methods. The Director ~~may~~ shall approve ASTM methods different from those described in this Paragraph if they will provide equivalent ~~or more reliable~~ results. The Director ~~may~~ shall prescribe alternate ASTM methods on an individual basis if that action is necessary to secure reliable test data.

(1) Coal Sampling:

- (A) Sampling Location. Coal shall be collected from a location in the handling or processing system that provides a sample representative of the fuel bunkered or burned during a ~~boiler operating~~ boiler-operating day. For the purpose of this method, a fuel lot size is defined as the weight of coal bunkered or consumed during each boiler-operating day. For reporting and calculation purposes, the gross sample shall be identified with the calendar day on which sampling began. The Director ~~may~~ shall approve alternate definitions of fuel lot sizes if the alternative will provide a more representative sample.
- (B) Sample Increment Collection. A coal sampling procedure shall be used that meets the requirements of ASTM ~~D 2234~~ D2234 Type I, condition A, B, and C, and systematic spacing for collection of sample increments. All requirements and restrictions regarding increment distribution and sampling device constraints shall be observed.
- (C) Gross Samples. ASTM ~~D 2234~~, D2234 7.1.2, 8.1.1.2 Table 2 shall be used except as provided in 7.1.5.2 8.1.1.5 to determine the number and weight of increments (~~composite from a composite or gross samples~~ sample).
- (D) Preparation. ASTM ~~D 2013~~ D2013 shall be used for sample preparation from a composite or gross sample.
- (E) Gross Caloric Value (GCV). ASTM ~~D 2015 or D 3286~~ D5865 shall be used to determine GCV on a dry basis from a composite or gross sample.
- (F) Moisture Content. ASTM ~~D 3173~~ D3173 shall be used to determine moisture from a composite or gross sample.

(G) Sulfur Content. ASTM ~~D 3177 or D 4239~~ D4239 shall be used to determine the percent sulfur on a dry basis from a composite or gross sample.

(2) Oil Sampling

- (A) Sample Collection. A sample shall be collected at the pipeline inlet to the fuel-burning unit after sufficient fuel has been drained from the line to remove all fuel that may have been standing in the line.
- (B) Heat ~~Of~~ of Combustion. ASTM Method ~~D 240~~ D240 or ~~D 2015~~ D4809 shall be used to determine the heat of combustion.
- (C) Sulfur Content. ASTM Method ~~D 129~~ D129 or ~~D 1552~~ D1552 shall be used to determine the sulfur content.

The sulfur content and BTU content of the fuel shall be reported on a dry basis. ~~When the test methods described in Subparagraph (d)(1) or (d)(2) of this Rule are used to demonstrate that the ambient air quality standards for sulfur dioxide are being protected, the sulfur content shall be determined at least once per year from a composite of at least three or 24 samples taken at equal time intervals from the fuel being burned over a three hour or 24 hour period, respectively, whichever is the time period for which the ambient standard is most likely to be exceeded; this requirement shall not apply to sources that are only using fuel analysis in place of continuous monitoring to meet the requirements of Section .0600 of this Subchapter.~~

(e) ~~When compliance is shown for sulfuric acid manufacturing plants or spodumene ore roasting plants with Rules .0517 and .0527, respectively, of this Section through stack sampling, the procedures described in Method 8 of Appendix A of 40 CFR Part 60 shall be used. When Method 8 of Appendix A of 40 CFR Part 60 is used to determine compliance, compliance shall be determined by averaging emissions measured by three one hour test runs unless otherwise specified in the applicable rule or federal subpart.~~

(f) ~~When compliance is shown for a combustion source emitting sulfur dioxide not covered under Paragraph (a) through (e) of this Rule through stack sampling, the procedures described in Method 6 or Method 6C of Appendix A of 40 CFR Part 60 shall be used. When using Method 6 procedures to show compliance, compliance shall be determined by averaging six 20 minute samples taken over such a period of time that no more than 20 minutes elapses between any two consecutive samples. The 20 minute run requirement only applies to Method 6 not to Method 6C. Method 6C is an instrumental method and the sampling is done continuously.~~

(f) If the test methods described in Subparagraph (d)(1) or (d)(2) of this Rule are used to demonstrate that the ambient air quality standards for sulfur dioxide set forth in 15A NCAC 02D .0402 are being protected, the sulfur content shall be determined at least once per year from a composite of:

- (1) at least three samples over a three-hour period for sources that are most likely to exceed the maximum three-hour ambient standard; or

- (2) at least 24 samples over a 24-hour period for sources that are most likely to exceed the maximum 24-hour ambient standard.

This requirement shall not apply to sources that are only using fuel analysis in place of continuous monitoring to meet the requirements of 15A NCAC 02D .0600.

*Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5).*

**15A NCAC 02D .2612 NITROGEN OXIDE TESTING METHODS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .2613 VOLATILE ORGANIC COMPOUND TESTING METHODS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .2614 DETERMINATION OF VOC EMISSION CONTROL SYSTEM EFFICIENCY**

(a) The provisions of this Rule are shall be applicable to any test method employed to determine the collection capture or control efficiency of any device or system designed, installed, and operated for the purpose of reducing volatile organic compound emissions.

(b) The control efficiency of volatile organic compound emission control systems shall be determined using the following procedures shall be used to determine efficiency: procedures:

- (1) The volatile organic compound containing material shall be sampled and analyzed using the procedures contained in this Section.
- (2) Samples of the gas stream containing volatile organic compounds shall be taken simultaneously at the inlet and outlet of the emissions control device.
- (3) The efficiency of the control device shall be expressed as the fraction a percent of the total combustible carbon content reduction achieved.
- (4) ~~The volatile organic compound mass emission rate shall be the sum of emissions from the control device and emissions not collected by the capture system.~~

(c) The volatile organic compound mass emission rate shall be the sum of emissions from the control device and the emissions not collected by the capture system.

~~(e)(d) Capture efficiency performance of volatile organic compound emission control systems shall be determined using the EPA recommended capture efficiency protocols and test methods as described in the EPA document, EMTIC GD-035, "Guidelines for Determining Capture Efficiency." This document is hereby incorporated by reference including subsequent amendments or editions. A copy of the referenced materials may be obtained free of charge via the Internet from the EPA TTN website at <http://www3.epa.gov/ttn/emc/guidlnd/gd-036.pdf>.~~

~~(d) The EPA document, EMTIC GD 035, "Guidelines for Determining Capture Efficiency" cited in this Rule is hereby incorporated by reference including any subsequent amendments or editions. A copy of the referenced materials may be obtained~~

~~free of charge via the Internet from the EPA TTN website at <http://www.epa.gov/ttn/emc/guidlnd.html>.~~

*Authority G.S. 143-215.3(a)(1); 143-215.68; 143-215.107(a)(5).*

**15A NCAC 02D .2615 DETERMINATION OF LEAK TIGHTNESS AND VAPOR LEAKS**

(a) ~~Leak Testing Detection Procedures.~~ One of the following test methods from the EPA document "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection System," EPA-450/2-78-051, published by the U.S. ~~Environmental Protection~~ Environmental Protection Agency, December 1978, shall be used to determine compliance with ~~Rule .0932~~ 15A NCAC 02D .0932 Gasoline Truck Tanks And Vapor Collector ~~Systems of this Section:~~ Systems:

- (1) The gasoline vapor leak detection procedure by combustible gas detector described in Appendix B ~~of to~~ EPA-450/2-78-051 shall be used to determine leakage from gasoline truck tanks and vapor control systems.
- (2) The leak detection procedure for bottom-loaded truck tanks by bag capture method described in Appendix C ~~of to~~ EPA-450/2-78-051 shall be used to determine the leak tightness of truck tanks during bottom loading.

(b) Annual Certification. The pressure-vacuum test procedures for leak tightness of truck tanks described in Method 27 of Appendix A ~~of to~~ 40 CFR Part 60 or 49 CFR Part 180.407 shall be used to determine the leak tightness of gasoline truck tanks in use and equipped with vapor collection equipment. Method 27 of Appendix A of 40 CFR Part 60 ~~is shall be~~ changed to read: read as follows:

- (1) 8.2.1.2 "Connect static electrical ground connections to tank."
- (2) 8.2.1.3 "Attach test coupling to vapor return line."
- (3) 16.0 No alternative procedure is applicable.

(c) Copies of Appendix B and C of the EPA document, "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection System," EPA-450/2-78-051, cited in this Rule, are hereby incorporated with subsequent amendments and editions by reference and are available on the Division's Website <http://daq.state.nc.us/enf/sourcetest>.  
<http://deq.nc.gov/about/divisions/air-quality/air-quality-enforcement/emission-measurement>.

*Authority G.S. 143-215.3(a)(1), 143-215.107(a)(5).*

**15A NCAC 02D .2616 FLUORIDES**

The procedures for determining compliance with fluoride emissions standards shall be by completed using:

- (1) Method 13A or 13B of Appendix A ~~of to~~ 40 CFR Part 60 for sampling determining total fluoride emissions from stacks; ~~or~~
- (2) Method 14 of Appendix A ~~of to~~ 40 CFR Part 60 for sampling determining total fluoride emissions from roof monitors not employing stacks or pollutant collection ~~systems.~~ systems;  
or

- (3) Method 26 or Method 26A of Appendix A to 40 CFR Part 60 for determining hydrogen halide and halogen emissions.

*Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5).*

**15A NCAC 02D .2617 TOTAL REDUCED SULFUR  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .2618 MERCURY**

~~Method 101 or 102 of Appendix B of 40 CFR Part 61 shall be used to show compliance with mercury emission standards.~~

The procedures for determining compliance with mercury emission standards shall be performed using one of the following methods:

- (1) Method 29 of Appendix A to 40 CFR Part 60;
- (2) Method 30A of Appendix A to 40 CFR Part 60;
- (3) Method 30B of Appendix A to 40 CFR 60;
- (4) Method 101 of Appendix B to 40 CFR Part 61;
- (5) Method 101A of Appendix B to 40 CFR Part 61; or
- (6) Method 102 of Appendix B to 40 CFR Part 61.

*Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5).*

**15A NCAC 02D .2619 ARSENIC, BERYLLIUM,  
CADMIUM, HEXAVALENT CHROMIUM  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .2620 DIOXINS AND FURANS  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .2621 DETERMINATION OF FUEL  
HEAT CONTENT USING F-FACTOR POLLUTANT  
EMISSIONS USING THE F FACTOR**

(a) ~~Emission rates~~ Emissions for wood or fuel burning sources ~~that are~~ expressed in units of pounds per million ~~BTU~~ Btu shall be determined by the ~~"Oxygen-Based"~~ "Oxygen-Based F Factor Procedure" described in Section ~~5~~ 12.2.1 of Method 19 of Appendix A ~~of to~~ 40 CFR Part 60. Other procedures described in Method 19 may be used if appropriate. ~~To provide data of sufficient accuracy for use with the F factor methods, an integrated (bag) sample shall be taken for the duration of each test run. For simultaneous testing of multiple ducts, there shall be a separate bag sample for each sampling train. The bag sample shall be analyzed with an Orsat analyzer by Method 3 of Appendix A of 40 CFR Part 60. (The number of analyses and the tolerance between analyses are specified in Method 3.) The specifications stated in Method 3 for the construction and operation of the bag sampling apparatus shall be followed.~~

(b) A continuous oxygen (O<sub>2</sub>) ~~and or~~ or carbon dioxide (CO<sub>2</sub>) ~~monitor under analyzer meeting the requirements of Method 3E 3A of Appendix A of to~~ 40 CFR Part 60 may be used if the average of all values during the run are used to ~~compute~~ determine the average O<sub>2</sub> or CO<sub>2</sub> concentrations.

(c) If the continuous monitor method in Paragraph (b) of this Rule is not used, an integrated bag sample shall be taken for the

duration of each test run. For simultaneous testing of multiple ducts, there shall be a separate bag sample for each sampling train. Each bag sample shall be analyzed with an Orsat analyzer by Method 3 of Appendix A to 40 CFR Part 60. The specifications stated in Method 3 for the construction and operation of the bag sampling apparatus shall be followed.

~~(e)(d)~~ The Director ~~may approve~~ shall review the use of alternative methods according to ~~Rule 15A NCAC 02D .2602 .2601(e) of this Section if~~ and shall approve them if they meet the requirements of Method 3 of Appendix A ~~of to~~ 40 CFR Part 60.

*Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5).*

**TITLE 21 – OCCUPATIONAL LICENSING BOARDS  
AND COMMISSIONS**

**CHAPTER 17 – BOARD OF DIETETICS, NUTRITION**

*Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Board of Dietetics/Nutrition intends to readopt with substantive changes the rules cited as 21 NCAC 17 .0101, .0104, .0105, .0107, .0109, and .0303.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://www.ncbdcn.org/proposed-rule-changes>

**Proposed Effective Date:** August 1, 2019

**Public Hearing:**

**Date:** May 22, 2019

**Time:** 3:00 p.m.

**Location:** Conference Room, 140 Preston Executive Drive, Cary, NC 27513

**Reason for Proposed Action:** Pursuant to G.S. 150B-21.3A9d)(2), the North Carolina Board of Dietetics/Nutrition (the NCBDN) must readopt rules 21 NCAC 17 .0101, .0104, .0105, .0107, .0109, and .0303 as all of these rules were determined to be necessary with substantive public interest. These rules involve definitions, the application process, the examinations the Board recognizes, provisional licensure for those who have not yet passed the qualifying examination, issuance and renewal of a license, and supervision of those working on their supervised practice requirements in order to qualify for licensure. In 2016, the NCBDN classified these rules as rules that would require readoption because it was aware of (and supported) proposed legislation that would significantly change the NC Dietetics/Nutrition Practice Act (the Act), and consequently impact the rules drafted pursuant to this Act. Such legislation was passed in 2018 as SL 2018-91. In addition to the other changes, SL 2018-91 provided for a new pathway to licensure for qualified nutrition professionals. The NCBDN recognized each of these rules provided for in this Notice of Text as rules that either involved a piece of that licensure process or maintenance of a license once obtained. With the creation of the new licensure pathway provided under NC Gen. Stat 90-357.5(c), which went



into effect July 1, 2018, the current versions of these rules no longer align with the provisions of Article 25 of Chapter 90.

**Comments may be submitted to:** Charla Burill, 140 Preston Executive Drive, Suite 205-C, Cary, NC 27513; fax (919) 882-1776; email director@ncbndn.org

**Comment period ends:** June 14, 2019 at 5:00 p.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. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- ☐ State funds affected  
☐ Local funds affected  
☐ Substantial economic impact (≥\$1,000,000)  
☒ Approved by OSBM  
☒ No fiscal note required

## SECTION .0100 – LICENSURE

### 21 NCAC 17 .0101 DEFINITIONS AND ACRONYMS

(a) As used in this Chapter, the following terms ~~and phrases, which have not already been defined in the~~ Practice Act, G.S. 90-350 through 90-369, shall have the meanings specified: mean:

- (1) "Act" means Dietetics/Nutrition Practice Act.
- (2) ~~"ADA" means The American Dietetic Association.~~
- (2)(3) "Applicant" means any person who has applied to the Board for a license to practice dietetics/nutrition provide medical nutrition therapy in the State of North Carolina.
- (3)(4) "Application" means a written request directed to and received by the Board, on forms supplied by the Board, for a license to practice dietetics/nutrition provide medical nutrition therapy in the State of North Carolina, together with all information, documents documents, and other materials necessary for the Board to act on that application, to demonstrate that the applicant has met the requirements for licensure as specified in G.S. 90, Article 25.

- (5) ~~"CDR" means the Commission on Dietetic Registration which is a member of the National Commission for Health Certifying Agencies.~~
- (6) ~~"CADE" means the Commission on Accreditation for Dietetics Education.~~
- (4)(7) "Degree" means a degree received from a college or university that was regionally accredited at the time the degree was ~~conferred.~~ conferred, or a validated foreign equivalent.
- (5)(8) "Dietitian/nutritionist" ~~or "nutritionist"~~ means one engaged in ~~dietetics/nutrition dietetics or nutrition~~ practice.
- (9) ~~"Executive Secretary" means the person employed to carry out the administrative functions of the Board.~~
- (6)(40) "Health care practitioner" includes any individual who is licensed under G.S. ~~90, 90~~ and whose licensed scope of practice includes dietetics or nutrition.
- (7)(44) "Nutrition assessment" means:
  - (A) the evaluation of the nutrition needs of individuals and groups based upon biochemical, anthropometric, nutrigenomic, physical, and food and diet history data to determine nutritional needs and ~~recommend~~ appropriate nutrition intake order therapeutic diets, including, including enteral and parenteral ~~nutrition.~~ nutrition; and
  - (B) the ordering laboratory tests related to the practice of nutrition and dietetics.
- (8)(42) "Nutrition counseling" means the advice and assistance provided by licensed dietitians/nutritionists and licensed nutritionists to individuals or groups on nutrition intake by integrating information from the nutrition assessment with information on food and other sources of nutrient and meal preparation consistent with therapeutic needs and cultural background, which shall include ethnicity, race, language, religious and spiritual beliefs, education, and socioeconomic status status, and therapeutic needs.
- (13) ~~"Provisionally licensed dietitian/nutritionist" means a person provisionally licensed under the act.~~
- (14) ~~"Equivalent major course of study" means one which meets the knowledge requirements of the ADA Approved Didactic Program in Dietetics as referenced in the most current edition of the "Eligibility Requirements and Accreditation Standards for Didactic Programs in Dietetics (DPD)" which is hereby incorporated by reference including any subsequent amendments and editions of the referenced material. Copies of this manual are available at no charge through the ADA's website at:~~

<http://www.eatright.org/CADE/content.aspx?id=57>.

- (15) ~~"Supervised practice program" means one which meets the standards of the ADA-accredited Dietetic Internship Program as referenced in the most current edition of the "Eligibility Requirements and Accreditation Standards for Dietetic Internship Programs (DI)" which is hereby incorporated by reference including any subsequent amendments and editions of the referenced material. Copies of this manual are available at no charge through the ADA's website at: <http://www.eatright.org/CADE/content.aspx?id=57>.~~
- (16) ~~"Medical nutrition therapy" (MNT) is an evidence-based application of the Nutrition Care Process, as currently defined by the ADA, AND, focused on prevention, delay or management of diseases and conditions, and involves an in-depth assessment, periodic reassessment and intervention. The ADA's AND's definition of "Nutrition Care Process," which is listed in the ADA's AND's "Definition of Terms List," is hereby incorporated by reference including any subsequent amendments and editions of the referenced material. Copies of this publication can be found on the ADA's AND's website at: <http://www.eatright.org/HealthProfessionals/content.aspx?id=6867>. <http://www.eatrightpro.org/-/media/eatrightpro%20files/practice/scope%20standards%20of%20practice/definition%20of%20terms%20list.aspx>.~~

(b) As used in this Chapter, the following acronyms mean:

- (1) ACEND: the Accreditation Council for Education in Nutrition and Dietetics.
- (2) AND: the Academy of Nutrition and Dietetics.
- (3) BCNS: the Board for Certification of Nutrition Specialists, whose Certified Nutrition Specialist credential is accredited by the National Commission for Certifying Agencies.
- (4) CDR: the Commission on Dietetic Registration, whose Registered Dietitian Nutritionist credential is accredited by the National Commission for Certifying Agencies.
- (5) ACBN: the American Clinical Board of Nutrition, whose Diplomate of the American Clinical Board of Nutrition credential is accredited by the National Commission for Certifying Agencies.
- (6) LDN: licensed dietitian/nutritionist.
- (7) LN: licensed nutritionist.
- (8) PLDN: provisionally licensed dietitian/nutritionist.
- (9) PLN: provisionally licensed nutritionist.

Authority G.S. 90-352; 90-356.

## 21 NCAC 17.0104 APPLICATIONS

(a) Each applicant for initial licensure or renewal shall file a completed application with the Board. Application forms are available at [www.ncbdn.org](http://www.ncbdn.org).

(b) ~~Applicants shall submit an application that is typed or written in ink. A complete application shall be:~~

- (1) typed;
- (2) signed by the applicant under the penalty of perjury affirming that the information on the application is true and releasing to the Board information pertaining to the application; and
- (3) accompanied by the appropriate nonrefundable application, issuance, and criminal history record check fees; and
- (4) accompanied by such evidence, statements, or documents showing to the satisfaction of the Board that applicant meets requirements, demonstrating the applicant meets the applicable requirements specified in G.S. 90-357.5, and the applicant is not in violation of G.S. 90-363.

(c) ~~Applicants shall submit a completed application to: to the North Carolina Board of Dietetics/Nutrition, 1000 Centre Green Way, Suite 200, Cary, NC 27513. Dietetics/Nutrition on its website at [www.ncbdn.org](http://www.ncbdn.org).~~

(d) ~~Applications and all documents filed in support thereof shall become the property of the Board upon receipt.~~

~~(d)(e)~~ The Board shall not consider review an application until the applicant pays the application fee. The fee may be paid online via credit card, or by check mailed to: North Carolina Board of Dietetics/Nutrition, 140 Preston Executive Drive, Suite 205-C, Cary, NC 27513.

~~(e)(f)~~ Applicants seeking examination eligibility from the Board must submit the application at least 60 days prior to the date the applicant wishes to take the examination. Examination information for each of the examinations the Board recognizes may be found on the following websites:

- (1) Information regarding the Registered Dietitian Nutritionist examination offered by the Commission on Dietetic Registration may be found at: <https://www.cdrnet.org/program-director/student-instructions>.
- (2) Information regarding the Certified Nutrition Specialist examination offered by the Board for Certification of Nutrition Specialists may be found at: [www.nutritionspecialists.org/CNSExam](http://www.nutritionspecialists.org/CNSExam).
- (3) Information regarding the Diplomate of the American Clinical Board of Nutrition examination offered by the American Clinical Board of Nutrition may be found at: <https://www.acbn.org/handbook.pdf>.

~~(f)(g)~~ Before cancelling an application, the Executive Secretary Director shall send a notice to an applicant who does not complete the application which that lists the additional materials required. An incomplete application shall be valid for a period of six months from the date the application is filed with the Board. After six months, if an application has not been completed by the applicant and ready for Board review, the application shall

be considered cancelled due to failure to complete. Complete applications that the Board determines require additional evidence under Paragraph (m) of this Rule, shall be eligible for consideration for the timeline set forth in that Paragraph.

~~(g)(h) Applicants, Applicants who must provide~~ providing evidence of current registration as a Registered Dietitian Nutritionist by the CDR in G.S. 90-357(3)a, 90-357.5(a)(2) shall submit a ~~notarized~~ photocopy of the applicant's ~~signed~~ registration identification ~~card, card, or a copy of a CDR Credential Verification certificate~~ certifying that the applicant is a Registered Dietitian Nutritionist.

~~(h)(i) Applicants, who must provide~~ Applicants providing evidence of completing academic requirements in G.S. 90-357(3) b.1, c.1 and d, 90-357.5(a)(1) shall either:

- (1) Submit transcripts and a verification statement ~~which that~~ includes the original signature of the Program Director of a college or university ~~in which where~~ the course of study was ~~approved~~ accredited by the ~~Commission on Accreditation for Dietetics Education~~ ACEND as meeting the ~~current knowledge requirements of the ADA;~~ the competency requirements of the most current edition of the Accreditation Standards for Nutrition and Dietetic Didactic Programs; or
- (2) Submit ~~sufficient~~ documentation, including ~~official~~ transcripts, ~~for the Board to determine if the equivalent major course of study meets the ADA requirements as referenced in 21 NCAC 17.0101(14).~~ demonstrating the course of study met the competency requirements of the most current edition of the ACEND Accreditation Standards for Nutrition and Dietetic Didactic Programs.

~~(j) Applicants, who must provide evidence of completing supervised practice program in G.S. 90-357(3)b.2 and c.2, shall either:~~

- ~~(1) Submit a verification statement which includes the original signature of the Program Director or Sponsor of a supervised practice program; or~~
- ~~(2) Submit sufficient documentation for the Board to determine if the supervised practice program meets the ADA requirements as referenced in 21 NCAC 17.0101(15).~~

(i) Applicants providing evidence of completing academic requirements in G.S. 90-357.5(c) shall submit documentation, including official transcripts, demonstrating completion of the requirements stated in G.S. 90-357.5(c)(1).

(k) Applicants who have obtained their education outside of the United States and its territories must:

- (1) Have their academic degree evaluated by CDR, as equivalent to the baccalaureate or higher degree conferred by a U.S. college or university accredited by the regional accrediting agencies recognized by the Council on Postsecondary Accreditation and the U.S. Department of Education; and
- (2) Have any Board required documents submitted in a language other than English be

accompanied by a certified translation thereof in English from World Education Services, Inc.

(j) Applicants providing evidence of completing a supervised practice program in G.S. 90-357.5(a)(1)(b) shall either:

- (1) Submit a verification statement that includes the original signature of the Program Director of a documented, supervised practice experience that has been accredited by the ACEND as meeting the competency requirements of the most current edition of the Accreditation Standards for Nutrition and Dietetics Internship Programs; or
- (2) Submit documentation demonstrating at least 1000 hours of documented, supervised practice experience, meeting the competency requirements of the most current edition of the Accreditation Standards for Nutrition and Dietetics Internship Programs issued by ACEND. The scope of activities may include alternate supervised experiential learning such as simulation, case studies, and role playing, but must also include at least 750 hours in a professional work setting. The 1000 hours must be concurrent with or following completion of the academic requirements for licensure and need not be a paid experience. The following shall be necessary to determine and verify supervised practice experience:
  - (A) The supervisor shall have access to all patient/client records kept during the supervised practice experience. The supervisor shall review performance by periodic observation, either in real-time, or by some recording of the nutrition service.
  - (B) If there is more than one supervisor or facility for different parts of the supervised practice experience, information and verification of each part is required.
  - (C) The applicant shall provide to the Board for each supervisor/facility:
    - (i) the name and address of the facility providing the supervised practice experience;
    - (ii) the name, address, phone, and title of the supervisor who supervised the supervised practice experience;
    - (iii) a summary of nutrition services performed, along with dates and hours spent performing them;
    - (iv) evidence that the supervisor met the requirements stated in G.S. 90-357.5(a)(1)(b) at the time of supervision; and

- (v) an attestation that the supervisor is not related to, married to, or domestic partners with the supervisee.
- (D) Each supervisor shall review the evidence provided by the applicant and verify that the information is true, including:
  - (i) that the applicant participated in nutrition services under his or her supervision, stating the total number of hours;
  - (ii) providing a summary of the nutrition services provided under his or her supervision; and
  - (iii) providing an evaluation of the applicant for the Board to be able to assess the applicant's performance in completion of the competencies required by ACEND.

(k) Applicants providing evidence of completing a supervised practice program in G.S. 90-357.5(c)(2) shall submit documentation demonstrating at least 1000 hours of documented, supervised practice experience, meeting the requirements as stated in G.S. 90-357.5(c)(2). The scope of activities may include alternate supervised experiential learning such as simulation, case studies, and role playing, but must also include at least 750 hours in a professional work setting. The 1000 hours must be concurrent with or following completion of the academic requirements for licensure and need not be a paid experience. The following shall be necessary to determine and verify the supervised practice experience:

- (1) The supervisor shall have access to all relevant patient/client records kept during the supervised practice experience. The supervisor shall review performance by periodic observation, either in real-time or by some recording of the nutrition service.
- (2) If there is more than one supervisor or facility for different parts of the supervised practice experience, information and verification of each part is required.
- (3) The applicant shall provide to the Board for each supervisor/facility:
  - (A) the name and address of the facility providing the supervised practice experience;
  - (B) the name, address, phone, and title of the supervisor who supervised the supervised practice experience;
  - (C) a summary of nutrition services performed, along with dates, and hours spent performing them;
  - (D) evidence that the supervisor met the requirements as stated in G.S. 90-

357.5(c)(2) at the time of supervision; and

- (E) an attestation that the supervisor is not related to, married to, or domestic partners with the supervisee.
- (4) Each supervisor must review the evidence provided by the applicant and verify that the information is true including:
  - (A) that the applicant participated in nutrition services under his or her supervision, stating the total number of hours;
  - (B) providing a summary of the nutrition services provided under his or her supervision; and
  - (C) providing an evaluation of the applicant for the Board to be able to assess the applicant's performance in the areas of nutrition assessment; nutrition intervention, education, counseling, or management; and nutrition monitoring or evaluation.

(l) Applicants who have obtained their education outside of the United States and its territories shall:

- (1) Have their academic degree(s) evaluated by a Board-approved foreign credential evaluating service as equivalent to a baccalaureate or higher degree conferred by a U.S. college or university accredited by the regional accrediting agencies recognized by the Council on Higher Education Accreditation and the U.S. Department of Education; and
- (2) All documents submitted in a language other than English shall be accompanied by a certified translation thereof in English from a Board-approved translation service.
- (3) The following foreign credential evaluating and translation services are Board-approved:
  - (A) Academic and Professional International Evaluation, Inc., which may be found at: [www.api-eval.org](http://www.api-eval.org);
  - (B) Academic Credentials Evaluation Institute, Inc., which may be found at: <https://www.acei-global.org/>;
  - (C) American Education Research Corporation, Inc., which may be found at: <http://www.aerc-eval.com/>;
  - (D) Association of International Credential Evaluators, Inc., which may be found at: [www.aice-eval.org](http://www.aice-eval.org);
  - (E) Bruscan Educational Information Services, which may be found at: <http://www.bruscan.com/>;
  - (F) Center for Educational Documentation, Inc., which may be found at: <http://www.cedevaluations.com/>;
  - (G) Education Credential Evaluators, Inc., which may be found at: [www.ece.org](http://www.ece.org);

- (H) Educational Perspectives, which may be found at: <https://www.edperspective.org/>;
- (I) Foundation for International Services, Inc., which may be found at: <https://www.fis-web.com/>;
- (J) International Education Research Foundation, which may be found at: [www.ierf.org](http://www.ierf.org);
- (K) Josef Silny & Associates, which may be found at: <http://www.jsilny.org/>;
- (L) SpanTran: The Evaluation Company, which may be found at: <https://www.spantran.com/>; or
- (M) World Education Services, Inc., which may be found at: <https://www.wes.org/>.

(m) If the Board determines that the application does not demonstrate satisfaction of the requirements specified in G.S. 90-357.5, the Board shall notify the applicant in writing. The notification shall include what is required to demonstrate the applicant meets the statutory requirements, and the applicant shall be:

- (1) offered the ability to place the application on hold for a time period of up to one year from the date of the letter providing the Board's determination, so long as such a request is made in writing within 30 days of the date of the letter. During this hold time, the applicant may provide other evidence demonstrating the applicant satisfied the requirements the Board determined were not met;
- (2) offered the opportunity to appear for an interview before the Board. At any time during that interview, applicant may stop the interview, and request to have all or any part of requested information provided in writing; and
- (3) offered the ability to withdraw the application so long as such a request is made in writing within 30 days of the date of the letter. The applicant will be allowed to apply for licensure at a later time.

(n) If an applicant who received the notice specified in Paragraph (m) of this Rule does not provide a written response to the Board within 30 days of the date of the notification requesting that he or she be granted an interview or his or her application be placed on hold or withdrawn, the Board shall issue the applicant an official rejection as provided in G.S. 90-358.

(o) A rejected applicant shall be deemed to be a "person aggrieved" within the meaning of G.S. 150B-2(6). The applicant shall have 60 days from the date of official rejection to request an administrative hearing.

*Authority G.S. 90-356; 90-356; 90-357.5; 90-358.*

## **21 NCAC 17 .0105 EXAMINATION FOR LICENSURE**

(a) ~~The Board approves the examination offered by the Commission on Dietetic Registration (CDR).~~

~~(b) The examination shall be offered by ACT year round at designated ACT testing centers to qualified applicants for licensing.~~

~~(c) The Board recognizes the passing score set by the CDR. The Board shall recognize the passing scores set by the testing agencies for the exams in G.S. 90-359 as "successful completion."~~

*Authority G.S. 90-356; 90-359.*

## **21 NCAC 17 .0107 PROVISIONAL LICENSE**

(a) Applicants for a provisional license under G.S. 90-357.5(a) shall provide evidence of completing the academic educational and clinical practice requirements by: by submitting the information required by 21 NCAC 17 .0104(h) and (j), and providing evidence of making application to take the Registered Dietitian Nutritionist examination. Applicants granted provisional licensure under G.S. 90-357.5(a) shall be given the credential "PLDN."

- (1) ~~Submitting transcripts and a verification statement which includes the original signature of the Program Director of a college or university in which the course of study has been approved by the Commission on Accreditation for Dietetics Education as meeting the current knowledge requirements of the ADA; or~~
- (2) ~~Submit sufficient documentation for the Board to determine if the equivalent major course of study meets the ADA requirements as referenced in 21 NCAC 17.0101(14).~~

~~(b) Applicants shall provide evidence of completing a supervised practice program by:~~

- (1) ~~Submitting a verification statement which includes the original signature of the Program Director or Sponsor of a supervised practice program which has been approved by CDR to meet the dietetic practice requirements of ADA; or~~
- (2) ~~Submit sufficient documentation for the Board to determine if the supervised practice program meets the ADA requirements as referenced in 21 NCAC 17.0101(15).~~

(b) Applicants for a provisional license under G.S. 90-357.5(c) shall provide evidence of completing the educational and clinical practice requirements by submitting the information required by 21 NCAC 17 .0104(i) and (k), and providing evidence of making application to take the Certified Nutrition Specialist examination or the Diplomate of the American Clinical Board of Nutrition examination. Applicants granted a provisional license under G.S. 90-357.5(c) shall be given the credential "PLN."

~~(c) Applicants shall provide evidence of making application to take the examination. Applications for a provisional license are available at [www.ncbdn.org](http://www.ncbdn.org).~~

~~(d) A provisional license shall be issued for a period of not exceeding one year 12 months upon the applicant completing the following:~~

- (1) ~~payment of application, issuance fees; issuance, and criminal history record check fees;~~

- (2) submission of a ~~completed~~ completed, approved application as provided by the Board; and
- (3) provision of evidence of being under the supervision of North Carolina licensed ~~dietitian(s)/nutritionist(s).~~ dietitian(s)/nutritionist(s) or licensed nutritionist(s).

(e) Following the successful ~~completion~~ completion, as defined in 21 NCAC 17.0105, of one of the licensing ~~examination,~~ examinations, the provisionally licensed dietitian/nutritionist or provisionally licensed nutritionist shall ~~remit~~ submit a completed application for licensure pursuant to G.S. 90-357.5, upgrading license, payment of fees, and evidence of passing one of the ~~examination~~ examinations referenced in 21 NCAC 17.0105. G.S. 90-359. If the provisionally licensed dietitian/nutritionist or provisionally licensed nutritionist successfully completes one of the licensing ~~examination~~ examinations and ~~obtains a license~~ submits an application for licensure pursuant to G.S. 90-357.5 within ~~six~~ 12 months of the date that the provisional license became effective, the ~~provisional license or renewal fee shall be deducted from the issuance fee.~~ provisionally licensed dietitian/nutritionist or provisionally licensed nutritionist shall only be required to pay the balance of the issuance fee.

(f) If the provisionally licensed dietitian/nutritionist or provisionally licensed nutritionist does not successfully complete the licensing examination and apply for a license pursuant to G.S. 90-357.5 within 12 months of the date that the provisional license became effective, the provisionally licensed dietitian/nutritionist or provisionally licensed nutritionist must reapply and pay all applicable fees in order to obtain licensure under G.S. 90-357.5.

*Authority G.S. 90-356; ~~90-361~~; 90-357.5; 90-361.*

## 21 NCAC 17 .0109 ISSUANCE AND RENEWAL OF LICENSE

- (a) An applicant shall be issued a license based on compliance with requirements stated in G.S. ~~90-357~~ 90-357.5 and the rules in this Chapter.
- (b) A licensee shall notify the Board of any change in the licensee's personal or professional mailing address within 30 days of that change.
- (c) Licenses shall expire on March 31 of every year. ~~Beginning in 1993, the licenses~~ A license for an LDN or LN shall be issued for a period of one year beginning April 1 and ending March 31. If an LDN or LN license is initially granted, reinstated, or reactivated between January 1 and March 31, the license shall be granted from the time of issuance through March 31 of the following year.
- (d) At least ~~60~~ 30 days prior to the expiration date of the license, the Board shall send the licensee written notice via USPS or electronic mail of the amount of renewal fee due, and instructions on how ~~to obtain a license renewal form which must be submitted with the required fee.~~ the licensee may renew online at [www.ncbdcn.org](http://www.ncbdcn.org).
- (e) A licensee's renewal application must be ~~postmarked~~ submitted online prior to the expiration date. The licensee's renewal fee must also be received or postmarked prior to the expiration date in order to avoid the late renewal fee. If the fee is

mailed, it must be sent to the mailing address provided in 21 NCAC 17 .0104(d). The licensee shall be responsible for filing any change of email or physical address where renewal notices should be sent. Failure to receive renewal notice due to the licensee's failure to file change of addresses with the Board is not shall not be justification for late renewal.

(f) ~~The Board may not renew the license of a person who is in violation of the Act, or Board rules at the time of application for renewal.~~ Renewal applications shall require licensees attest that the information on the application is true and complete. The applicant shall provide a written explanation and all available court documents evidencing the circumstances of any pending charge or conviction, not previously made known to the Board, if requested by the Board. The Board shall use these documents when determining if a license should be renewed under G.S. 90-363.

(g) Applicants for renewal of licenses shall provide documentation of having met continuing education requirements by ~~submitting either:~~ submitting:

- (1) ~~Evidence of completing continuing education hours to maintain~~ Verification of current certification as a Registered Dietitian Nutritionist by the Commission on Dietetic Registration, CDR, and verification of compliance with CDR's continuing education requirements. These The continuing education standards required to maintain certification standards are contained in the "Professional Development Portfolio ~~Guide~~", Guide," which is hereby incorporated by reference including subsequent amendments ~~or additions~~ and editions of reference material. Copies of this standard may be obtained at no charge from ~~the Commission on Dietetic Registration's CDR's~~ website at: <http://www.cdrnet.org/pdrcenter/>; <https://www.cdrnet.org/pdp/professional-development-portfolio-guide/>; ~~or~~
- (2) A summary of continuing education on the form provided by the Board documenting completion of ~~30~~ 75 hours of continuing education for a ~~two~~ five year period. The continuing education hours must meet the standards contained in the "Professional Development Portfolio Guide." Documentary evidence for continuing education activities shall include the following for each activity:
  - (A) the name of provider/sponsor;
  - (B) the name of accrediting organization;
  - (C) the title of the activity;
  - (D) the date attended;
  - (E) the continuing education hours earned; and
  - (F) a record of attendance or participation;
- (3) Verification of current certification as a Certified Nutrition Specialist by the BCNS, and verification of compliance with BCNS's continuing education requirements. The continuing education standards required to maintain certification are listed on the Board for

Certification of Nutrition Specialists' website, which is hereby incorporated by reference including subsequent amendments or editions of reference material. Copies of this standard may be obtained at no charge from the BCNS's website at: <https://nutritionspecialists.org/cns-tools/recertification>; or

- (4) Verification of current certification as a Diplomate, American Clinical Board of Nutrition by the ACBN, and verification of compliance with ACBN's continuing education requirements. The continuing education standards required to maintain certification are listed on the American Clinical Board of Nutrition's website, which is hereby incorporated by reference including subsequent amendments or editions of reference material. Copies of this standard may be obtained at no charge from the ACBN's website at: <https://www.acbn.org/policiesprocedures.pdf>.

(h) ~~The Board shall furnish a A renewal license shall be furnished~~ to each licensee who meets all renewal requirements by the expiration date.

(i) The Board shall renew a license upon the payment of a late fee within 60 days of the expiration ~~date of March 31, date.~~ If the license has been expired for 60 days or less, the license may be renewed by ~~returning submitting the online license renewal form form, with all appropriate the renewal and late fees fee, and~~ verification of current certification as a Registered Dietitian Nutritionist, Certified Nutrition Specialist, Diplomate, American Clinical Board of Nutrition, or, if following the requirements of Subparagraph (g)(2) of this Rule, continuing education documentation and documentation to the Board, postmarked on or before the end of the 60-day grace period.

*Authority G.S. 90-356; 90-362; 90-363.*

## **SECTION .0300 - DIETETIC/NUTRITION STUDENTS OR TRAINEES**

### **21 NCAC 17.0303 SUPERVISION**

~~(a) A planned, continuous program in clinical practice pursuant to G.S. 90-357(3)b.2. shall designate a licensed dietitian/nutritionist who shall supervise a student or trainee; and~~

- (1) ~~shall meet the qualifications of the current standards of education as referenced in the most current edition of the "Eligibility Requirements and Accreditation Standards for Dietetic Internship Programs (DI)" which is hereby incorporated by reference including any subsequent amendments and editions of the referenced material. Copies of this manual are available at no charge through the ADA's website at: <http://www.eatright.org/CADE/content.aspx?id=57>; and~~
- (2) ~~shall meet his/her employment qualifications of the sponsoring institution, if any.~~

~~(b) In accordance with the current standards of education referenced in this Rule, a Program Director shall:~~

- ~~(1) provide student/trainee advisement, evaluation, counseling and supervision;~~
- ~~(2) provide academic or supervised practice program assessment, planning, implementation and evaluation;~~
- ~~(3) inform student(s)/trainee(s) of laws, regulations and standards affecting the practice of dietetics/nutrition, including the Dietetics/Nutrition Practice Act and its Rules; and~~
- ~~(4) advise student(s)/trainee(s) on meeting the requirements to be licensed to practice dietetics/nutrition.~~

For purposes of G.S. 90-368(2), "direct supervision" means the supervising practitioner:

- (1) discusses and recommends, with the student or trainee, nutrition care services undertaken by the student or trainee, which are appropriate to the level of nutrition care;
- (2) is available for consultation on nutrition care activities being performed by the student or trainee, either through on-site or through electronic communication;
- (3) shall be available to render assistance when requested by the student or trainee or the patient or client, or shall have arranged for another practitioner to be available in the absence of the supervising practitioner;
- (4) personally observes, evaluates, and approves the acts or functions of the student or trainee supervised; and
- (5) shall maintain responsibility for the nutrition care activities performed by the student or trainee. For patients or clients receiving medical nutrition therapy in NC, the supervising practitioner shall be licensed in the State to provide the medical nutrition therapy he or she is supervising. For patients or clients outside of NC, the supervising practitioner shall be lawfully allowed to provide the nutrition care activities in the state where the patients or clients are located.

*Authority G.S. 90-356(2); 90-357; 90-357.5; 90-368(2).*

\*\*\*\*\*

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

*Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Board of Funeral Service intends to readopt with substantive changes the rules cited as 21 NCAC 34A .0201; 34B .0310; 34C .0305; 34D. 0105, .0203 and .0303.*

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

**Proposed Effective Date:** September 1, 2019

**Public Hearing:**

**Date:** May 8, 2019

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

**Location:** 1033 Wade Avenue, Suite 108, Raleigh, NC 27605

**Reason for Proposed Action:** Pursuant to G.S. 150B-21.3A(c)(2)g., all six rules proposed for readoption were determined to be necessary with substantive public interest as part of the periodic review of this agency's rules and, therefore, are subject to readoption. Pursuant to G.S. 150B-21.3A(d)(2), these rules are required to be readopted by the North Carolina Board of Funeral Service (the "Board") no later than September 30, 2019.

The substantive changes being proposed, among other things, reflect recent legislative changes as enacted by the passage of House Bill 529, "An Act Amending the Laws Pertaining to the Practice of Funeral Service" (S.L. 2018-78). In addition, the proposed changes reflect evolving technology and administrative practices of the Board staff to improve the efficiency with which the Board's regulations are administered.

It should be noted that, although substantive changes are proposed to 21 NCAC 34A .0201 – Fees AND OTHER PAYMENTS, these changes do not alter the existing fee amounts, but rather simply update existing fee structures to reflect the licensing of hydrolysis facilities and operators, as authorized by House Bill 529, codified as G.S. 90-210.136.

**Comments may be submitted to:** Catherine E. Lee, 1033 Wade Avenue, Suite 108, Raleigh, NC 27605, email [clee@ncbfs.org](mailto:clee@ncbfs.org)

**Comment period ends:** June 14, 2019

**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. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- ☐ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact (≥\$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required

## SUBCHAPTER 34A - BOARD FUNCTIONS

### SECTION .0200 - FEES AND OTHER PAYMENTS

#### 21 NCAC 34A .0201 FEES AND OTHER PAYMENTS

(a) Fees for funeral service shall be as follows:

Establishment permit	
Application	\$350.00
Annual renewal	\$250.00
Late renewal fee	\$150.00
Establishment and embalming facility reinspection fee	\$100.00
Courtesy card	
Application	\$75.00
Annual renewal	\$50.00
Out-of-state licensee	
Application	\$200.00
Embalmer, funeral director, funeral service	
Application, North Carolina resident	\$150.00
Application, non-resident	\$200.00
Annual renewal	
Embalmer	\$75.00
Funeral Director	\$75.00
Total fee, embalmer and funeral director, when both are held by same person	\$100.00
Funeral service	\$100.00
Inactive status	\$30.00
Reinstatement fee	\$50.00
Resident trainee permit	
Application	\$50.00
Voluntary change in supervisor	\$50.00



Annual renewal	\$35.00
Late renewal	\$25.00
Duplicate License certificate	\$25.00
Chapel registration	
Application	\$150.00
Annual renewal	\$100.00
Late renewal	\$75.00
(b) Fees for <del>crematories</del> <u>crematory and hydrolysis licensees</u> shall be as follows:	
License	
Application	\$400.00
Annual renewal	\$150.00
Late renewal fee	\$75.00
Crematory <u>or hydrolysis</u> reinspection fee	\$100.00
Per-cremation <u>or per hydrolysis</u> fee	\$10.00
Late filing or payment fee for each cremation <u>or hydrolysis</u>	\$10.00
Late filing fee for cremation or hydrolysis report, per month	\$75.00
Crematory <u>or Hydrolysis</u> Manager Permit	
Application	\$150.00
Annual renewal	\$40.00
(c) Fees for preneed funeral contract regulation shall be as follows:	
Preneed funeral establishment license	
Application	\$350.00
Annual renewal	\$250.00
Late renewal fee	\$100.00
Reinspection fee	\$100.00
Preneed sales license	
Application	\$20.00
Annual renewal	\$20.00
Late renewal fee	\$25.00
Preneed contract filings	
Filing fee for each contract	\$20.00
Late filing or payment fee for each contract	\$25.00
Late filing fee for each certificate of performance	\$25.00
Late filing fee for annual report	\$150.00
(d) Fees for Transportation Permits <u>shall be as follows:</u>	
Application	\$125.00
Annual renewal	\$75.00
Late fee	\$50.00
(e) <u>All fees remitted to the Board are non-refundable.</u>	

Authority G.S. 90-210.23(a); 90-210.25(c); 90-210.28; 90-210.67(b),(c),(d),(d1); 90-210.68(a); 90-210.134(a); 90-210.136.

## SUBCHAPTER 34B - FUNERAL SERVICE

### SECTION .0300 - LICENSING

#### **21 NCAC 34B .0310 ~~PRACTICE OF FUNERAL SERVICE OR FUNERAL DIRECTING NOT AS AN OWNER, EMPLOYEE OR AGENT OF A LICENSED FUNERAL ESTABLISHMENT~~ UNAFFILIATED PRACTICE PERMIT**

(a) ~~A funeral director or funeral service licensee registered to practice under G.S. 90-210.25(a2) shall not use its business office required by G.S. 90-210.25(a2)(2)a. to conduct the practice of funeral service or funeral directing. A funeral director or funeral service licensee shall not hold out to the public that its business office is a funeral establishment and shall not use a business name that misleads the public to believe that its business office is a funeral establishment or operates or maintains a facility that is a~~

~~funeral establishment.~~ Applications for an unaffiliated practice permit, pursuant to G.S. 90-210.25(a2), shall be made on forms provided by the Board, including the following information and documentation:

- (1) the full name and the applicant's Board-issued funeral directing or funeral service license number;
- (2) the applicant's physical address and, if different, mailing address;
- (3) the applicant's telephone number and facsimile number;
- (4) the name of the individual or entity that owns the unaffiliated practice;
- (5) the ownership percentages of each individual owner, partner, limited liability company member, or corporate officer;

- (6) the name and address of the funeral establishment or embalming facility where embalming will occur;
- (7) the address of the location where the business records of the unaffiliated practice will be maintained;
- (8) the name and address of the location where sheltering of human remains will occur prior to moving remains to the location where funeral services will be held;
- (9) the names, licensure, and employment information for any other licensees who will be employed by the unaffiliated practice;
- (10) a "yes" or "no" response to the question asking whether the applicant has been, within the previous two years, the subject of any investigation for employee misclassification, as defined by G.S. 143-762(a)(5);
- (11) if the unaffiliated practice is owned by a corporation or limited liability company, proof showing that the entity is in good standing with the North Carolina Department of the Secretary of State;
- (12) the new application fee charged to funeral establishments, pursuant to 21 NCAC 34A .0202;
- (13) a copy of the General Price List intended for use by the unaffiliated practice;
- (14) a copy of the Casket Price List intended for use by the unaffiliated practice;
- (15) a copy of the Outer Burial Container Price List intended for use by the unaffiliated practice;
- (16) a copy of the Statement of Funeral Goods and Services Selected intended for use by the unaffiliated practice;
- (17) if the unaffiliated practice is owned by a partnership, a copy of the partnership agreement;
- (18) if the unaffiliated practice is owned by a corporation, a copy of the Articles of Incorporation of the owning entity;
- (19) if the unaffiliated practice is owned by a limited liability company, a copy of the Articles of Organization of the owning entity;
- (20) if the unaffiliated practice will conduct business in a different name than that of its owning entity, a copy of the Certificate of Assumed Name; and
- (21) verification by the applicant.

(b) ~~An applicant to practice under the provisions of G.S. 90-210.25(a2) shall submit a form provided by the Board with an application fee. The applicant shall furnish the name, address, telephone number, and county of location for the applicant and any business organization operating under the laws of North Carolina, the license number of the applicant, the location where the applicant shall shelter remains, the location where the applicant uses as an embalming facility, the name and license numbers of any other embalmers retained by a funeral director to embalm, and any other information the Board deems necessary as~~

~~required by law. The applicant shall complete a verification before a notary public. An unaffiliated practice shall not hold itself out to the public as a funeral establishment.~~

(c) An unaffiliated practice shall not embalm or cause to be embalmed a dead human body in any location other than the preparation room of a funeral establishment or embalming facility licensed by the Board.

(d) The records of an unaffiliated practice and each location at which the practice of funeral service or embalming is performed on behalf of the unaffiliated practice shall be subject to inspection by inspectors of the Board during normal hours of operation and periods shortly before or after normal hours of operation.

(e) Upon request by the Board, an unaffiliated practice shall furnish information related to the unaffiliated practice.

Authority G.S. 90-210.20(c1), (g), (h); 90-210.23(a); 90-210.25(a2)(2)a., b.; 90-210.25(e)(1); 90-210.27A(a), (c), (g), (i).

## **SUBCHAPTER 34C - CREMATORIES**

### **SECTION .0300 - AUTHORIZATIONS, REPORTS, RECORDS**

#### **21 NCAC 34C .0305 MONTHLY REPORTS**

~~No later than the tenth day of each month, every crematory licensee shall remit to the Board the per cremation fees under 21 NCAC 34A .0201(b) for the cremations which the licensee performed during the immediately preceding calendar month. The fees shall be accompanied by a statement signed by an authorized representative of the crematory indicating the name of the crematory, each decedent's name, date of each cremation, the person or other entity for whom each cremation was performed, the number of cremations contained in the report and the total amount of fees remitted with the report.~~

(a) Each crematory and hydrolysis licensee shall submit a monthly report on forms prescribed by the Board. Monthly reports shall be accompanied by the per-cremation or per-hydrolysis fee set forth in 21 NCAC 34A .0201(b). Monthly reports may be submitted electronically. The Board also will accept monthly reports submitted by facsimile, mail, or hand-delivery.

(b) The monthly report form shall require crematory and hydrolysis licensees to furnish the following information:

- (1) the name and permit number of the crematory or hydrolysis licensee;
- (2) the name of each decedent for which a cremation or hydrolysis was performed;
- (3) the date of each decedent's death and cremation or hydrolysis;
- (4) the name of the individual and/or entity on whose behalf the cremation or hydrolysis was performed;
- (5) the name of at least one authorizing agent and the relationship to the decedent;
- (6) the total number of cremations and hydrolyses performed in the preceding month; and
- (7) the signature of the crematory or hydrolysis manager.

(c) Both the report and fees shall be received by the Board on or before the 10th calendar day in the month that immediately

follows the month for which cremations and hydrolyses are being reported.

(d) A crematory or hydrolysis licensee that fails to timely submit a monthly report and the required fees shall pay the late fees set forth in 21 NCAC 34 .0201(b).

*Authority G.S. 90-210.132; 90-210.134(a); 90-210.136(d), (h).*

## **SUBCHAPTER 34D - PRENEED FUNERAL CONTRACTS**

### **SECTION .0100 - GENERAL PROVISIONS**

#### **21 NCAC 34D .0105 PRENEED FUNERAL CONTRACT COPIES TO BE FILED SUBMITTED TO BOARD; AMENDMENTS**

(a) Within 10 days following the sale execution of a preneed funeral contract, contract or amendment to an existing preneed funeral contract, any person selling the preneed sales licensee must submit a copy of the contract shall send a copy of it to the Board, accompanying accompanied by the filing fee required by G.S. 90-210.67(d), set forth in G.S. 90-210.67(d) and 21 NCAC 34A .0201.

(b) All preneed funeral contract amendments must be submitted on the appropriate Board-approved preneed funeral contract amendment form.

(c) The following restrictions shall apply to preneed funeral contract amendments:

- (1) an existing irrevocable preneed funeral contract cannot be amended by a subsequently-filed revocable preneed funeral contract; and
- (2) an existing irrevocable inflation-proof preneed funeral contract cannot be amended by a subsequently-filed standard preneed funeral contract.

(d) When and where additional preneed funeral funds are deposited into an existing preneed funeral trust account or an existing prearrangement insurance policy or product, and the additional funds do not alter the preneed statement of funeral goods and services selected, the additional deposit of funds shall not constitute an amendment to an existing preneed funeral contract for purposes of this Rule. The preneed funeral establishment or preneed sales licensee shall not be required to file a preneed funeral contract amendment form for additional preneed funeral funds deposited in accordance with this Paragraph.

*Authority G.S. 90-210.62(b); 90-210.67(d); 90-210.68(a); 90-210.69(a).*

### **SECTION .0200 – LICENSING**

#### **21 NCAC 34D .0203 SURETY BONDS**

(a) Any applicant for a new preneed funeral establishment license or any preneed licensee required to maintain a surety bond under G.S. 90-210.67(b) shall submit a copy of the bond with its initial application and with each renewal application. The bond shall cover all insurance premiums paid under a preneed insurance policy and all trust payments under a preneed funeral trust. The bond shall name the Board as trustee and shall be issued by a bonding company licensed to do business in this State. The Board

shall recognize all surety bond forms approved by the N.C. Department of Insurance. Prior to the issuance of a preneed establishment permit, an applicant shall either deposit fifty thousand dollars (\$50,000) with the clerk of superior court in the county where the preneed establishment maintains its facility that is licensed or has submitted an application for licensure to the Board or shall obtain a surety bond meeting the following requirements:

- (1) the bond shall be in an amount not less than fifty thousand dollars (\$50,000);
- (2) the bond shall name the Board as the obligee;
- (3) the bond shall name the preneed funeral establishment and its owners as principals; and
- (4) the bond shall be issued by a bonding company licensed to conduct business as surety in this State.

(b) Any preneed establishment licensee required to obtain a bond may petition the Board to repeal the requirement one year after obtaining the bond. The preneed establishment licensee shall establish that the firm is solvent. For purposes of this paragraph, solvency shall be defined as assets in excess of liabilities; provided, however, that goodwill shall not be considered an asset and that unperformed preneed funeral contracts shall be treated as both an asset and a liability of equal value. A preneed establishment may demonstrate solvency by submitting a balance sheet prepared by a certified public accountant that is no more than 90 days old or through other financial evidence generally recognized as valid by certified public accountants. The following preneed funeral establishment permit holders shall maintain a surety bond meeting the criteria set forth in Paragraph (a) of this Rule for five years following licensure:

- (1) any preneed funeral establishment that failed to renew its permit on or before February 1 of any year within the preceding five years;
- (2) any preneed funeral establishment whose permit was suspended, revoked, or placed on probation within the preceding five years; and
- (3) any preneed funeral establishment for which a bond claim has ever been paid.

(c) All petitions must be filed on a form provided by the Board. The petition form shall be verified before a notary public by the owner, a corporate officer, partner, or member of the limited liability company owning the preneed establishment and shall require the petitioner to furnish the following information: A preneed establishment that continuously has maintained bond coverage for a period of at least one year and that never has had a bond claim paid on its behalf or on behalf of any individual thereof, may apply to the Board for a waiver of the requirement that it continue to maintain a surety bond. The waiver application shall be made on forms prescribed by the Board. The applicant shall furnish the following information and documentation:

- (1) the name of the and preneed establishment; funeral establishment permit number of the applicant;
- (2) certifications that the firm is solvent, has no unsatisfied civil judgments against it, and has not paid a claim on the bond; and a balance sheet showing the preneed funeral establishment's assets, liabilities, and equity

- prepared by a Certified Public Accountant no more than 60 days prior to the date of the application;
- (3) any other information that the Board deems necessary to determine solvency or to process the petition and that is required by law: a profit and loss statement showing the preneed funeral establishment's revenues and expenses prepared by a Certified Public Accountant no more than 60 days preceding the date of the application;
- (4) a list of each individual and entity that will agree to be held jointly and severally liable, in lieu of a surety, if a reimbursable claim is paid by the Board's Preneed Recovery Fund on behalf of the preneed funeral establishment;
- (5) copies of the declarations page for each insurance policy providing liability coverage to the preneed funeral establishment, to the extent this coverage exists; and
- (6) verification by each individual named in Subparagraph (c)(4) of this Rule.

(d) The Board shall refuse to grant any waiver request unless it is first shown that the applicant's current assets exceed its current liabilities in an amount not less than fifty thousand dollars (\$50,000).

*Authority G.S. 90-210.67(b); 90-210.69(a).*

### **SECTION .0300 - OPERATIONS**

#### **21 NCAC 34D .0303 CERTIFICATE CERTIFICATES OF PERFORMANCE OF PRENEED FUNERAL CONTRACTS**

(a) The certificate of performance as required by G.S. 90-210.64(a) shall be on a form provided by the Board and shall require the following information: ~~the names, addresses and preneed funeral establishment license numbers of the performing funeral establishment and the contracting funeral establishment; the name of the deceased beneficiary of the preneed funeral contract; the date of death and the county where the death certificate was or will be filed; the invoice amount; certification that the contract was or was not performed in whole or in part; the name and address of the financial institution where the preneed trust funds are deposited and the trust account or certificate number; the name and address of the insurance company that issued the prearrangement insurance policy and the policy number; and the amount and the date of the payment by the financial institution or insurance company and to whom paid.~~

- (1) the name, permit number, and contact information of the performing funeral establishment;
- (2) the name, permit number, and contact information of the contracting preneed funeral establishment, if different;

- (3) the full name and the last four digits of the social security number of the decedent;
- (4) the date the preneed funeral contract was executed;
- (5) the preneed funeral contract number assigned by the Board;
- (6) the date of the decedent's death;
- (7) the county and state of death;
- (8) the contract amount of the goods and services provided at the time of death;
- (9) a statement that one of the following scenarios applies:
- (A) the performing funeral establishment performed the preneed funeral contract in its entirety;
- (B) the preneed funeral contract was revoked or transferred after the death of the decedent and either the contracting preneed funeral establishment provided some services prior to the revocation or transfer or the contracting preneed funeral establishment provided no services prior to the revocation or transfer;
- (10) the name and location of each financial institution or insurance company where preneed funeral funds were held;
- (11) each account and insurance policy number from which preneed funeral funds were paid;
- (12) the date on which any preneed funeral funds were paid, the amount paid, and to whom;
- (13) if the preneed funeral contract was an inflation-proof preneed funeral contract, a calculation showing the proper distribution for cash advance goods or services provided or any goods or services modified pursuant to G.S. 90-210.63A(c);
- (14) if a refund was owed, the date paid and the check number of the check remitting the refund; and
- (15) the date and signature of the licensee completing the form.

~~(b) The form shall be completed by each funeral establishment performing any services or providing any merchandise pursuant to the preneed funeral contract, or, if none are performed or provided, by the contracting funeral establishment. The form shall be presented to the financial institution or insurance company for payment. Within 10 days following its receipt of payment, any funeral establishment that is required to complete the form shall file a copy with the Board~~

(b) Any licensee of the Board that is required to file a certificate of performance pursuant to G.S. 90-210.64(a) that fails to timely submit a certificate of performance to the Board shall pay the late fees set forth in 21 NCAC 34A .0201(c).

*Authority G.S. 90-210.64(a); 90-210.68; 90-210.69(a).*

**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 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY**

**Rule-making Agency:** Coastal Resources Commission

**Rule Citation:** 15A NCAC 07H .2701, .2704, and .2705

**Effective Date:** April 1, 2019

**Date Approved by the Rules Review Commission:** March 21, 2019

**Reason for Action:** The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Session Law 2018-136.

Session Law 2018-136 Section 5.13 directs the Coastal Resources Commission shall adopt temporary rules pursuant to G.S. 150B-21.1 to revise the Commission's general permit for the construction of riprap sills for wetland enhancement in estuarine and public trust waters (15A NCAC 07H .2700) in order to make the general permit consistent with the United States Army Corps of Engineers Wilmington District regional general permit for living shorelines. The CRC is proposing to amend its rules governing the construction of marsh sills in order to be more consistent with other general permits that govern construction of shoreline stabilization methods such as bulkheads.

**CHAPTER 07 - COASTAL MANAGEMENT**

**SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN**

**SECTION .2700 – GENERAL PERMIT FOR THE CONSTRUCTION OF ~~RIPRAP SILLS FOR WETLAND ENHANCEMENT IN ESTUARINE AND PUBLIC TRUST WATERS~~ MARSH SILLS**

**15A NCAC 07H .2701 PURPOSE**

A general permit pursuant to under this Section shall allow for the construction of ~~riprap~~ marsh sills for wetland enhancement and shoreline stabilization in estuarine and public trust waters as set out in Subchapter 07J .1100 and according to the rules in this Section. Marsh sills are defined as sills that are shore-parallel structures built in conjunction with existing, created, or restored wetlands. This general permit shall not apply within the Ocean Hazard System AECs or waters adjacent to these AECs with the exception of those portions of shoreline within the Inlet Hazard Area AEC that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area.

*History Note:* Authority G.S. 113A-107; 113A-118.1; Temporary Adoption Eff. June 15, 2004; Eff. April 1, 2005; Temporary Amendment Eff. April 1, 2019.

**15A NCAC 07H .2704 GENERAL CONDITIONS**

- (a) Structures authorized by a permit issued pursuant to this Section shall be ~~riprap or stone~~ marsh sills conforming to the standards in these Rules.
- (b) Individuals shall allow authorized representatives of the Department of ~~Environment and Natural Resources (DENR)~~ Environmental Quality (DEQ) to make periodic inspections at any time deemed necessary in order to ~~insure~~ ensure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed in these Rules.
- (c) The placement of ~~riprap or stone~~ marsh sills authorized in these Rules shall not interfere with the established or traditional rights of navigation of the waters by the public.
- (d) This permit shall not be applicable to proposed construction where the Department has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality, air quality, coastal wetlands, cultural or historic sites, wildlife, fisheries resources, or public trust rights.
- (e) This permit does not eliminate the need to obtain any other required state, local, or federal authorization.
- (f) Development carried out under this permit shall be consistent with all local requirements, AEC Guidelines as set out in Subchapter 07H .0200, and local land use plans current at the time of authorization.

*History Note:* Authority G.S. 113A-107; 113A-118.1; Temporary Adoption Eff. June 15, 2004; Eff. April 1, 2005; Temporary Amendment Eff. April 1, 2019.

**15A NCAC 07H .2705 SPECIFIC CONDITIONS**

- (a) A general permit issued pursuant to this Section shall be applicable only for the construction of ~~riprap or stone~~ marsh sill structures built in conjunction with existing, ~~created~~ created, or restored wetlands. Planted wetland vegetation shall consist only of native species.
- (b) ~~This general permit shall not apply within the Ocean Hazard System Areas of Environmental Concern (AEC) or waters adjacent to these AECs with the exception of those portions of shoreline within the Inlet Hazard Area AEC that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area.~~

~~(c)(b)~~ On shorelines where no fill is proposed, the The landward edge of the sill shall be positioned no more than 5 greater than 30 feet waterward of the waterward depth contour of locally growing wetlands or to mid-tide depth contour, of the normal high water or normal water level or five feet waterward of the existing wetlands, whichever distance is greater. Where no wetlands exist, in no case shall the landward edge of the sill be positioned greater than 30 feet waterward of the mean high water or normal high water line.

~~(d)~~ On shorelines where fill is proposed, the landward edge of the sill shall be positioned no more than 30 feet waterward of the existing mean high water or normal high water line.

~~(e)(c)~~ The permittee shall maintain the authorized sill sill, and existing or planted wetlands including wetlands and tidal inundation, in conformance with the terms and conditions of this permit, or the remaining sill structures shall be removed within 90 days of notification of noncompliance from the Division of Coastal Management.

~~(f)(d)~~ The height of sills shall not exceed ~~six~~ 12 inches above mean normal high water, normal water level, or the height of the adjacent wetland substrate, whichever is greater, higher.

~~(g)(e)~~ Sill construction authorized by this permit shall be limited to a maximum length of 500 feet.

~~(h)~~ Sills shall be porous to allow water circulation through the structure.

~~(i)(f)~~ The sills shall have at least one five-foot ~~drop-down~~ or opening every 100 feet and may be ~~staggered or overlapped~~ staggered, overlapped, or left open as long as the five-foot ~~drop-down~~ or separation between sections is maintained. Overlapping sections shall not overlap more than 10 feet. Deviation from these ~~drop-down~~ opening requirements shall be allowable following coordination with the ~~N.C. Division of Marine Fisheries and the National Marine Fisheries Service~~, N.C. Division of Coastal Management.

~~(j)(g)~~ The ~~riprap~~ sill structure shall not exceed a slope of a ~~one foot rise over a two foot horizontal distance and a minimum slope of a one and a half foot rise over a one foot horizontal distance~~, one and a half foot horizontal distance over a one foot vertical rise. The width of the structure on the bottom shall ~~be no wider than 15~~ not exceed 12 feet.

~~(k)~~ For the purpose of protection of public trust rights, fill waterward of the existing mean high water line shall not be placed higher than the mean high water elevation.

~~(l)~~ The permittee shall not claim title to any lands raised above the mean high or normal water levels as a result of filling or accretion.

~~(m)(h)~~ For water bodies ~~more narrow~~ narrower than 150 feet, no portion of the structures shall ~~not~~ be positioned offshore more than one sixth (1/6) the width of the waterbody.

~~(n)(i)~~ The sill shall not be within a navigation channel or associated setbacks marked or maintained by a state or federal agency.

~~(o)(j)~~ The sill shall not interfere with leases or franchises for shellfish culture.

~~(p)(k)~~ All structures shall have a minimum setback distance of 15 feet between any parts of the structure and the adjacent property owner's riparian access corridor, unless either a signed waiver statement is obtained from the adjacent property owner or the portion of the structure within 15 feet of the adjacent riparian

access corridor is located no more than 25 feet from the ~~mean~~ normal high or normal water level. The riparian access corridor line is determined by drawing a line parallel to the channel, then drawing a line perpendicular to the channel line that intersects with the shore at the point where the upland property line meets the water's ~~edge~~, edge, as defined in 15A NCAC 07H .1205(t). Additionally, the sill shall not interfere with the exercise of riparians rights by adjacent property owners, including access to navigation channels from piers, or other means of access.

~~(q)~~ The sill shall not interfere with the exercise of riparian rights by adjacent property owners, including access to navigation channels from piers, or other means of access.

~~(r)(l)~~ Sills shall be marked at 50-foot intervals with yellow reflectors extending at least three feet above ~~mean normal~~ high water level, or normal water level and must be maintained for the life of the structure.

~~(s)(m)~~ If the crossing of wetlands with mechanized construction equipment is necessary, temporary construction mats shall be utilized for the areas to be crossed. The temporary mats shall be removed ~~immediately~~ upon completion of the construction of the ~~riprap~~ sill structure. Material used to construct the sill shall not be stockpiled on existing wetlands or in open water unless contained in a containment structure supported by construction mats.

~~(t)(n)~~ Sedimentation and erosion control measures shall be implemented to ensure that eroded materials do not enter adjacent wetlands or waters.

~~(u)(o)~~ No excavation or ~~filling of any native submerged aquatic vegetation~~ filling, other than that necessary for the construction and bedding of the ~~sill structure~~ structure, is authorized by this general permit.

~~(p)~~ Sills shall not be constructed within any native submerged aquatic vegetation. If submerged aquatic vegetation is present within a project area, a submerged aquatic vegetation survey shall be completed during the growing season of April 1 thru September 30. All sills shall have a minimum setback of 10 feet from any native submerged aquatic vegetation.

~~(q)~~ Sills shall not be constructed within any habitat that includes oyster reefs or shell banks. All sills shall have a minimum setback of 10 feet from any oysters, oyster beds, or shell banks.

~~(v)(r)~~ No excavation of the shallow water bottom or any wetland is authorized by this general permit.

~~(w)~~ No more than 100 square feet of wetlands may be filled as a result of the authorized activity.

~~(x)~~ Backfilling of sill structures may be utilized only for the purpose of creating a suitable substrate for the establishment or reestablishment of wetlands. Only clean sand fill material may be utilized.

~~(y)(s)~~ The ~~riprap~~ sill material shall consist of clean ~~rock~~ rock, marl, oyster shell, or masonry materials such as granite or broken ~~concrete~~, concrete, or other similar materials that are approved by the N.C. Division of Coastal Management. Riprap Sill material shall be free of loose sediment or any ~~pollutant~~, pollutant, including exposed rebar. The ~~structures~~ sill material shall be of sufficient size and slope to prevent its movement from the approved alignment by wave or current action.

~~(z)~~ If one or more contiguous acre of property is to be graded, excavated or filled, an erosion and sedimentation control plan shall be filed with the Division of Energy, Mineral, and Land Resources, or appropriate government having jurisdiction. The

~~plan must be approved prior to commencing the land disturbing activity.~~

~~(aa) In order to ensure that no adverse impacts occur to important fisheries resources, the Division of Marine Fisheries shall review and concur with the location and design of the proposed project prior to the issuance of this general permit.~~

~~(bb) Prior to the issuance of this general permit, Division staff shall coordinate with the Department of Administration's State Property Office to determine whether or not an easement shall be required for the proposed activity.~~

~~(cc) Following issuance of this general permit, the permittee shall contact the N.C. Division of Water Quality and the U.S. Army~~

~~Corps of Engineers to determine any additional permit requirements. Any such required permits, or a certification from the appropriate agency(s) that no additional permits are required, shall be obtained and copies provided to the Division of Coastal Management prior to the initiation of any development activities authorized by this permit.~~

*History Note: Authority G.S. 113A-107; 113A-118.1;*

*Temporary Adoption Eff. June 15, 2004;*

*Eff. April 1, 2005;*

*Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f));*

*Temporary Amendment Eff. April 1, 2019.*

*This Section contains information for the meeting of the Rules Review Commission March 21, 2019 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  
Jeffrey A. Poley  
Brian P. LiVecchi

#### **Appointed by House**

Garth Dunklin (Chair)  
Andrew P. Atkins  
Anna Baird Choi  
Paul Powell  
Jeanette Doran (2<sup>nd</sup> Vice Chair)

### **COMMISSION COUNSEL**

Amber Cronk May (919)431-3074  
Amanda Reeder (919)431-3079

### **RULES REVIEW COMMISSION MEETING DATES**

April 18, 2019                      May 16, 2019  
June 20, 2019                      July 18, 2019

---

### **RULES REVIEW COMMISSION MEETING**

#### **MINUTES**

***March 21, 2019***

The Rules Review Commission met on Thursday, March 21, 2019, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Andrew Atkins, Bobby Bryan, Margaret Currin, Anna Baird Choi, Garth Dunklin, Jeff Hyde, Jeff Poley, and Paul Powell.

Staff members present were Commission Counsels Amber Cronk-May and Amanda Reeder; and Julie Brincefield and Alex Burgos.

The meeting was called to order at 9:02 a.m. with Chairman Dunklin presiding.

Chairman Dunklin read the notice required by G.S. 163A-159 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 February 21, 2019 meeting. There were none and the minutes were approved as distributed.

#### **FOLLOW UP MATTERS**

##### **Soil and Water Conservation Commission**

02 NCAC 59D .0101, .0102, .0103, .0104, .0105, .0106, .0107, .0108, .0109, .0110; 59H .0101, .0102, .0103, .0104, .0105, .0106, .0107, and .0108. The rewritten rules in 59H were approved.

The Commission objected to all rules in 02 NCAC 59D based upon ambiguity, as reflected in the Requests for Technical Changes for each rule issued on January 3, 2019.

##### **Board of Elections and Ethics Enforcement**

The agency is addressing the objections for 08 NCAC 02 .0112, .0113; 03 .0101, .0102, .0103, .0104, .0105, .0106, .0201, .0202, .0301, .0302; 04 .0302, .0304, .0305, .0306, .0307; 06B .0103, .0104, .0105; 08 .0104; 09 .0106, .0107, .0108, .0109; 10B .0101, .0102, .0103, .0104, .0105, .0106, and .0107. No action was required by the Commission.



**Commission for the Blind**

10A NCAC 63C .0203 and .0601 – The rewritten rules were unanimously approved. Pursuant to G.S. 150B-21.12(c), the Commission found that the rules were responsive to the Commission's objection; however, the Commission also found that the changes were substantial, requiring the revised rules to be republished.

The agency is addressing the objections for 10A NCAC 63C .0204 and .0403. No action was required by the Commission on these Rules.

The agency will republish Rules 10A NCAC 63C .0203, .0204, .0403, and .0601 in the NC Register for a 60-day comment period and the Commission will review the rules after the close of the comment period.

**Coastal Resources Commission**

15A NCAC 07H .0209, .0308, .1704, and .1705 - All rules were unanimously approved.

**LOG OF FILINGS (PERMANENT RULES)****Commerce/Credit Union Division**

04 NCAC 06C .0708 was unanimously approved.

**Medical Care Commission**

All rules were unanimously approved.

Prior to the review of the 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 represents them.

**Department of Health and Human Services**

The Commission extended the period of review for 10A NCAC 14J .0101 - .0103; .0201, .0203, .0204; .0301 - .0303; .0402 - .0405; .0501; .0601; .0702; .0705; .0904; .1001, .1002; .1201 - .1203; .1207; .1210; .1212 - .1215; .1218, .1219; .1225 and .1226 in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period in order to allow the agency to address public comments at a later meeting.

**Alcoholic Beverage Control Commission**

All rules were unanimously approved.

Prior to the review of 14B NCAC 15C .0101 and .0102 from the Alcoholic Beverage Control Commission, Commissioner Powell recused himself and did not participate in any discussion or vote concerning these Rules because they have a direct effect on his company.

**Department of Transportation**

All rules were unanimously approved.

**Board of Barber Examiners**

All rules were unanimously approved.

Prior to the review of the rules from the Board of Barber Examiners, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm represents the Board in general legal matters.

**Medical Board**

All rules were unanimously approved.

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

**LOG OF FILINGS (TEMPORARY RULES)****Coastal Resources Commission**

All rules were unanimously approved.

**EXISTING RULES REVIEW**

**Criminal Justice Education and Training Standards Commission**

12 NCAC 09 - The Commission unanimously approved the report as submitted by the agency.

**Department of Revenue**

17 NCAC 07 - The Commission unanimously approved the report as submitted by the agency.

**Wildlife Resources Commission**

15A NCAC 10A,D,E,G,I,J,K – As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than December 31, 2024 pursuant to G.S. 150B-21.3A(d)(2).

**Wildlife Resources Commission**

15A NCAC 10H – The agency requested an extension of the schedule for readoption until December 31, 2020 for rules subject to readoption in 15A NCAC 10H .1200.

The extension request was approved.

The Commission rescheduled the date of readoption for Rules 15A NCAC 10H .1201 - .1207. The agency will readopt the rules no later than December 31, 2020 pursuant to G.S. 150B-21.3A(d)(2).

**COMMISSION BUSINESS**

The Chair gave an update on the consent order in the matter of DHHS/CPH v. RRC.

The meeting adjourned at 9:29 a.m.

The next regularly scheduled meeting of the Commission is Thursday, April 18, 2019 at 9:00 a.m.

---

Alexander Burgos, Paralegal

---

Minutes approved by the Rules Review Commission:  
Garth Dunklin, Chair

**March 21, 2019**

Rules Review Commission  
Meeting  
Please Print Legibly

Name	Agency
MARJORIE ACKER	DHSR
Nadine Pfeiffer	DHHS - DHSR
Candace Hoffman	DHSR/DOJ
Jennifer Everett	DEQ
Rose Conner	NCCUR
Dennis Seavers	BBE
Hannah Jennigan	NCDOT
Daron Barnes	NCWRC
Kellette Wade	NCDOT
Cyberia Ziegler	DSB
Janice Davidson	NC DOR
Dusan Broadner	NCDOR
Charmine Williams	CJETS
Misty Pickens Williams	DAAS
Kelly Chambers	DOJ - AG Office
Tunya Smith	NCDOT
Matthew Boyer	NCSA
William Walker	NCDOS
Bethany Burgeon	DOJ
Doug V. Alexander	NCDOT
Taris Perry	NC DHHS

Rules Review Commission  
Meeting  
Please Print Legibly

[illegible]



**STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:  
6714 Mail Service Center  
Raleigh, NC 27699-6714

Street address:  
1711 New Hope Church Rd  
Raleigh, NC 27609-6285

March 21, 2019

Carrie Ruhlman, Rulemaking Coordinator  
Wildlife Resources Commission  
1701 Mail Service Center  
Raleigh, NC 27699-1701

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **15A NCAC 10A,D,E,G,I,J, and K**

Dear Ms. Ruhlman:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the March 21, 2019 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than December 31, 2024.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Amber May  
Commission Counsel

Administration  
919/431-3000  
fax: 919/431-3100

Rules Division  
919/431-3000  
fax: 919/431-3104

Judges and  
Assistants  
919/431-3000  
fax: 919/431-3100

Clerk's Office  
919/431-3000  
fax: 919/431-3100

Rules Review  
Commission  
919/431-3000  
fax: 919/431-3104

Civil Rights  
Division  
919/431-3036  
fax: 919/431-3103

An Equal Employment Opportunity Employer

**RRC DETERMINATION  
PERIODIC RULE REVIEW  
December 13, 2018  
APO Review: February 16, 2019  
Wildlife Resources Commission  
Total: 35**

**RRC Determination: Necessary with substantive public interest**

<b>Rule</b>	<b>Determination</b>
<u>15A NCAC 10A .0401</u>	Necessary with substantive public interest
<u>15A NCAC 10A .0402</u>	Necessary with substantive public interest
<u>15A NCAC 10A .0501</u>	Necessary with substantive public interest
<u>15A NCAC 10A .0502</u>	Necessary with substantive public interest
<u>15A NCAC 10A .0503</u>	Necessary with substantive public interest
<u>15A NCAC 10A .1001</u>	Necessary with substantive public interest
<u>15A NCAC 10A .1101</u>	Necessary with substantive public interest
<u>15A NCAC 10A .1201</u>	Necessary with substantive public interest
<u>15A NCAC 10A .1301</u>	Necessary with substantive public interest
<u>15A NCAC 10A .1302</u>	Necessary with substantive public interest
<u>15A NCAC 10A .1303</u>	Necessary with substantive public interest
<u>15A NCAC 10D .0102</u>	Necessary with substantive public interest
<u>15A NCAC 10D .0103</u>	Necessary with substantive public interest
<u>15A NCAC 10D .0104</u>	Necessary with substantive public interest
<u>15A NCAC 10D .0105</u>	Necessary with substantive public interest
<u>15A NCAC 10E .0101</u>	Necessary with substantive public interest
<u>15A NCAC 10E .0102</u>	Necessary with substantive public interest
<u>15A NCAC 10E .0103</u>	Necessary with substantive public interest
<u>15A NCAC 10E .0104</u>	Necessary with substantive public interest
<u>15A NCAC 10G .0401</u>	Necessary with substantive public interest
<u>15A NCAC 10G .0402</u>	Necessary with substantive public interest
<u>15A NCAC 10G .0403</u>	Necessary with substantive public interest
<u>15A NCAC 10G .0405</u>	Necessary with substantive public interest
<u>15A NCAC 10G .0501</u>	Necessary with substantive public interest
<u>15A NCAC 10I .0102</u>	Necessary with substantive public interest
<u>15A NCAC 10I .0103</u>	Necessary with substantive public interest
<u>15A NCAC 10I .0104</u>	Necessary with substantive public interest
<u>15A NCAC 10I .0105</u>	Necessary with substantive public interest
<u>15A NCAC 10J .0101</u>	Necessary with substantive public interest
<u>15A NCAC 10J .0102</u>	Necessary with substantive public interest
<u>15A NCAC 10J .0103</u>	Necessary with substantive public interest
<u>15A NCAC 10J .0104</u>	Necessary with substantive public interest
<u>15A NCAC 10K .0101</u>	Necessary with substantive public interest

15A NCAC 10K .0102

Necessary with substantive public interest

15A NCAC 10K .0103

Necessary with substantive public interest

**LIST OF APPROVED PERMANENT RULES**

**March 21, 2019 Meeting**

**SOIL AND WATER CONSERVATION COMMISSION**

<u>Purpose</u>	02 NCAC 59H .0101
<u>Definitions</u>	02 NCAC 59H .0102
<u>Allocation Guidelines And Procedures</u>	02 NCAC 59H .0103
<u>Best Management Practices Eligible For Cost Share Payments</u>	02 NCAC 59H .0104
<u>Cost Share And Incentive Payments</u>	02 NCAC 59H .0105
<u>Technical Assistance Funds</u>	02 NCAC 59H .0106
<u>Cost Share Agreement</u>	02 NCAC 59H .0107
<u>District Program Operation</u>	02 NCAC 59H .0108

**CREDIT UNION DIVISION**

<u>Charitable Contributions and Charitable Donation Accounts</u>	04 NCAC 06C .0708
--	-------------------

**MEDICAL CARE COMMISSION**

<u>Plan Approval</u>	10A NCAC 13B .3102
<u>List of Referenced Codes, Rules, Regulation, and Standards</u>	10A NCAC 13B .6101
<u>General</u>	10A NCAC 13B .6102
<u>Equivalency and Conflicts with Requirements</u>	10A NCAC 13B .6103
<u>Outpatient Surgical Facilities</u>	10A NCAC 13B .6207

**ALCOHOLIC BEVERAGE CONTROL COMMISSION**

<u>Requirements for Storage</u>	14B NCAC 15A .1603
<u>Prohibited Practices</u>	14B NCAC 15A .1604
<u>Removal of Beverages from ABC Stores</u>	14B NCAC 15A .1701
<u>Mixed Beverages Tax Stamp</u>	14B NCAC 15A .1901
<u>Nonprofit Sales at Raffle or Auction</u>	14B NCAC 15A .2206
<u>Definitions</u>	14B NCAC 15B .0101
<u>Consumption: Intoxication by Permittee Prohibited</u>	14B NCAC 15B .0209
<u>Advertising of Malt Beverages, Wine and Beverages by Reta...</u>	14B NCAC 15B .1006
<u>Definitions</u>	14B NCAC 15C .0101
<u>Application Procedures</u>	14B NCAC 15C .0102
<u>Distiller, Supplier and Brokerage Representatives: Prohib...</u>	14B NCAC 15C .0901
<u>Definitions</u>	14B NCAC 15C .1301
<u>Other Similar Events Approval</u>	14B NCAC 15C .1302
<u>Tastings Held for Consumers</u>	14B NCAC 15C .1303
<u>Special Event Compliance Procedure</u>	14B NCAC 15C .1304
<u>Special Event Sale of Branded Merchandise, Point-of-Sale ...</u>	14B NCAC 15C .1305
<u>Special Event Participation Limitations</u>	14B NCAC 15C .1306

**COASTAL RESOURCES COMMISSION**

<u>Coastal Shorelines</u>	15A NCAC 07H .0209
<u>Specific Use Standards for Ocean Hazard Areas</u>	15A NCAC 07H .0308
<u>General Conditions</u>	15A NCAC 07H .1704
<u>Specific Conditions</u>	15A NCAC 07H .1705

**TRANSPORTATION, DEPARTMENT OF**

<u>Purpose and Scope</u>	19A NCAC 02D .1101
<u>Definitions</u>	19A NCAC 02D .1102
<u>Certification of Firms</u>	19A NCAC 02D .1103
<u>Renewal of Certification</u>	19A NCAC 02D .1104



---

**RULES REVIEW COMMISSION**

---

<u>Change in Ownership or Control</u>	19A NCAC 02D .1105
<u>Decertification</u>	19A NCAC 02D .1106
<u>Appeals of Denial of Certification</u>	19A NCAC 02D .1107
<u>Goals</u>	19A NCAC 02D .1108
<u>Counting Participation Toward Meeting the Goal</u>	19A NCAC 02D .1109
<u>Non-Attainment of Goals</u>	19A NCAC 02D .1110
<u>Performance Related Replacement of Eligible Firms</u>	19A NCAC 02D .1111
<u>Replacement of a Firm Removed by Decertification</u>	19A NCAC 02D .1112
<b>BARBER EXAMINERS, BOARD OF</b>	
<u>Physical and Mailing Address</u>	21 NCAC 06A .0102
<u>Student Permit</u>	21 NCAC 06F .0113
<u>State Authorization as a Postsecondary Institution</u>	21 NCAC 06F .0127
<b>MEDICAL BOARD</b>	
<u>Qualifications and Requirements for License</u>	21 NCAC 32S .0202
<u>Annual Renewal</u>	21 NCAC 32S .0204
<u>Expedited Application for Physician Assistant Licensure</u>	21 NCAC 32S .0220

---

**LIST OF APPROVED TEMPORARY RULES****March 21, 2019 Meeting****COASTAL RESOURCES COMMISSION**

<u>Purpose</u>	15A NCAC 07H .2701
<u>General Conditions</u>	15A NCAC 07H .2704
<u>Specific Conditions</u>	15A NCAC 07H .2705

---

**RRC Determination  
Periodic Rule Review  
March 21, 2019****Necessary with substantive public interest**

<b>Revenue, Department of</b>	17 NCAC 07B .1605	17 NCAC 07B .2603
17 NCAC 07B .0104	17 NCAC 07B .1701	17 NCAC 07B .2604
17 NCAC 07B .0106	17 NCAC 07B .1702	17 NCAC 07B .2605
17 NCAC 07B .0108	17 NCAC 07B .1704	17 NCAC 07B .2701
17 NCAC 07B .0112	17 NCAC 07B .1705	17 NCAC 07B .2702
17 NCAC 07B .0115	17 NCAC 07B .1801	17 NCAC 07B .2801
17 NCAC 07B .0117	17 NCAC 07B .1905	17 NCAC 07B .2802
17 NCAC 07B .0121	17 NCAC 07B .1907	17 NCAC 07B .2901
17 NCAC 07B .0801	17 NCAC 07B .2001	17 NCAC 07B .3004
17 NCAC 07B .0901	17 NCAC 07B .2002	17 NCAC 07B .3009
17 NCAC 07B .0902	17 NCAC 07B .2101	17 NCAC 07B .3101
17 NCAC 07B .0904	17 NCAC 07B .2102	17 NCAC 07B .3106
17 NCAC 07B .1101	17 NCAC 07B .2105	17 NCAC 07B .3107
17 NCAC 07B .1123	17 NCAC 07B .2201	17 NCAC 07B .3301
17 NCAC 07B .1202	17 NCAC 07B .2204	17 NCAC 07B .3302
17 NCAC 07B .1301	17 NCAC 07B .2205	17 NCAC 07B .3801
17 NCAC 07B .1302	17 NCAC 07B .2209	17 NCAC 07B .3804
17 NCAC 07B .1303	17 NCAC 07B .2210	17 NCAC 07B .3907
17 NCAC 07B .1305	17 NCAC 07B .2212	17 NCAC 07B .3910
17 NCAC 07B .1404	17 NCAC 07B .2213	17 NCAC 07B .4102
17 NCAC 07B .1601	17 NCAC 07B .2301	17 NCAC 07B .4105
17 NCAC 07B .1602	17 NCAC 07B .2401	17 NCAC 07B .4106

17 NCAC 07B .4109  
17 NCAC 07B .4201  
17 NCAC 07B .4202  
17 NCAC 07B .4203  
17 NCAC 07B .4204  
17 NCAC 07B .4205  
17 NCAC 07B .4206  
17 NCAC 07B .4210  
17 NCAC 07B .4301  
17 NCAC 07B .4302  
17 NCAC 07B .4401

17 NCAC 07B .4403  
17 NCAC 07B .4404  
17 NCAC 07B .4406  
17 NCAC 07B .4411  
17 NCAC 07B .4413  
17 NCAC 07B .4415  
17 NCAC 07B .4503  
17 NCAC 07B .4510  
17 NCAC 07B .4609  
17 NCAC 07B .4614  
17 NCAC 07B .4701

17 NCAC 07B .4707  
17 NCAC 07B .4708  
17 NCAC 07B .4716  
17 NCAC 07B .4801  
17 NCAC 07B .4802  
17 NCAC 07B .4803  
17 NCAC 07B .5001  
17 NCAC 07B .5002  
17 NCAC 07B .5004

---

**RRC Determination**  
**Periodic Rule Review**  
**March 21, 2019**  
**Necessary without substantive public interest**

**Criminal Justice Education and Training Standards Commission**

12 NCAC 09A .0101  
12 NCAC 09A .0102  
12 NCAC 09A .0103  
12 NCAC 09A .0106  
12 NCAC 09A .0107  
12 NCAC 09A .0201  
12 NCAC 09A .0202  
12 NCAC 09A .0203  
12 NCAC 09A .0204  
12 NCAC 09A .0205  
12 NCAC 09A .0206  
12 NCAC 09B .0101  
12 NCAC 09B .0102  
12 NCAC 09B .0103  
12 NCAC 09B .0104  
12 NCAC 09B .0105  
12 NCAC 09B .0106  
12 NCAC 09B .0111  
12 NCAC 09B .0114  
12 NCAC 09B .0116  
12 NCAC 09B .0117  
12 NCAC 09B .0201  
12 NCAC 09B .0202  
12 NCAC 09B .0203  
12 NCAC 09B .0204  
12 NCAC 09B .0205  
12 NCAC 09B .0209  
12 NCAC 09B .0210  
12 NCAC 09B .0211  
12 NCAC 09B .0212  
12 NCAC 09B .0213  
12 NCAC 09B .0214  
12 NCAC 09B .0215  
12 NCAC 09B .0218  
12 NCAC 09B .0219  
12 NCAC 09B .0220  
12 NCAC 09B .0221  
12 NCAC 09B .0222  
12 NCAC 09B .0224

12 NCAC 09B .0225  
12 NCAC 09B .0226  
12 NCAC 09B .0227  
12 NCAC 09B .0232  
12 NCAC 09B .0233  
12 NCAC 09B .0235  
12 NCAC 09B .0236  
12 NCAC 09B .0237  
12 NCAC 09B .0238  
12 NCAC 09B .0239  
12 NCAC 09B .0240  
12 NCAC 09B .0241  
12 NCAC 09B .0242  
12 NCAC 09B .0243  
12 NCAC 09B .0244  
12 NCAC 09B .0245  
12 NCAC 09B .0301  
12 NCAC 09B .0302  
12 NCAC 09B .0303  
12 NCAC 09B .0304  
12 NCAC 09B .0305  
12 NCAC 09B .0306  
12 NCAC 09B .0307  
12 NCAC 09B .0308  
12 NCAC 09B .0309  
12 NCAC 09B .0310  
12 NCAC 09B .0312  
12 NCAC 09B .0401  
12 NCAC 09B .0402  
12 NCAC 09B .0403  
12 NCAC 09B .0404  
12 NCAC 09B .0405  
12 NCAC 09B .0406  
12 NCAC 09B .0408  
12 NCAC 09B .0409  
12 NCAC 09B .0410  
12 NCAC 09B .0411  
12 NCAC 09B .0412  
12 NCAC 09B .0413  
12 NCAC 09B .0414  
12 NCAC 09B .0415

12 NCAC 09B .0416  
12 NCAC 09B .0417  
12 NCAC 09B .0501  
12 NCAC 09B .0502  
12 NCAC 09B .0503  
12 NCAC 09B .0601  
12 NCAC 09B .0602  
12 NCAC 09B .0603  
12 NCAC 09B .0604  
12 NCAC 09B .0605  
12 NCAC 09B .0606  
12 NCAC 09B .0607  
12 NCAC 09B .0608  
12 NCAC 09B .0701  
12 NCAC 09C .0101  
12 NCAC 09C .0102  
12 NCAC 09C .0103  
12 NCAC 09C .0201  
12 NCAC 09C .0202  
12 NCAC 09C .0203  
12 NCAC 09C .0204  
12 NCAC 09C .0205  
12 NCAC 09C .0207  
12 NCAC 09C .0208  
12 NCAC 09C .0209  
12 NCAC 09C .0211  
12 NCAC 09C .0212  
12 NCAC 09C .0213  
12 NCAC 09C .0214  
12 NCAC 09C .0215  
12 NCAC 09C .0216  
12 NCAC 09C .0219  
12 NCAC 09C .0301  
12 NCAC 09C .0302  
12 NCAC 09C .0303  
12 NCAC 09C .0304  
12 NCAC 09C .0306  
12 NCAC 09C .0307  
12 NCAC 09C .0308  
12 NCAC 09C .0309  
12 NCAC 09C .0310

---

**RULES REVIEW COMMISSION**

---

12 NCAC 09C .0401  
12 NCAC 09C .0402  
12 NCAC 09C .0403  
12 NCAC 09C .0404  
12 NCAC 09C .0601  
12 NCAC 09C .0607  
12 NCAC 09C .0608  
12 NCAC 09D .0101  
12 NCAC 09D .0102  
12 NCAC 09D .0104  
12 NCAC 09D .0105  
12 NCAC 09D .0106  
12 NCAC 09D .0201  
12 NCAC 09D .0202  
12 NCAC 09D .0204  
12 NCAC 09D .0205  
12 NCAC 09D .0206  
12 NCAC 09E .0101  
12 NCAC 09E .0103  
12 NCAC 09E .0104  
12 NCAC 09E .0105  
12 NCAC 09E .0106  
12 NCAC 09E .0107  
12 NCAC 09E .0108  
12 NCAC 09E .0109  
12 NCAC 09E .0110  
12 NCAC 09F .0101  
12 NCAC 09F .0102  
12 NCAC 09F .0103  
12 NCAC 09F .0104  
12 NCAC 09F .0105  
12 NCAC 09F .0106  
12 NCAC 09F .0107  
12 NCAC 09G .0101  
12 NCAC 09G .0102  
12 NCAC 09G .0103  
12 NCAC 09G .0201  
12 NCAC 09G .0202  
12 NCAC 09G .0203  
12 NCAC 09G .0204  
12 NCAC 09G .0205  
12 NCAC 09G .0206  
12 NCAC 09G .0301  
12 NCAC 09G .0302  
12 NCAC 09G .0303  
12 NCAC 09G .0304  
12 NCAC 09G .0305  
12 NCAC 09G .0306  
12 NCAC 09G .0307

12 NCAC 09G .0308  
12 NCAC 09G .0309  
12 NCAC 09G .0310  
12 NCAC 09G .0311  
12 NCAC 09G .0312  
12 NCAC 09G .0313  
12 NCAC 09G .0314  
12 NCAC 09G .0315  
12 NCAC 09G .0316  
12 NCAC 09G .0401  
12 NCAC 09G .0402  
12 NCAC 09G .0403  
12 NCAC 09G .0404  
12 NCAC 09G .0405  
12 NCAC 09G .0406  
12 NCAC 09G .0407  
12 NCAC 09G .0408  
12 NCAC 09G .0409  
12 NCAC 09G .0410  
12 NCAC 09G .0411  
12 NCAC 09G .0412  
12 NCAC 09G .0414  
12 NCAC 09G .0415  
12 NCAC 09G .0416  
12 NCAC 09G .0501  
12 NCAC 09G .0502  
12 NCAC 09G .0503  
12 NCAC 09G .0504  
12 NCAC 09G .0505  
12 NCAC 09G .0506  
12 NCAC 09G .0601  
12 NCAC 09G .0602  
12 NCAC 09G .0604  
12 NCAC 09G .0605  
12 NCAC 09G .0606  
12 NCAC 09G .0701  
12 NCAC 09H .0101  
12 NCAC 09H .0102  
12 NCAC 09H .0103  
12 NCAC 09H .0104  
12 NCAC 09H .0105

**Revenue, Department of**

17 NCAC 07B .0113  
17 NCAC 07B .0118  
17 NCAC 07B .0120  
17 NCAC 07B .0122  
17 NCAC 07B .1001  
17 NCAC 07B .1122

17 NCAC 07B .1304  
17 NCAC 07B .1501  
17 NCAC 07B .1902  
17 NCAC 07B .2207  
17 NCAC 07B .2402  
17 NCAC 07B .2501  
17 NCAC 07B .2502  
17 NCAC 07B .2503  
17 NCAC 07B .2504  
17 NCAC 07B .3001  
17 NCAC 07B .3002  
17 NCAC 07B .3003  
17 NCAC 07B .3005  
17 NCAC 07B .3011  
17 NCAC 07B .3013  
17 NCAC 07B .3102  
17 NCAC 07B .3103  
17 NCAC 07B .3402  
17 NCAC 07B .3501  
17 NCAC 07B .3503  
17 NCAC 07B .3504  
17 NCAC 07B .3505  
17 NCAC 07B .3904  
17 NCAC 07B .3909  
17 NCAC 07B .4104  
17 NCAC 07B .4110  
17 NCAC 07B .4207  
17 NCAC 07B .4208  
17 NCAC 07B .4209  
17 NCAC 07B .4303  
17 NCAC 07B .4402  
17 NCAC 07B .4405  
17 NCAC 07B .4410  
17 NCAC 07B .4412  
17 NCAC 07B .4414  
17 NCAC 07B .4508  
17 NCAC 07B .4509  
17 NCAC 07B .4511  
17 NCAC 07B .4514  
17 NCAC 07B .4602  
17 NCAC 07B .4611  
17 NCAC 07B .4709  
17 NCAC 07B .4715  
17 NCAC 07B .4718  
17 NCAC 07B .5003  
17 NCAC 07B .5101

---

**RRC Determination  
Periodic Rule Review  
March 21, 2019  
Unnecessary**

**Criminal Justice Education and  
Training Standards Commission**  
12 NCAC 09D .0203

**Revenue, Department of**  
17 NCAC 07B .0105

17 NCAC 07B .0109  
17 NCAC 07B .0111  
17 NCAC 07B .0123

17 NCAC 07B .0804  
17 NCAC 07B .1102  
17 NCAC 07B .1103  
17 NCAC 07B .1104  
17 NCAC 07B .1105  
17 NCAC 07B .1107  
17 NCAC 07B .1108  
17 NCAC 07B .1109  
17 NCAC 07B .1110  
17 NCAC 07B .1111  
17 NCAC 07B .1112  
17 NCAC 07B .1114  
17 NCAC 07B .1115  
17 NCAC 07B .1116  
17 NCAC 07B .1117  
17 NCAC 07B .1118  
17 NCAC 07B .1119  
17 NCAC 07B .1120  
17 NCAC 07B .1406  
17 NCAC 07B .1603  
17 NCAC 07B .1604  
17 NCAC 07B .1802  
17 NCAC 07B .1804  
17 NCAC 07B .1805

17 NCAC 07B .2103  
17 NCAC 07B .2104  
17 NCAC 07B .2202  
17 NCAC 07B .2302  
17 NCAC 07B .2606  
17 NCAC 07B .2607  
17 NCAC 07B .2609  
17 NCAC 07B .2611  
17 NCAC 07B .2612  
17 NCAC 07B .2703  
17 NCAC 07B .2902  
17 NCAC 07B .3012  
17 NCAC 07B .3104  
17 NCAC 07B .3105  
17 NCAC 07B .3201  
17 NCAC 07B .3202  
17 NCAC 07B .3204  
17 NCAC 07B .3506  
17 NCAC 07B .3702  
17 NCAC 07B .3802  
17 NCAC 07B .3803  
17 NCAC 07B .3901  
17 NCAC 07B .3902  
17 NCAC 07B .3903

17 NCAC 07B .3905  
17 NCAC 07B .3906  
17 NCAC 07B .4002  
17 NCAC 07B .4003  
17 NCAC 07B .4004  
17 NCAC 07B .4006  
17 NCAC 07B .4007  
17 NCAC 07B .4008  
17 NCAC 07B .4009  
17 NCAC 07B .4101  
17 NCAC 07B .4107  
17 NCAC 07B .4108  
17 NCAC 07B .4408  
17 NCAC 07B .4504  
17 NCAC 07B .4513  
17 NCAC 07B .4713  
17 NCAC 07B .5102  
17 NCAC 07B .5201  
17 NCAC 07B .5202  
17 NCAC 07B .5301  
17 NCAC 07C .0103  
17 NCAC 07C .0304

---

**CONTESTED CASE DECISIONS**

---

*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  
Tenisha Jacobs

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>			
18	ABC	04349	2/20/2019	NC Alcoholic Beverage Control Commission	v.	H and J Super Discount Inc T/A Super Discount Mini Mart	Overby
				-			
18	DHR	05011	2/11/2019	Primary Care Solutions Inc	v.	Cardinal Innovations Healthcare Inc	Malherbe
18	DHR	05357	2/25/2019	Iantha Southerland	v.	Department of Health and Human Services, Division of Health Service Regulation	Lassiter
18	DHR	06469	2/7/2019	Jesusito Rondon Guzman t/a Tienda Mexicana La Posadita	v.	NC Department of Health and Human Services	Ward
				-			
18	DOJ	04480	2/26/2019	Christopher Garriss	v.	NC Criminal Justice Education and Training Standards Commission	Overby
18	DOJ	04664	2/13/2019	Rosalind R Smith	v.	NC Criminal Justice Education and Training Standards Commission	Ward
18	DOJ	06219	2/18/2019	Keifer Austin Furr	v.	NC Private Protective Services Board	Lassiter
18	DOJ	06375	2/27/2019	Benjamin Louis Zucker	v.	North Carolina Department of Justice Criminal Standards Division	Bawtinheimer
				-			
18	INS	04465	2/14/2019	Courtney N Viebrock	v.	North Carolina Department of State Treasurer	Malherbe
				-			
18	OSP	04046	2/6/2019	Heather Harper	v.	Department of Public Safety	Ward

**CONTESTED CASE DECISIONS**

				<b><u>UNPUBLISHED</u></b>			
17	CSE	07720	2/27/2019	Anthony R Coley	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Elkins
18	CSE	01368	2/27/2019	Mackie Barfield Jr	v.	Child Support Services	Elkins
18	CSE	06220	2/7/2019	Douglas W Moyd (Mody)	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Malherbe
18	CSE	06235	2/22/2019	David Earl Rigg	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Overby
18	CSE	06240	2/15/2019	Felicia H Middleton	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Elkins
18	CSE	06246	2/1/2019	Mark Davis-Mccrary	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Malherbe
18	CSE	06264	2/27/2019	Melanie K Marino	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Elkins
18	CSE	06276	2/15/2019	Ricky Williams	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Elkins
18	CSE	06301	2/27/2019	Michael Anthony Cylar	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Elkins
18	CSE	06306	2/27/2019; 3/15/2019	Gregory L Thompson	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Elkins
18	CSE	06388	2/15/2019	Michael Norwood	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Elkins
18	CSE	06392	2/27/2019	Mark A Preston	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Elkins
18	CSE	06409	2/20/2019	John R Mitchell	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	May
18	CSE	06423	2/25/2019	Martin Malamah-Thomas	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Malherbe
18	CSE	06483	2/22/2019	Jessica Collazo	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Overby
18	CSE	06488	2/15/2019	David M McDermott	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Elkins
18	CSE	06537	2/19/2019	Jeffrey S Brown	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
18	CSE	06554	2/18/2019	Georgie A Mendoza	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Sutton
18	CSE	06573	2/22/2019	Brian O'Neal Black	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Sutton

**CONTESTED CASE DECISIONS**

18	CSE	06639	2/8/2019	Rashone Washington	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	May
18	CSE	06673	2/18/2019	Arnold S Thomas	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Malherbe
18	CSE	06869	2/8/2019	William C Davis	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	May
18	CSE	06870	2/20/2019	Michael Kearney	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
18	CSE	06997	2/8/2019; 2/19/2019	Jason Leland McCrary	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	May
18	CSE	07088	2/8/2019	Roosevelt Moore	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
18	CSE	07094	2/19/2019	Erich M Pearl	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Malherbe
18	CSE	07359	2/20/2019	Felix Allende	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
18	CSE	07420	2/13/2019	Gregory Leng	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Malherbe
18	CSE	07424	2/7/2019	Andres Montoya Vazquez	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Malherbe
18	CSE	07576	2/19/2019	Eric Garcia	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Malherbe
18	CSE	07600	2/18/2019	Kevin Michael Smith	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Sutton
18	CSE	07636	2/19/2019	Nathan E Justice	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Malherbe
18	CSE	07815	2/26/2019	William Walter	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Sutton
19	CSE	00051	2/19/2019	Sherman Addison	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Bawtinheimer
19	CSE	00280	2/26/2019	Scott F Rutherford	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Bawtinheimer
18	DCS	02864	2/27/2019	Adelia Wyatt	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Elkins
18	DHR	01807	2/15/2019	Amjad Sheikh	v.	North Carolina Department of Health and Human Services (File No NCRR0052)	Ward

**CONTESTED CASE DECISIONS**

18	DHR	06238	2/4/2019	Reliable Home Care Ser Portia Shipman Owner	v.	North Carolina Department of Health and Human Services	May
18	DHR	06863	2/1/2019; 2/8/2019	Agatha Jean Morris	v.	NC Dept of Health and Human Svcs Health Care Personnel Reg Section	Jacobs
18	DHR	06989	2/22/2019	Shelia Holmes- Graham	v.	Betty Overman NC State Nurse Aid Registry Raleigh NC	Jacobs
18	DHR	07304	2/20/2019	Dena Causey	v.	Division of Child Development and Early Education	May
18	DHR	07512	2/26/2019	Taylor Phillips	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Overby
18	DHR	07669	2/26/2019	Noralene Locklear	v.	Department of Health and Human Services, Division of Health Service Regulation	Lassiter
18	DHR	07761	2/14/2019	The Goddard School at Edison Square	v.	Division of Child Development and Early Education	Malherbe
18	DHR	07768	2/25/2019	Valerie Denise Little	v.	Nurse Aide Listing No 169354 Health Care Personnel Registry	May
18	DOJ	06866	2/5/2019	Lance Paul White	v.	NC Sheriffs Education and Training Standards Commission	Jacobs
18	DOJ	07492	2/28/2019	Christopher Bruce	v.	NC Sheriffs Education and Training Standards Commission	Sutton
18	DOJ	07496	2/26/2019	Mychella L George	v.	NC Sheriffs Education and Training Standards Commission	Bawtinhimer
19	DOL	00681	2/27/2019	Leslie Duke	v.	NC Dept of Labor OSHA OSHA Mr William Peterson	Bawtinhimer
18	OSP	06335	2/11/2019	Sharon Young	v.	Murdoch Development Center and NC Department of HAHS	Elkins