

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Cemetery Commission

RULE CITATION: All Rules

**DEADLINE FOR RECEIPT: Thursday, February 13, 2014**

***NOTE WELL: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

*On each Submission for Permanent Rule form, you indicated the notice of text was published October 2, 2013. They were actually published October 1, 2013.*

*Also, every form, in Item 9A, you include the citation to S.L. 2012-120 under "Legislation enacted in the last General Assembly Session" but you don't always check the box. I think you don't mean to use it for every form, and think you need to remove it when it's not applicable.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

If you have any questions or problems concerning this request, please contact me.

Amanda J. Reeder  
Commission Counsel

REQUEST FOR TECHNICAL CHANGE

AGENCY: Cemetery Commission

RULE CITATION: 21 NCAC 07A .0101

**DEADLINE FOR RECEIPT: Thursday, February 13, 2014**

The Rules Review Commission staff has completed its opinion review of this rule or set of rules your agency filed with the RRC for review by the RRC at its next meeting. The Commission has not yet met and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that one or more technical changes need to be made. Approval of any rule is contingent on making this technical change as set out in G.S. 150B-21.10.

*Is the mailing address for the Commission the same as the address for the address? I think it is, and since you are referring to the public visiting the office, why not simply state "the address of the Cemetery Commission is..."*

*You may want to insert a reference to the Commission's website here, as well.*

*In the History Note, remove the reference to G.S. 150B-10, as that was repealed in 1991.*

Please retype or otherwise correct the rule(s) or submission form(s) as necessary and deliver it to our office at 1711 New Hope Church Rd, Raleigh, North Carolina 27609.

If you have any questions or problems concerning this request, please contact me.

Amanda J. Reeder  
Commission Counsel

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Cemetery Commission

RULE CITATION: 21 NCAC 07A .0103, .0104, .0201, .0202, .0203, .0204 and .0205

**DEADLINE FOR RECEIPT: Thursday, February 13, 2014**

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In reviewing these rules, the staff determined that one or more technical changes need to be made. Approval of any rule is contingent on making this technical change as set out in G.S. 150B-21.10.

*Pursuant to Rule 26 NCAC 02C .0403, combine these two rules onto the same form and combine the repeals onto one page, thusly:*

<b>21 NCAC 07A .0103</b>	<b>AREAS OF RESPONSIBILITY</b>
<b>21 NCAC 07A .0104</b>	<b>FUNCTIONS</b>
<b>21 NCAC 07A .0201</b>	<b>CEMETERY COMMISSION MEMBERS</b>
<b>21 NCAC 07A .0202</b>	<b>ADMINISTRATOR OF CEMETERY COMMISSION</b>
<b>21 NCAC 07A .0203</b>	<b>CEMETERY COMMISSION EXAMINERS</b>
<b>21 NCAC 07A .0204</b>	<b>CLERICAL STAFF</b>
<b>21 NCAC 07A .0205</b>	<b>MEETINGS</b>

*History Note: Authority G.S. 65-49; 65-50; 65-52; 65-53(1); 150B-10;  
Eff. February 1, 1976;  
Readopted Eff. January 16, 1978;  
Repealed Eff. March 1, 2014*

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Amanda J. Reeder  
Commission Counsel

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Cemetery Commission

RULE CITATION: 21 NCAC 07A .0106

**DEADLINE FOR RECEIPT: Thursday, February 13, 2014**

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In reviewing these rules, the staff determined that one or more technical changes need to be made. Approval of any rule is contingent on making this technical change as set out in G.S. 150B-21.10.

*I think you can strike the language on lines 4 and 5 stating "provided after June 1, 2004" and simply state "are required" or "will be collected"*

*In Item 1, G.S. 65-54 speaks to making the payment when the certificate of interment right is issued. I take it you all are using the terms "interment, entombment or inurnment" to properly apply to spaces, crypts and niches?*

*Is Item 5 provided in a pre-need contract? I am thinking it is, but I need to make sure of this to make sure the Commission has authority for this fee.*

*In Item 6, are you saying that all at need merchandise, property or services paid through cash or credit sales don't require assessments? Or are you saying that any cash or credit sales don't require assessments? I think this needs to be clarified.*

*On line 17, Item 7, the second "space" should be lowercase.*

*In the History Note, I don't think you need the reference to G.S. 150B-19, since G.S. 65-54 gives the Commission the statutory authority to set fees.*

*Also in the History Note, insert a semicolon after "March 1, 2014"*

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Amanda J. Reeder  
Commission Counsel

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Cemetery Commission

RULE CITATION: 21 NCAC 07B .0103

**DEADLINE FOR RECEIPT: Thursday, February 13, 2014**

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*I really don't think it is advisable or necessary to include the language in (a) or (e). The notice requirements in G.S. 150B-19.1 and the Notice of Text requirements in G.S. 150B-21.2(c) will control. I think it is confusing to state in your Rule that this is binding unless inconsistent with the Notice of Text, and I recommend striking this language.*

*If you wish to keep the language in (a), is the Commission still holding hearings at the Department of Commerce? If so, then you need to state where that is, since the address rule will now only state where the Commission is located.*

*In (d), the Commission will acknowledge receipt of the request; in (f), it will make a "prompt" acknowledgement. Is there a difference on purpose? If not, please just state "acknowledgment" for both or state a timeframe.*

*On line 13, I'd state "necessary to ensure an effective public hearing" or "necessary to ensure all individuals who have requested to address the Commission may speak" if that's what you mean.*

*What is the point of Paragraph (f)? Is the Commission going to acknowledge receipt to the commenter? Is there a reason for this? Also note that G.S. 150B-21.2(f) requires the agency to consider fully all written and oral comments received, so I think this is already covered by statute and not needed in the Rule. If the Commission feels it needs to retain the language, I think you need to make sure that this language is added for oral comments, as well.*

*In Paragraph (g), replace "designate" with "designee" assuming that is what you mean. Also, replace "his" with "his or her"*

*In (h), please note that G.S. 150B-21.2(h) does not require a written request. Why not just state that the individual "may make a request to the Commission." And note, the statute gives a 15 day deadline to make the request, but the rule doesn't include it. Do you want to include that language here?*

*In the History Note, insert a semicolon after March 1, 2014.*

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Amanda J. Reeder  
Commission Counsel

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Cemetery Commission

RULE CITATION: 21 NCAC 07B .0105

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*In the Submission for Permanent Rule form, you state that the amendment will "add provision for email and fax submissions, not just regular mail" but you don't give any information on how to do this in the Rule language. Did you intend to do so?*

*On line 4, I don't think you meant to strike (a). Please use an (a) there. On line 6, why not just state that the petition may be sent to the Commission at the address set forth in Rule 21 NCAC 07A .0101?*

*In (b)(3), this is not the requirement of G.S. 150B-4. That statute refers to a person aggrieved seeking a ruling as the validity of a rule or the applicability of the statute to a given state of facts. I think (b)(3) needs to be clarified to conform to the statute.*

*Also in (b)(3), line 14, state "him or her;" and add an "and" assuming you wish to require 1-4.*

*Why do you need (c)? It seems that (d) clearly states when the Commission won't issue a declaratory ruling. You could insert a new (e) to state that when the Commission won't issue the ruling, it will notify the petitioner in writing, stating the reasons for denial.*

*End (d)(1) and (2) with semicolons, not commas. Delete the "or" at the end of (d)(1) on line 21.*

*In (e), is the determination of what is necessary made by the Commission?*

*In the History Note, insert a semicolon after March 1, 2014 and make sure you put a space between "March" and "1"*

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Amanda J. Reeder  
Commission Counsel

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Cemetery Commission

RULE CITATION: 21 NCAC 07C .0103

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*Please insert page numbers, as set forth in Rule 26 NCAC 02C .0108(1)(h).*

*In the Rule, do you want "Commission" to be capitalized? I note it is always capitalized when used in conjunction with "Cemetery." However, on lines 5 and 11 of Page 1, it's "commission" and on line 13, it's "Commission." Please be consistent in this and all other Rules.*

*In (a), line 7, is the form only available by writing to the Commission? Is it not on your website? Further, why not delete the address and state "by writing to the Commission at the address in Rule 21 NCAC 07A .0101"?*

*In (b)(1), is it "Commission examiners" or "Commission investigators" (per G.S. 65-53.1)?*

*Are you relying upon G.S. 65-53(6) to assess the actual cost of the examination in (b)(1)? If so, add that to your History Note. If not, what is the Commission's authority to do this?*

*Also in (b)(1), when you refer to trust fund requirements, do you mean the statutory trust fund requirements referenced in G.S. 65-59 or are there others you are looking at?*

*End (b)(1) with a semicolon, not a period.*

*For (b)(6), when will this be applicable? I know that 65-59 states that the Commission cannot approve the change until it determines that "the proposed new owners are qualified by character, experience and financial responsibility to control and operate the cemetery company in a legal and proper manner." Is this what you are trying to address?*

*Add an "and" to the end of (b)(6), line 31.*

*Why are you seeking the information in (b)(7)? Is it to comply with G.S. 65-55(f)(4)?*

*In (c), lines 35-36, do you mean “until the Commission issue the certificate of approval” or do you really just mean after submitting the application and going through (b)(1) through (7), they can take over? Or is this different?*

*Is the purpose of the deadline in (c) to make sure there are not major changes that will affect the approval by the Commission?*

*On Page 2, line 3, state “in accordance with the provisions...”*

*On line 4, I’d state “shall provide written notice to...”*

*On line 6, how will they know when the meeting is? Will they be notified or will it be from the notice requirements in G.S. 65-52?*

*In the History Note, insert a semicolon after March 1, 2014.*

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Amanda J. Reeder  
Commission Counsel

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Cemetery Commission

RULE CITATION: 21 NCAC 07C .0104

**DEADLINE FOR RECEIPT: Thursday, February 13, 2014**

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*Should there be a timeline within the Rule? Or is it that they will simply be filed? Note, I'm not entirely comfortable allowing this to be added through a technical change, but I think you should think of this for future rulemaking.*

*The History Note should be:*

*Eff. September 1, 1979;*

*Amended Eff. March 1, 2014.*

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Amanda J. Reeder  
Commission Counsel

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Cemetery Commission

RULE CITATION: 21 NCAC 07C .0105

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*On line 5, delete "regular" and I'd replace "working" with "business"*

*On line 5, do you mean "the request" rather than the item? Or are you referring to an agenda item?*

*And how will the individuals know when the meetings are in order to make the 30 day requirement? The notice requirement in G.S. 65-51 doesn't seem to provide for an annual schedule.*

*In the History Note, insert a semicolon after March 1, 2014.*

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Amanda J. Reeder  
Commission Counsel

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Cemetery Commission

RULE CITATION: 21 NCAC 07D .0101

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In reviewing these rules, the staff determined that one or more technical changes need to be made. Approval of any rule is contingent on making this technical change as set out in G.S. 150B-21.10.

*What is the authority to require this report from the cemetery? I know G.S. 65-65 requires a report from the trustee, but what is the authority to make cemeteries send this report? Especially since G.S. 65-61 requires the appointment of a corporate trustee? Are you using the requirements of G.S. 65-64 to create this reporting requirement?*

*On lines 8 and 9, why not just state "Each licensed cemetery shall make a monthly report of deposits to the perpetual care fund and submit the report to the Commission by the last day of each month."?*

*On line 9, I'd state "The licensed cemetery shall use the Report of Grave Spaces for the Month of \_\_\_\_ form."*

*Again, is this form really not available on the website? Does a cemetery really have to write to the Commission to get it?*

*On line 12, do you mean "amount due to be paid to the trust fund"?*

*Again, I recommend you give a reference to the address rule, Rule 21 NCAC 07A .0101, rather than restating the address here.*

*In the History Note, insert a semicolon after March 1, 2014.*

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Amanda J. Reeder  
Commission Counsel

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Cemetery Commission

RULE CITATION: 21 NCAC 07D .0102

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In reviewing these rules, the staff determined that one or more technical changes need to be made. Approval of any rule is contingent on making this technical change as set out in G.S. 150B-21.10.

*I take it you are referring in this Rule to only the perpetual care trust, set forth in G.S. 65-55(c)(2) and 61?*

*On line 5, what do you mean by "depository"?*

*On line 5, you may wish to create a new paragraph. If not, at least delete "Also"*

*On line 6, replace "as called for under Chapter 65-55 of the General Statutes" with "required by G.S. 65-55"*

*On lines 7 and 8, delete both references to "the State of" and just state "North Carolina."*

*In the History Note, I think you need to add G.S. 65-60.1, since that sets forth the requirement that the trustee have a presence in North Carolina.*

*Also in the History Note, insert a semicolon after March 1, 2014.*

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Amanda J. Reeder  
Commission Counsel

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Cemetery Commission

RULE CITATION: 21 NCAC 07D .0104

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*To make sure I understand, is the idea of this Rule is to implement G.S. 65-64(a) and require the dollar per day late fee, but not for first time offenders?*

*On line 4, state "The fee levied... (\$1.00) per day..."*

*On line 5, state "for which the deposit is delinquent, subject to..."*

*On line 6, "percent" should be one word.*

*On line 6, what do you mean by "was or is owed"? Do you mean if they started paying but didn't make up the deficiency? Note the same question for Item 2, lines 14-15.*

*It Item 1, insert a comma after "found" on line 7.*

*In Item 1, are you saying that upon discovery, the Commission will send a written notice to the cemetery that it has 20 days to fix the issue? If so, state that. What is the purpose of "regardless of whether or not the delinquency was corrected before an examination by this Commission" language? And the 20 days begins from discovery of the error, not the actual failure to deposit, correct?*

*In Item 2, line 12, replace "running" with "accruing"*

*Also on line 12, state "The Commission is not required to send a notice of delinquency before the fee is incurred..."*

*On line 13, when may the maximum amount of 100% not be required? This needs to be in Rule. Do you mean "shall" here? If so, then I don't know that you need the language on lines 5 and 6 about "subject to a maximum fine of one hundred percent"*

*For Item 3, are you saying that if the Commission has not notified or levied a fee against a cemetery, then they get a new 20 day grace period?*

*In Item 4, you are saying everyone will get a 20 day notice. I don't think you mean to say that, given the language in Item 2, but that's what you are saying here.*

*Do not use "and/or" on line 19. I think you mean "or" here.*

*I think Item 4 needs to be rewritten to be clearer. For example, "If the cemetery's care and maintenance trust fund is delinquent, the cemetery shall correct the deficiency and pay any fee owed to the Commission. If the cemetery does not do so, then the Commission..."*

*In (4), where you speak of "immediate steps" to revoke, are you speaking of the injunctive relief in G.S. 65-53(5)? If so, please state this and add the citation to the History Note. If not, then please delete or define "immediate"*

*In the History Note, you need to fix the reference from G.S. 54(a) to 64(a). I also think you need to add G.S. 65-53, since 53(3) speaks to revocation of licensure.*

*Also in the History Note, insert a semicolon after March 1, 2014.*

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Amanda J. Reeder  
Commission Counsel

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Cemetery Commission

RULE CITATION: 21 NCAC 07D .0105

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*Are you also relying upon G.S. 65-63 for authority for this Rule?*

*The History Note should be:*

*Eff. September 1, 1983;*

*Amended Eff. March 1, 2014.*

Please retype or otherwise correct the rule(s) or submission form(s) as necessary and deliver it to our office at 1711 New Hope Church Rd, Raleigh, North Carolina 27609.

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Amanda J. Reeder  
Commission Counsel

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Cemetery Commission

RULE CITATION: 21 NCAC 07D .0201

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In reviewing these rules, the staff determined that one or more technical changes need to be made. Approval of any rule is contingent on making this technical change as set out in G.S. 150B-21.10.

*In the Submission for Permanent Rule form, you state this amendment is to revise the language of the Rule to allow for electronic submission of reports. However, there are no rules that specify how to contact the Commission electronically. If you wish to allow electronic submission, you need to state how to do so in the Rule text.*

*What is your authority for this Rule? Where you speak of "deposits" on line 7, do you mean by the purchaser of the service? Are you referring to the trust funds established for preconstruction as set forth in G.S. 65-70? Or G.S. 65-66? If so, that needs to be in the History Note.*

*On lines 7 – 9, why not just state, "Each licensed cemetery shall make a monthly report of deposits ....and submit the report to the Commission by the last day of each month."?*

*On lines 9-10, I'd state, "The licensed cemetery shall use the "Monthly Report..."*

*Lines 7 and 8 speak of a trust for "pre-need cemetery merchandise, pre-constructed mausoleums and below ground crypts." Why does the form on lines 9 and 10 refer to pre-need cemetery merchandise, pre-constructed mausoleums and services not delivered"?*

*Regarding the language beginning on line 13, is this form really not available on the website? Does a cemetery really have to write to the Commission to get it?*

*Again, I recommend you give a reference to the address rule, Rule 21 NCAC 07A .0101, rather than restating the address here.*

*In the History Note, insert a semicolon after March 1, 2014.*

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Amanda J. Reeder  
Commission Counsel

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Cemetery Commission

RULE CITATION: 21 NCAC 07D .0202

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*In (a) and (b), who will not consider the items delivered? The Commission?*

*Regarding the language on lines 7 and 8, as I read G.S. 65-66(d), installation is separate from the property.*

(d) Any contract for the sale of personal property or services or both shall state separate costs for each item of personal property, for each act of installation required by the contract, for opening and closing each grave space, and for each other item of services included in the contract.

*What is your authority to state it is not?*

*On line 9, insert a comma after "or" in "or, if stored off premises"*

*What is your authority to require a CPA to prepare the report? Are you relying upon G.S. 65-60.1(c)?*

*And why is the report only focusing on purchases from North Carolina companies? What is the point of this?*

*On line 13, state "company that, as of the date of the report, is in storage and thus, the property of the customer and not the supplier." Make a similar change on lines 16-17.*

*On line 16, that is not the proper way to insert "an"*

*Also on line 16, the report can come from an accountant, not necessarily a CPA?*

*In the History Note, insert a semicolon after March 1, 2014.*

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Amanda J. Reeder  
Commission Counsel

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Cemetery Commission

RULE CITATION: 21 NCAC 07D .0203

**DEADLINE FOR RECEIPT: Thursday, February 13, 2014**

The Rules Review Commission staff has completed its opinion review of this rule or set of rules your agency filed with the RRC for review by the RRC at its next meeting. The Commission has not yet met and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that one or more technical changes need to be made. Approval of any rule is contingent on making this technical change as set out in G.S. 150B-21.10.

*In (a), I'd state, "Withdrawal requests made pursuant to G.S. 65-66(b)(4) shall be made no more than once per month."*

*In (b), the Commission, the trustee or the financial institution shall ask the depositor for full disclosure? Doesn't the trustee know what is in the trust?*

*On line 12, delete "(2)"*

*In (c), does the prior approval apply only to withdrawals?*

*In the History Note, insert a semicolon after March 1, 2014.*

Please retype or otherwise correct the rule(s) or submission form(s) as necessary and deliver it to our office at 1711 New Hope Church Rd, Raleigh, North Carolina 27609.

If you have any questions or problems concerning this request, please contact me.

Amanda J. Reeder  
Commission Counsel