

ADMINISTRATIVE RULE STYLE GUIDE



September 19, 2019

Rules Review Commission
Office of Administrative Hearings



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Agency rulemaking is an essential and important part of lawmaking in North Carolina's jurisprudence. Rules frame the rights and responsibilities of the people, and courts scrutinize rules to the same extent as statutes. Drafting effective, simply-written, and unambiguous rules is one of the toughest and least appreciated jobs in all of government.

Rulemaking in North Carolina has undergone significant changes since 1973 when the General Assembly enacted the original North Carolina Administrative Procedure Act (G.S. 150). However, the last guidance to assist those involved in the rulemaking process was published by the Attorney General's office over 36 years ago. So the Rules Review Commission determined it was important to provide an updated resource to assist those engaged in rulemaking with the newly published Administrative Rule Style Guide.

The stated goal of the Administrative Rule Style Guide is "to assist agencies adopting rules, members of the public in understanding them, and the Rules Review Commission in reviewing them as provided by law." Topics ranging from formatting to word selection are covered comprehensively to ensure consistency, accessibility, and efficiency. The goal is to make a better Administrative Code.

There were many people responsible for publication of this Administrative Rule Style Guide. We express great appreciation to Gerry Cohen, former special counsel to the NC General Assembly, who provided significant guidance and expertise in the completion of this project. Many others, including the OAH Rules Division staff and agency rulemaking coordinators, provided significant review of multiple drafts of the Administrative Rule Style Guide.

Finally, it is intended that this Administrative Rule Style Guide be a living document, updated at regular intervals. Your comments and suggestions are welcome, and we encourage you to share them with Molly Masich, Codifier of Rules.

North Carolina Rules Review Commission

Garth K. Dunklin, Chair

Raleigh, North Carolina
September 19, 2019

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CHAPTER 1. PURPOSE OF STYLE GUIDE

This style guide will assist agencies in drafting rules. Members of the public will have a better chance of understanding rules drafted and formatted if this guide is used. Having standard nomenclature, grammar, syntax, and usage can assist in this purpose. This guide is intended to address items not covered by rule but are important for consistency.

1.1. Who Should Use This Style Guide

Each agency's rule-making coordinator, designated under G.S. 150B-21(a), should be familiar with and use this style guide. In addition, all agency staff members that are involved in drafting and reviewing proposed rules should use the style guide in rulemaking tasks. This style guide is designed to assist agencies adopting rules, members of the public in understanding them, and the Rules Review Commission (RRC) in reviewing them as provided by law. To assist agency staff in drafting rules, this style guide includes an Appendix of some example rules.

1.2. Use of The Rulemaking Template

When drafting rules, an agency should use the "Office of Administrative Hearings Rules Division Template," which automates the process of formatting a rule. If that template is not available, the agency is required to follow the general format instructions found in 26 NCAC 02C. For documentation pertaining to how to download and use the Office of Administrative Hearings Agency Template click the following link:

<https://www.oah.nc.gov/documents/rules/rules-oah%20template%20documentation>

1.3. Disclaimer

This document is intended only as a guide and is not binding or controlling. As it is not a rule, it is not mandatory to use the style guide in rule drafting. This style guide does not have the force of law and cannot be used to challenge the validity of a rule. The controlling authorities for the drafting and review of rules are contained in the Administrative Procedure Act (APA, Chapter 150B of the General Statutes), and in the rules contained in 26 NCAC 02C and 26 NCAC 05. Failure to comply with any provisions in this style guide that are not mandated by the controlling law or rules will not be considered objectionable for the purposes of RRC review.

The provisions in the style guide may be modified by the Rules Review Commission (RRC) or the Office of Administrative Hearings (OAH). Agency staff are encouraged to confer with OAH staff if there is a conflict between this guide and the needs of the agency so that the concerns may be addressed.

CHAPTER 2. WORD SELECTION

2.1. Word, Term, and Phrase Usage

Do not use more than one word or phrase for a single idea. Choose the clearest term and use it consistently throughout a set of rules. This is especially important when using a term of art which is defined as a term that has a specialized meaning in a particular field or profession.

If a statutory term exists, use the statutory term. (see also Chapter 15, "Word, Phrase and Term Usage" section later in this guide.)

North Carolina Courts construe each word in laws and rules as having meaning and a reason for being there. Synonyms often have definitions that are just different enough to potentially alter the meaning of a rule. That is why using a word or phrase consistently reduces potential ambiguity.

2.2. Active Writing

Write a rule in the active voice. Rules written in the active voice describe who shall do what.

Ex. Avoid: An appeal shall be filed in 30 days.
Use instead: The employee shall file an appeal in 30 days.

Avoid: A plan shall be approved before beginning the program.
Use instead: The director shall approve a plan before beginning the program.

2.3. Verbs

Use active rather than passive verbs.

| | |
|-----------------------|---------------------|
| <i>Ex. Avoid:</i> | <i>Use instead:</i> |
| shall be considered | shall consider |
| shall be implemented | shall implement |

Use the present tense.

2.4. Adverbs

Avoid the use of adverbs in rules. Adverbs are words that modify adjectives, verbs, and other adverbs. Adverbs answer the question "how." If a word has -ly attached to it, it is probably an adverb. Adverbs may add ambiguity to a rule, making it more difficult to comply with, or consistently enforce, a rule.

Ex. Avoid: Safety checks shall be performed frequently.

The sentence offers a vague answer to the question of how often someone needs to do safety checks. "Frequently" may mean hourly to one person, daily to another person, and quarterly to a third person.

Ex. Use instead: Safety checks shall be performed daily.

The sentence precisely tells the reader the minimum requirement for the frequency of performing safety checks.

2.5. Frequently Misused Words and Terms

And/or. Never use this term under any circumstance. In most cases the word "or" is proper to convey the thought of "one, or the other, or any of them." If emphasis is needed, use terms such as "any of the following," "all of the following," "either of the following," and "or both."

Any, each, every, all, some. Do not use if "a," "an," or "the" can be used with the same meaning, or if the word can be omitted.

Ex. Avoid: "Any qualified employee shall..."
Use instead: "Qualified employees shall..."

Articles. The articles *a*, *an*, and *the* signal whether the noun they modify is definite or indefinite. Use articles before nouns.

Ex. the name
Ex. an orange

Biannual. Biannual means twice a year. Use "semiannual" or "twice a year" instead. Biennial means every two years.

Capital means capital city; money or assets; first rate; capitol means the statehouse (capitol building).

Ensure means to make sure; Insure means to take insurance on or for.

Including but not limited to. This phrase is commonly misused and should not be used. The word "limited to" adds nothing. The word "including" does not limit anything, it simply lists illustrative meanings. Using "including" is enough.

Insure means to take insurance on or for; Ensure means to make sure.

It's always means "It is." Use "its" for all other uses of "it." "Its" is possessive.

Minimum and at least. Rules set minimum standards that the regulated public must follow. The use of the terms "at a minimum" or "at least" is unnecessary. Those terms should not be used.

Principal means most important.

Principle means comprehensive and fundamental law, doctrine, or assumption.

Pronouns. Use both genders or use gender-neutral terms.

*Ex. Replace "he" with "he or she."
Replace "his" with "his or her."
Use "their"*

Alternatively, replace the pronoun with the noun to which it refers (such as "the applicant shall" rather than "he shall" in a sentence relating to duties of an applicant for a license or permit).

Use an all-encompassing term like "the individual."

Said and Such. Do not use the words "said" or "such" in place of an article (a, an, the, thus, these, and those).

Ex. *Avoid:* "said form" or "such form"
 Use instead: "the form"

To avoid ambiguity, use a specific reference to what is being mentioned.

Ex. The form specified in Paragraph (a) of this Rule.

Redundant word pairs. Unnecessary pairs of words, such as "authorize and empower," "each and every," "any and all," "by and under," and "null and void," are repetitive, may be ambiguous. They should not be used.

Ex. "authorized and empowered" in the sentence "The Commissioner is authorized and empowered" can be replaced with "The Commissioner may"

Rules and regulations. These terms each have a specific meaning. "Rules" means State agency rules. "Regulations" usually refers to federal regulations. Do not use "regulations" when referring to State agency rules.

Shall, May, Must, Should, and Will.

"Shall" usually imposes upon someone a duty to act. When a sentence contains the word "shall," check for proper use of the word by reading the sentence and substituting the phrase "he or she has the duty" for "he or she shall." To prohibit, use "shall not." Do not use the word "must."

"Shall" also indicates the operation of a rule, as in "Public water supplies shall be governed by this Section." This is preferable to saying, "This section governs public water supplies.", unless in context the word "shall" might indicate the rule does not operate in the present when in fact it does.

"May" confers a use instead, power, or privilege without imposing an obligation. When using the term "may," there is no need to add the phrase "at his or her discretion." If an agency "may" take an action, it also may choose not to act. If an agency "may" act, the rule shall state the factors, standards, or circumstances that will guide the agency in deciding whether to act, as required by G.S. 150B-19(6). By contrast, if a regulated person "may" act, the rule simply allows the action and need not state standards.

"Should" expresses a value judgment about whether a situation is desirable or undesirable. Never use "should" in rules absent a specific statutory directive. Use "shall" or "may" instead.

"Will" expresses the simple future. It is used to indicate prediction, in contrast to "shall," which indicates command.

Ex. In awarding grants for tourism projects, the town council shall give priority to proposed projects that will facilitate and support tourism.

That and which. These terms are not interchangeable. "That" is used to introduce a clause that is necessary for full comprehension of the sentence and is never set off by commas. "Which" is used to introduce a clause that provides nonessential or parenthetical information and is usually set off by commas.

Ex. Any funds that are not spent shall lapse.
The Division, which is responsible for all licenses, shall provide ...

Vague words and phrases. Do not use words such as "herein," "above," "below," "currently," "foregoing," "formerly," "hereafter," "heretofore mentioned," "hereunder," "notwithstanding," "now," and "thereafter." Instead, use specific references, such as "in this Chapter," "under this Section," or "prior to July 1, 2017."

2.6. Excess Language

Excess language may seek to spell out all possibilities and nuances in a rule. Instead, it makes a rule cluttered and often ambiguous.

Ex. *Avoid:* The Hearing Officer shall control the direction of the flow of discussion and the management of the hearing.
Use instead: The Hearing Officer shall conduct the hearing.

Ex. *Avoid:* The Hearing Officer shall consider evidence presented at the hearing, including, but not limited to the permit issuance date.
Use instead: The Hearing Officer shall consider evidence presented at the hearing, including the permit issuance date.

2.7. Use Verbs

Do not transform verbs into nouns.

Ex. *Avoid:* construction, renovations, alterations or demolitions of institutions
coordination of the preparation of the building renewal request
Use instead: constructing, renovating, altering or demolishing institutions
coordinating preparation of the building renewal request

2.8. Abbreviations and Contractions

Define the abbreviation if one is used, either in a definition rule or, if it is used in a single rule, in the rule in which it is used.

- (1) An abbreviation may be used if part of a name.
- (2) Use the abbreviations a.m. and p.m. to express time. However, specify either noon or midnight; do not use 12:00 p.m., 12:00 a.m., 12:00 noon, or 12:00 midnight.

- (3) In technical sections of a rule, units of measure may be abbreviated. In non-technical sections of a rule, write out the names of the units.
- (4) Symbols may be used in text for chemical elements, equations, formulas, and tabular matter.
- (5) Do not use the following abbreviations: et seq., e.g., i.e., etc.
- (6) Avoid using contractions.

2.9. Phrase Involving Time

When a rule uses a phrase involving time, the agency should make sure that the phrase or timeline is clear and does not create ambiguity. Examples of time-based phrases include "prior," "after," "when," and "as they occur."

- Ex. Avoid:* "After receiving a request, the agency shall notify the applicant that ..."
Use instead: "After receiving the request, the agency shall notify the applicant within five business days that ..."

Please note that sometimes a rule may imply some time-based event, even if it does not use a time-based phrase. The example below does not use a word like "before," "after," or "when," but the implication is that the licensee should act within a certain time frame. Agencies may need to clarify the timing of events to avoid vagueness.

- Ex. Avoid:* "The licensee shall notify the board of an address change."
Use instead: "The licensee shall notify the board of an address change within 30 days."

2.10 The Difference Between an Acronym and an Initialism

Acronyms and initialisms are often confused abbreviations, but they are different.

An acronym is an abbreviation usually formed from the first letter of each word, but pronounceable as a word.

- Ex. RAM (Random Access Memory) or NASA (National Aeronautics and Space Administration).*

An initialism is similar to an acronym, but is not pronounced as a word, but read as the individual letters.

- Ex. NSA (National Security Agency), OAH (Office of Administrative Hearings), RRC (Rules Review Commission).*

CHAPTER 3. FORMAT

3.1. Bold Text

Do not bold any words or phrases in the text of a rule. Bold these: Chapter titles, Subchapter titles, Section titles and Rule titles.

3.2. Capitalization

Only capitalize the following words:

The first word in a sentence.

The months of the year.

The names of state and federal regulations, constitutions, statutes, and rules.

The names of legislative, administrative, and judicial bodies and departments, bureaus, and offices.

Rule when referring to a specific rule, but not to refer generally to rules or to unspecified rules.

Ex. Paragraph (b) of this Rule
Rule .0707 of this Section
the rules of this Chapter
the rules of this Section
these Rules

A title that is used to identify a specific position.

Ex. The Secretary of the Department or the Secretary (when referring to the individual in charge of a named department)

The United States, State when referring to the State of North Carolina, and the names of states, counties, and cities.

Do not use all capital letters for a word, unless the capitalized word is part of a quotation, a form, a chart or table, an acronym or initialism that has already been defined in rule, or is the rule name.

When in doubt, use lowercase letters for the word or phrase. Check the language in the authorizing statutes for guidance regarding capitalization.

Do not capitalize the following words unless they stand for or are part of a proper name:

administrative law judge
administration
agency
board
bureau
commission
department
director
division
executive

federal
government
hearing officer
judge
judicial branch
legislative
legislative branch
state
statutes

3.3. Italics

Do not italicize any words or phrases, including Latin terms, in the text of a rule.

3.4. Punctuation

Use only a single space after any type of punctuation such as a period or colon.

Colons. Place a colon after a clause containing an expression that introduces a series of items.

Ex. The petition shall contain the following: the name, address, and occupation of the petitioner.

Commas. A comma alters the meaning of a sentence: consider "Let's eat, Grandma" or "I'm sorry, I love you" without the comma.

(1) Place a comma between clauses that could be written as separate sentences.

Ex. The Commissioner shall appoint a Deputy Commissioner, and the Deputy Commissioner shall preside over the Advisory Task Force.

(2) Use a comma to set off a clause that could be omitted without altering the meaning of the main clause.

Ex. The application, which may be obtained from the Department of Administration, shall be submitted by June 30, 2018.

(3) Set off a dependent clause that comes before a main clause with a comma.

Ex. After the hearing officer completes the report, the hearing officer shall submit the report to the chief hearing officer.

(4) Use a comma to separate words, phrases, or clauses in a series; and use a comma before the conjunction, such as "and" or "or."

Ex. The members of the committee are the Chairman, Vice Chairman, and Ex

Officio members of the Commission.

- (5) Use a comma to set off the year following the month and day.

Ex. A license issued before June 30, 2018, shall be renewed by June 30, 2020, or it shall expire.

- (6) Do not use a comma around the year when it follows the month alone.

Ex. All licenses issued by the Board after June 2020 shall be effective for a period of three years.

- (7) If using a quotation, place commas and periods inside quotation marks.

This style guide encourages the "Oxford Comma," also known as the serial comma. The presence or absence of a comma before the word "*and*" or before the word "*or*" in a list of three or more items is the subject of much debate. Here is a discussion from the Oxford English Dictionary itself:

"The last comma can serve to resolve ambiguity, particularly when any of the items are compound terms joined by a conjunction, and it is sometimes helpful to the reader to use an isolated serial comma for clarification even when the convention has not been adopted in the rest of the text."

Ex. *cider, real ales, meat and vegetable pies, and sandwiches*

Dashes. Do not use dashes in text material.

Dates. Use commas surrounding specific dates, including one after the year. (see also entry in this section under "commas").

Ex. "July 8, 2013, when ...". Do not use a comma when only the year and month are listed. For example, "July 2013" or "December 1."

Forward slash (/) or backward slash (\). Never use the forward or backward slash except in a defined term, term of art, or part of a website address.

Hyphens. Only use hyphens if used in the dictionary, unless the use of a hyphen improves readability. Words that together function as a single adjective require a hyphen:

Ex. In the term "sales-tax restrictions," the words "sales" and "tax" together modify the term "restrictions" and are hyphenated.

Descriptive words that include numbers are hyphenated, such as "three-month's leave" or "31-day waiting period." See Chapter 5 on when to use figures. Hyphenate written numbers from 21 to 99, for example "thirty-five".

Periods. Use a period at the end of a complete sentence. Do not use a period after a chapter name, a rule name, or after the full rule number that appears before the rule name. If using a quotation, place commas and periods inside quotation marks.

Parentheses. Avoid the use of parentheses. Use parentheses only for words, phrases, clauses, or sentences by way of example. A common error is to use "sale(s)" or "licenses(s)" to cover circumstances when there may be more than one, but the correct reference is to use "sales" or "licenses."

Ex. Avoid: All applications shall contain the requested information (name, lot number, and building size) and be submitted to the Director.
Use instead: All applications for permit shall contain the name, lot number, and building size, and be submitted to the Director.

Quotation Marks. Use quotation marks around terms being defined or used in quotations or titles of documents. Do not use quotation marks in text to indicate words used in a special sense. Place commas and periods inside quotation marks. Place other punctuation marks (such as semicolons or colons) inside quotation marks only if they are part of the matter quoted.

Semicolons. Avoid using semicolons within a sentence in a rule. If a sentence is long enough to need semicolons, it is usually best to break it into separate sentences. If necessary, use semicolons to separate listed items if one or more of the items contains a comma. (Also see the discussion of semicolons in Chapter 14, which deals with lists, in this style guide.)

Ex. All records, reports, and information required to be submitted to the Commission or the Director; any public comment on these records, reports, or information; and the draft and final permits shall be disclosed to the public.

3.5. Spelling

If there is more than one spelling for a word, check the Merriam-Webster dictionary and use the spelling that appears first. A free online version of the dictionary is available at: <https://www.merriam-webster.com/>.

3.6. Underlining

Formatting of rules during the rulemaking process is governed by 26 NCAC 02C. In formatting proposed or adopted rules for publication or review, the agency will underline new text. Just as bolded and italicized text are not allowed, no text will be underlined when a rule is published in the North Carolina Administrative Code.

CHAPTER 4. AGENCY CONTACT RULE

4.1. Contact Rule

Write a simple contact rule that includes:

- (1) the agency's mailing and email address;
- (2) the agency's physical address and office hours;
- (3) the agency's telephone number; and
- (4) the agency's website address or URL.

If a rule states "contact the agency for this form" or "bring copies to the agency" it should cross-reference the contact rule, which can be amended as needed without publishing notice in the Register, as provided by G.S. 150B-21.5.

CHAPTER 5. NUMBERS AND SYMBOLS

5.1. Numbers

26 NCAC 02C .0108(9) governs the use of numbers within the text of rules.

Spell out the numbers one to nine, and use figures for zero and for numbers over nine. If a phrase contains two numbers, only one of which is over nine, use figures for both. If a sentence begins with a number, spell out the number.

Ex. Fourteen of the individuals appointed to the committee shall be members of the Commission.

Ex. Applicants shall submit 3 copies each of the 15 required forms.

If a proper name includes a number, write the number as it appears in the proper name.

Use figures in citing State and federal statutes, Session Laws, rules, regulations, or Executive Orders.

A number with more than 3 digits requires a comma.

Ex. 241
1,007

For fractions when the denominator is nine or less, write the fractions in words unless the fraction is part of a chart or formula. When it is over nine, express the fraction in figures.

Ex. three-eighths, one-half, 5/16, 3/25

In a date, the day of the month is a numeral.

Ex. July 6, 1982

5.2. Symbols

The percent symbol (%) is not used except in charts or formulas.

Ex. 25 percent or twenty-five percent

5.3. Computations

Write computations using either a list or formula.

Ex. "Curie" is the special unit of radioactivity. One curie is equal to 3.7×10^{10} disintegrations per second = 3.7×10^{10} becquerels = 2.22×10^{12} disintegrations per minute.

5.4. Money

Monetary amounts within the text are required to be spelled out, followed by the figures in

parentheses. (This does not apply when a fee schedule is set out in tabular form). Decimals and zeros are not used for even dollar amounts of \$1,000 or more. Money amounts that are less than \$100.00 and contain two words, and similar compounds in amounts over \$100.00, are hyphenated.

Ex. two thousand three hundred forty-two dollars (\$2,342)
ninety-five dollars (\$95.00)

CHAPTER 6. FOOTNOTES, APPENDICES, AND EXPLANATORY NOTES

6.1. Use of Footnotes, Appendices, and Explanatory Notes

Do not use footnotes or appendices in rule drafting. Any material that might otherwise be placed in a footnote or appendix must be inserted in the text of the rule.

If necessary in unusually complicated and voluminous sets of rules, a brief explanatory note may be added to the text, as long as it does not change the meaning of the rule.

- Ex.* If required by G.S. 89C, a professional engineer shall prepare these documents. The applicant shall provide the following documents to the Division by the applicant:
Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter dated December 1, 2005, that preparation of engineering design documents pursuant to this Paragraph constitutes practicing engineering under G.S. 89C.

CHAPTER 7. TABLES AND ILLUSTRATIONS

7.1. Tables and Illustrations

Write rules that are understandable without drawings, photographs, or tabular material. The body of a rule may include charts and figures only if the material complies with 26 NCAC 02C.

CHAPTER 8. FORMS

8.1. Forms

Generally, a form need not be adopted as a rule, pursuant to G.S. 150B-2(8a)(d). However, the contents of forms required by an agency must be adopted in a rule or set forth in statute.

- Ex.* Legislation instructs an agency to create a form by saying, for example, "in a form prescribed by the agency." The agency should list the contents of the form in a rule.
- Ex.* An agency requires an application form for a license or permit and will not process the application without the form. The agency should list the contents of the form in a rule.
- Ex.* An agency asks applicants for a grant program for photographs to use on the agency's website to inform the public about the grant program. The agency will process applications with or without the photographs, and photographs have no bearing on whether a grant is awarded. The request for photographs are not required to be included in a rule."

In drafting a form rule, state the contents of the form that are required, such that if that part of the form is left blank, it would be regarded as an incomplete form. Also, tell someone how to obtain a copy of the form.

Consider placing all form rules together in one Section. This makes it easier for the regulated public to find them and allows the agency to easily mirror the language for each rule.

See Appendix 1 for form rule examples.

CHAPTER 9. HISTORY NOTES

9.1. History Notes

The requirements for content and formatting of history notes are set out in 26 NCAC 02C .0108, .0109, and .0406. The first line shall list the citations for the authority relied upon for the rulemaking agency to make the rule. The next line shall state the date the original rule became effective. All other dates following the original effective date are listed in chronological order.

Whenever amending a rule and using an existing History Note, check each citation to ensure that:

- (1) the cited statutes still exist and are still within the agency's rulemaking authority. If the statute has been transferred, provide the new statutory citation. If the statute was entirely repealed, provide new authority that provides for the agency to engage in rulemaking; and
- (2) the cited statute is still relevant to the rule.

If a history note has a line showing the dates of amendments, the agency will insert the new amendment date immediately following the words *Amended Eff.*, unless the last line of the history note is an action other than an amendment. In this case, the agency will begin a new amendment line.

The agency should create a new Amended Eff. line when the last line of a history note is one of the following:

* *Readopted Eff.*

* *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.*

* *Temporary Amendment Eff.*

* *Temporary Amendment Expired Eff.*

* *Emergency Amendment Expired Eff.*

Below are some examples of history notes where agencies had to create a new Amended Eff. line after the types of rulemaking actions listed above.

History Note: Authority G.S. 93-1; 93-12; 93-12(3);

Eff. February 1, 1976;

Readopted Eff. September 26, 1977;

Amended Eff. January 1, 2014; February 1, 2011; January 1, 2006; January 1, 2004; April 1, 1999; August 1, 1998; February 1, 1996; April 1, 1994; September 1, 1992;

Readopted Eff. February 1, 2016;

Amended Eff. May 1, 2017.

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

Eff. September 3, 1976;

Readopted Eff. September 26, 1977;
Amended Eff. April 1, 2017; August 1, 2016; April 1, 2015; August 1, 2008; August 1, 2000; May 1, 1989; October 1, 1985; March 1, 1985;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest
Eff. January 9, 2018;
Amended Eff. April 1, 2018.

CHAPTER 10. CITATIONS

10.1. Overview

Citations in rules are governed by 26 NCAC 02C .0109.

10.2. Citing Statutes

Statutes are cited as they appear in the North Carolina General Statutes. Use the abbreviation "G.S." rather than "N.C.G.S." or "N.C. Gen. Stat."

Ex. G.S. 150B-21.9.

Do not refer to Session Laws or cite them as authority in the place of a statute codified in the General Statutes.

With regards to Session Laws:

- (1) If there is a codified statute in the General Statutes, do not refer to the Session Laws or cite them as authority.
- (2) If there is not a codified statute then cite the Session Laws or earlier compilations, as in the examples below.

Ex. 1997-present: S.L. 2013-413, s. 19

1943-1996: Section 19 of Chapter 413 of the Session Laws of 1987

Pre-1943: Section 19 of Chapter 413 of the Public Laws of 1911 (Or Public-Local Laws, or Private Laws)

Note: most references to Public Laws, Public-Local Laws, or Private Laws will relate to uncodified wildlife laws or other local acts.

The citation to federal statutes is United States Code, abbreviated "U.S.C.," or United States Code Annotated, abbreviated "U.S.C.A.". Both U.S.C. and U.S.C.A. place the title before and the section after the Code designator. (There may also be some uncodified Public Laws, such as a general ban on using social security numbers as identifiers, cited as "Section 7 of the Privacy Act of 1974, Public Law 93-579.")

Ex. 5 U.S.C. 1009

10.3. Citing Rules and Regulations

A proper citation to a rule in the North Carolina Administrative Code includes the title, chapter, and rule itself, as well as a subchapter or section designation, if applicable.

Ex. Citing a subchapter: 10A NCAC 71A
Citing a section: 01 NCAC 06B .0200
Citing a rule: 13 NCAC 07A .0603
Citing a rule subdivision: 15A NCAC 02B .0234(3)(a)(ii)

If referring in one rule to another rule within the same chapter or subchapter, cite the latter rule

as, for example, "Rule .0402 of this Subchapter (or Section or Chapter)."

If referring to a paragraph or subparagraph within the same rule, cite, for example, "Paragraph (a) of this Rule" or "Subparagraph (a)(1) of this Rule." Within the same rule, do not cite to a part of the same rule using the formal citation. It is confusing, as it appears that the agency is citing to an entirely different rule, not the one that the individual is currently reading. For instance, in 21 NCAC 06N .0102, a reference in Paragraph (b) to Paragraph (a) of that same rule would not cite "21 NCAC 06N .0102(a), but instead "Paragraph (a) of this Rule."

The citation to federal regulations is to the Code of Federal Regulations, abbreviated "CFR" (*Ex.* 32 CFR 562.40). If the CFR does not contain needed material, cite to the appropriate volume and page of the Federal Register (*Ex.* 22 Fed. Reg. 9641 (1957)). Citations in existing rules to "C.F.R.", as opposed to "CFR", do not need to be changed.

CHAPTER 11. INCORPORATION BY REFERENCE

11.1. Incorporation by Reference

Pursuant to G.S. 150B-21.6, an agency may adopt by reference in its rules, without repeating the contents of the material in the rule if:

- (1) the agency is incorporating another rule or part of a rule the agency has already adopted; or
- (2) the agency is adopting a code or standard that another body has adopted. See G.S. 150B-21.6 for specific requirements.

The reference shall identify the adopted material by publication date and official citation. The agency shall designate in the text of the rule whether the incorporation includes subsequent amendments and editions of the referenced material. The reference shall also state where copies can be obtained and inspected. If the material can be accessed for free online, then provide a URL in the text of the rule, and state "may be accessed at [URL] at no charge."

Standard language for this incorporation is:

- (1) including subsequent amendments and editions: "[outside source] is incorporated by reference, including subsequent amendments and editions. This document may be accessed at [url] at [cost].
- (2) excluding subsequent amendments and editions: "[outside source] is incorporated by reference, excluding subsequent amendments and editions. This document may be accessed at [url] at [cost].

Do not incorporate a NC General Statute.

If incorporating material by reference that will affect a set of rules, please note that the agency only needs to incorporate the material using this method one time. The agency does not have to repeatedly incorporate the same material within the same rule or set of rules.

When possible during the drafting of new rules, incorporate the outside material by reference at the first mention of the material.

See Appendix 2 for incorporation by reference examples.

CHAPTER 12. CROSS-REFERENCES

12.1. Cross-References

Cross-references are used to point to another Rule or law that the agency is relying upon to set a standard.

Ex. Licensees shall submit the application, as set forth in Rule .0101 of this Section, and the fee, as set forth in G.S. 90-271, to the Board by July 1.

Use cross-references carefully; too many cross-references can make a rule difficult to read and understand. Include a cross-reference to clarify the meaning of a rule or to create limits or exceptions to the rule.

A cross-reference refers to another rule or section by its official citation. Recodification, amendment, transfer, repeal, adoption, and other revisions change the position of rules relative to one another; therefore, avoid "above," "below," "preceding," "following," and similar words of relative position in cross-references.

If the text of a rule contains a reference to a rule or statute, check the cited rule or statute and, if the citation has become inaccurate, either delete the reference or replace it with a correct reference. G.S. 150B-21.5 allows agencies to amend rules, under limited circumstances, without going through the notice, comment, or hearing requirements of rulemaking.

CHAPTER 13. DEFINITIONS

13.1. Purpose of Definitions

The purpose of a definition is to achieve clarity and consistency. Once a term is defined in a rule, use that term in all rules within the scope of the definition. A definition provision in a rule may serve the following purposes:

- (1) to define unfamiliar words or phrases;
- (2) to limit the meaning of familiar words or phrases; or
- (3) to shorten the length of a set of rules by shortening the number of words referring to a thing which is mentioned more than one time in the rules. For example, a reference to the Water Pollution Control System Operators Certification Commission may be shortened by defining "Commission" as the "Water Pollution Control System Operators Certification Commission."

13.2. Drafting Definitions

When drafting definitions observe the following:

- (1) If creating a definitions rule, place it at the beginning of a chapter, subchapter, or section. If a defined term will be used in only one rule, define the term where it is used the first time or in the first paragraph or item of the rule.
- (2) Avoid unnecessary definitions. If a term is defined in statute, simply cite the statute. Do not define a term that is not used within a rule or set of rules.
- (3) Do not use a definition if the word or phrase does not actually appear in the referenced rule or elsewhere in the agency's portion of the Code. This can happen during drafting or review of a rule that has definitions if all the usages of that word or phrase are deleted. A later amendment to a rule deleting a word or phrase can also lead to a definition elsewhere becoming obsolete.
- (4) Do not state or add substantive requirements in a definition. These requirements are the proper subject of a separate rule. Requirements buried in definitions are confusing and hard to locate.
- (5) Do not define a term using that term. Do not repeat any portion of the term being defined in its definition. The definition should state all the information necessary to comprehend the word or concept.

Ex. Avoid: A "definition" means the defining of a term.

Use instead: A "definition" is what is meant by a word or text.

- (6) In a rule that lists multiple definitions together, list all defined terms alphabetically. The text of every definition includes the defined term in quotation marks, followed by the word "means" and the definition. Do not substitute "includes" for "means."
- (7) Do not capitalize a defined term unless the term is a proper name, such as the name of a program.
- (8) Use defined terms to mean the same thing each time the word appears in the rules.
- (9) Lists should be numbered. When inserting a new definition, it should be placed in alphabetical order, with succeeding definitions renumbered accordingly. If adding a new definition (5) in a current rule that has definitions numbered (1) through (10), renumber old (5) through (10) as (6) through (11).

Ex.

- (1) "Action" means the adoption, amendment, or repeal of a rule.
- (2) "Adoption" means a new rule with a new rule number.
- (3) "Adoption by agency" means the date that an agency takes final action on a rule.
- (4) "Amendment" means an existing rule with a deletion, addition or other change to that existing rule.
- (5) "Citation" means a reference to a rule by Title, Chapter or Subchapter, and Section or Rule number.
- ~~(5)~~(6) "Code" means the North Carolina Administrative Code.
- ~~(6)~~(7) "Commission" means the Rules Review Commission.
- ~~(7)~~(8) "Form" means an original form template provided by the OAH and completed by the submitting agency.
- ~~(8)~~(9) "OAH" means the Codifier of Rules at the Office of Administrative Hearings.
- ~~(9)~~(10) "Original" means a copy of the document marked or stamped as such.
- ~~(10)~~(11) "Publication" includes publication on the OAH website or in the Register or entry into the Code.

Whenever changing the number of a defined term, be sure to search other rules for potential cross-references to the old definition numbering and change those. The agency may be able to change the cross-reference without notice or public comment using G.S. 150B-21.5. If amending an older rule with a list that is not alphabetized and a new definition is being added, the agency should re-sort the rule to alphabetize the list.

CHAPTER 14. LISTS

14.1 Lists

Whenever possible, and especially when listing more than a few requirements, use enumerated lists to clarify meaning and for ease of reading. Always include at least two items in an enumerated list.

For lists that, taken together, comprise a single complete sentence:

- punctuate the sentence fragment immediately preceding the listed items with a colon;
- capitalize only the first word of the sentence containing the list;
- use lowercase throughout the remainder of the sentence;
- end the second to last item with "and" or "or"; and
- punctuate each listed item with a semicolon except the last, which ends with a period.

- Ex.* (a) The petition shall contain the following:
- (1) for petitions to adopt or amend a rule, a draft of the proposed rule or amendment;
 - (2) a statement of the effect of the requested rule change; and
 - (3) the name and address of the petitioner.
- (b) The petition may contain the following:
- (1) the reason for the proposal;
 - (2) the effect of the new rule on existing rules; or
 - (3) any data supporting the rule proposal.

For lists in which each item is itself a complete sentence:

- The sentence immediately preceding the listed items is punctuated with a colon.
- The first word of each complete sentence is capitalized.
- The second to last item does not end with "and" or "or."
- Each sentence ends with a period.

- Ex.* (a) For any request for an Authorization Certificate, the Division or the delegated local authority shall review the entire project and make a finding of fact as to whether each of the following requirements have been met in support of a "no practical alternatives" determination:
- (1) The basic project purpose cannot practically be accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality.
 - (2) The use cannot practically be reduced in size or density, reconfigured or redesigned better to minimize disturbance, preserve aquatic life and habitat, and protect water quality.
 - (3) Best management practices are used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.

CHAPTER 15. WORD, PHRASE, AND TERM USAGE

The lists in this chapter have words and phrases that agencies should generally avoid. Please consult with OAH staff if the agency believes that the word or phrase is necessary.

15.1. Word, Phrase, and Term Usage

Try to avoid the following terms:

above (referring to another part of a rule or another rule, section, subchapter, or chapter)
adequate
aforesaid
aforementioned
and/or (use “and” or “or” instead)
applicable
appropriate
before or below (referring to another part of a rule or another rule, section, subchapter, or chapter)
clear, clearly
cognizance
foregoing
hereby, herein, hereinafter, hereinbefore, herewith
improper
necessary
notwithstanding
provided that
reasonable, reasonably, reasonably certain
said (as a substitute for it, he, she)
same (as a substitute for it, he, she)
satisfactory
such (as a substitute for the)
substantially
successful
to wit
under
unduly
whatsoever
whenever
whereas
wheresoever
whosoever
within named

Try to avoid pairs with like meanings:

any and all
authorized and empowered
by and with

by and under
each and all
each and every
final and conclusive
full and complete
full force and effect
null and void
order and direct
over and above
rules and regulations
sole and exclusive
terms and conditions
terms and limitations
type and kind
unless and until

Avoid inclusive word pairs. Use either the broad or the narrow term as required.

any and all
authorized and directed
desire and require
means and includes
necessary and desirable

Avoid expressions that may be more clearly stated.

Expression to avoid:

acceptable

accompanied by
by means of
can
cease
chairman
commence, institute
contiguous to
continual, continuously

deem
detailed

due to the fact
during such time as

Use instead:

words that explain how to know what is acceptable
with
by
may
stop
chair
start, begin
next to
words that explain what is meant, e.g, a time period
consider
words that explain what is meant (one person's detailed is another person's encyclopedia and a third person's cliffsnotes™)
because
while

| | |
|--|--|
| during the course of | during |
| each, each and every | a, an |
| earliest practicable date | (use the exact date if possible) |
| enter into a contract with | contract |
| especially | including |
| excessive number of | too many |
| finalize | end, finish, complete, or conclude |
| for the duration of | during |
| for the purpose of stating (or other verb) | to state (or other verb) |
| for the reason that | because |
| full and complete | full, complete |
| give consideration | consider |
| give recognition to | recognize |
| have knowledge of | know |
| have need of | need |
| have the effect of | effect |
| hereafter | after this...takes effect |
| immediate | words that explain what is meant, e.g, a time period |
| implement | carry out, put into effect |
| in close proximity to | close to |
| in compliance with request | as requested |
| including, but not limited to | including |
| indicate | state |
| in order to | to |
| in the event that | if |
| involve | cause or result in |
| is able to | can |
| is applicable | applies |
| is authorized to | may |
| located in | set forth in |
| make application | apply |
| make a determination | determine |
| make payment | pay |
| may be treated as | treated |
| necessary | required (or words that explain how to know what is necessary) |
| necessitate | require |
| no later than | not later than |
| none whatsoever | none |
| on or after July 1, 1987 | after June 30, 1987 |
| on or before June 30, 1987 | before July 1, 1987 |
| on the part of | by |
| period of time | period, time |
| permanent, permanently | words that explain what is meant |
| proper, properly | words that explain how to know what is |

routine, routinely

shall be considered to be
shall be deemed to be
stated in

substantial, substantially

sufficient, sufficiently

suitable, suitably

temporary, temporarily

timely

the manner in which

until such time as

upon

utilize, employ

verbal, verbally

verification

whether or not

proper

words that explain what is meant, e.g, a
specific frequency or time period

considered

deemed

set forth in

a percentage or other words that explain
how to know what is substantial

words that explain how to know what is
sufficient

words that explain how to know what is
suitable

words that explain what is meant, e.g, a time
period such as 30 days

(use the exact date if possible)

how

until

after, on

use

oral, orally

proof (unless a verified complaint)

whether

APPENDIX 1

Chapter 8 form-based rule examples:

21 NCAC 06N .0102 FORM BAR-1

(a) The Form BAR-1 shall be filed when one applies to open or manage a new barber shop. It requests the following:

- (1) the name and address of the shop;
- (2) the name, address, and certificate number of the manager;
- (3) the name and address of the shop owner;
- (4) the physical dimensions of the shop;
- (5) for a new or renovated shop, a copy of the certificate of occupancy;
- (6) the shop business hours;
- (7) the type of fixtures installed; and
- (8) the date the shop will be ready for inspection.

(b) The fee required by Rule .0101(a)(19) of this Section shall accompany this form.

(c) The Form BAR-1 shall be notarized.

History Note: Authority G.S. 86A-1; 86A-13; 86A-15; 86A-25; 150B-11;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. March 1, 1983;
Legislative Objection Lodged Eff. March 7, 1983;
Curative Amended Eff. April 6, 1983;
Amended Eff. May 1, 1989;
Readopted Eff. July 1, 2016.

21 NCAC 06N .0103 FORM BAR-2

(a) The Form BAR-2 shall be filed when there is a change of management at any barber shop. It requires the following:

- (1) the name, mailing address, and permit number of the barber shop before the change of management;
- (2) the name of the barber shop after the change of management, if the barber shop name changes;
- (3) the name, address, and certificate number of the new manager or managers;
- (4) if the barber shop was closed at the time the Form BAR-2 was submitted, the date of closure; and
- (5) the former manager's name and certificate number.

(b) The Form BAR-2 shall be notarized.

History Note: Authority G.S. 86A-1; 86A-25;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. March 1, 1983;
Legislative Objection Lodged Eff. March 7, 1983;
Curative Amended Eff. April 6, 1983;
Amended Eff. May 1, 1989;
Readopted Eff. October 1, 2016.

APPENDIX 2

Chapter 11 incorporation by reference rule example:

10A NCAC 15 .0117 INCORPORATION BY REFERENCE

(a) For the purpose of the rules in this Chapter, the following rules, standards and other requirements are hereby incorporated by reference including any subsequent amendments and editions:

- (1) Appendix A, Appendix B, Appendix C, and Appendix G to 10 CFR Parts 20.1001 - 20.2401;
- (2) The following parts of 10 CFR:
 - (A) Part 21;
 - (B) Parts 30.1, 30.4 and 30.10;
 - (C) Part 31, except 31.5;
 - (D) Parts 32.2, 32.13, 32.24, 32.110, 32.201, 32.210;
 - (E) Subpart J of 10 CFR Part 35, Parts 35.50, 35.51, 35.55, 35.57, 35.59, 35.190, 35.290, 35.390, 35.392, 35.394, 35.396, 35.432, 35.433, 35.457, 35.490, 35.491, 35.500, 35.590, Subpart H of 10 CFR Part 35, 35.1000;
 - (F) Part 36;
 - (G) Part 40, except 40.12(b), 40.23, 40.27, 40.28, 40.31 (j through m), 40.32(d) and portions of (e) pertaining to uranium enrichment, and 40.32(g), 40.33, 40.38, 40.41(d), 40.41(e)(1), 40.41(e)(3), 40.41(g), 40.41(h), 40.51(b)(6), 40.64, 40.66, 40.67;
 - (H) Part 61 except 61.16, 61.23(i) and (j);
 - (I) Part 70, except 70.1 (c), (d), (e), 70.13, 70.14, 70.20(a), (b), 70.21(a)(1), (c), (f through h), 70.22(b), (c), (f through n), 70.23 (a)(6 through 12), (b), 70.23a, 70.24, 70.25(a)(1), 70.31(c through e), 70.32(a)(1), (a)(4 through 7), (b)(1), (b)(3), (b)(4)(c through k), 70.37, 70.40, 70.42(b)(6), 70.44, 70.51(c), 70.52, 70.55(c), 70.59-62, 70.64, 70.65, 70.66, 70.72, 70.73, 70.74, 70.76, 70.82;
 - (J) Parts 71.0, 71.1, 71.2, 71.3, 71.13, 71.4, 71.5, 71.8, 71.14(a), 71.15, 71.17(a) through (e), 71.20, 71.21, 71.22, 71.23, 71.47, Subpart G of 10 CFR Part 71, 10 CFR 71.101(a) through (c)(1), 71.101(f), 71.101(g), 71.103, 71.105, 71.127, 71.129, 71.131, 71.133, 71.135, 71.137, Appendix A to 10 CFR Part 71; and
 - (K) Part 150 except 150.3 Definition: Foreign Obligations, 150.7, 150.10, 150.14, 150.15, 150.15a, 150.16-17, 150.17a, 150.19, 150.21.
- (3) 21 CFR Part 1010, 21 CFR Part 1020 and 21 CFR Part 1040;
- (4) 39 CFR Part 14 and 39 CFR Part 15;
- (5) Postal Service Manual (Domestic Mail Manual) Section 124.3 [incorporated by reference in 39 CFR Section 111.11];
- (6) 40 CFR Part 261;
- (7) 49 CFR Parts 100-189;
- (8) "Agreement Between the United States Atomic Energy Commission and the State of North Carolina for Discontinuance of Certain Commission Regulatory Authority and Responsibility within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended," signed July 21, 1964;

- (9) "Standards and Specifications for Geodetic Control Networks" (September 1984);
- (10) "Geometric Geodetic Survey Accuracy Standards and Specifications for Geodetic Surveys Using GPS Relative Positioning Techniques";
- (11) "Reference Man: Anatomical, Physiological and Metabolic Characteristics" (ICRP Publication No. 23) of the International Commission on Radiological Protection;
- (12) "10 CFR, Chapter 1, Commission Notices, Policy Statements, Agreement States, 46 FR 7540"; and
- (13) American National Standard N43.9 "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography".

(b) The rules, standards and other requirements incorporated by reference in Paragraph (a) of this Rule are available for inspection at the Agency at the address listed in Rule .0111 of this Section. Except as noted in the Subparagraphs of this Paragraph, copies of the rules, standards and other requirements incorporated by reference in Paragraph (a) of this Rule may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 at a cost as follows:

- (1) Three dollars (\$3.00) for the appendixes listed in Subparagraph (a)(1) of this Rule, available from the Agency;
- (2) Sixty-Seven dollars (\$67.00) for the regulations listed in Subparagraph (a)(2) of this Rule in a volume containing 10 CFR Parts 1-50;
- (3) Sixty-Four dollars (\$64.00) for the regulations listed in Subparagraph (a)(3) of this Rule in a volume containing 10 CFR Parts 51-199;
- (4) Sixty-Six dollars (\$66.00) for the regulations listed in Subparagraph (a)(4) of this Rule in a volume containing 21 CFR Parts 800-1299;
- (5) Forty-Seven dollars (\$47.00) for the regulations listed in Subparagraph (a)(5) of this Rule in a volume containing 39 CFR;
- (6) Thirty-six dollars (\$36.00) for the manual listed in Subparagraph (a)(6) of this Rule; http://pe.usps.gov/text/dmm300/dmm300_landing.htm;
- (7) Fifty-Six dollars (\$56.00) for the regulations listed in Subparagraph (a)(7) of this Rule in a volume containing 40 CFR Parts 260-299;
- (8) For the regulations listed in Subparagraph (a)(8) of this Rule:
 - (A) Seventy dollars (\$70.00) for a volume containing 49 CFR Parts 100-177; and
 - (B) Seventy dollars (\$70.00) for a volume containing 49 CFR Parts 178-199;
- (9) One dollar (\$1.00) for the agreement in Subparagraph (a)(9) of this Rule, available from the Agency;
- (10) Two dollars and eighty-five cents (\$2.85) for the standards and specifications in Subparagraph (a)(10) of this Rule, available from the National Geodetic Information Center, N/CG174, Rockwall Building, Room 24, National Geodetic Survey, NOAA, Rockville, MD 20852;
- (11) Two dollars and eighty-five cents (\$2.85) for the standards and specifications in Subparagraph (a)(11) of this Rule, available from the National Geodetic Information Center, NCG174, Rockwall Building, Room 24, National Geodetic Survey, NOAA, Rockville, MD 20852;
- (12) Two Hundred Eighteen dollars (\$218.00) for the ICRP Publication No. 23 in Subparagraph (a)(12) of this Rule, available from Pergamon Press, Inc., Maxwell House, Fairview Park, Elmsford, NY 10523;

- (13) Two dollars (\$2.00) for the document in Subparagraph (a)(13) of this Rule, available from the Agency; and
 - (14) Twenty-Five dollars plus five dollars shipping and handling (\$30.00) for the American National Standard N43.9 in Subparagraph (a)(14) of this Rule, available from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018, telephone number (212) 642-4900.
 - (15) The Code of Federal Regulations is available free of charge on the internet at <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.
- (c) Nothing in this incorporation by reference of 10 CFR Part 61 in Subparagraph (a)(3) of this Rule shall limit or affect the continued applicability of G.S. 104E-25(a) and (b).

Example of a rule referring to a previous incorporation by reference:

02 NCAC 09K .0102 GENERAL SAMPLING PROCEDURES

- (a) Raw milk for producer payment shall be sampled as set forth in the Standard Methods for the Examination of Dairy Products, incorporated by reference in 02 NCAC 09B .0116(j).
- (b) Milk sampling and hauling procedures shall be conducted as set forth in the Pasteurized Milk Ordinance Appendix B, Milk Sampling Hauling and Transportation, incorporated by reference in 02 NCAC 09G .2001.