

NORTH CAROLINA REGISTER

VOLUME 38 • ISSUE 03 • Pages 103 – 171

August 1, 2023

I. EXECUTIVE ORDERS	
Executive Order No. 282	103 – 104
II. PROPOSED RULES	
Environmental Quality, Department of	
Marine Fisheries Commission	105 – 144
Coastal Resources Commission	144 – 146
III. EMERGENCY RULES	
Health and Human Services, Department of	
Health Service Regulation, Division of	147 – 151
IV. APPROVED RULES	152 – 163
Health and Human Services, Department of	
Child Care Commission	
Justice, Department of	
Criminal Justice Education and Training Standards Commission	
Environmental Quality, Department of	
Environmental Management Commission	
Occupational Licensing Boards and Commissions	
Dental Examiners, Board of	
Nursing, Board of	
Optometry, Board of Examiners, in	
Real Estate Commission	
State Human Resources, Office of	
State Human Resources Commission	
V. RULES REVIEW COMMISSION	164 – 171

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NORTH CAROLINA REGISTER
Publication Schedule for January 2023 – December 2023

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 th day from publication in the Register
37:13	01/03/23	12/07/22	01/18/23	03/06/23	03/20/23	04/20/2023	05/01/23	09/30/23
37:14	01/17/23	12/20/22	02/01/23	03/20/23	04/20/23	05/18/2023	06/01/23	10/14/23
37:15	02/01/23	01/10/23	02/16/23	04/03/23	04/20/23	05/18/2023	06/01/23	10/29/23
37:16	02/15/23	01/25/23	03/02/23	04/17/23	04/20/23	05/18/2023	06/01/23	11/12/23
37:17	03/01/23	02/08/23	03/16/23	05/01/23	05/20/23	06/15/2023	07/01/23	11/26/23
37:18	03/15/23	02/22/23	03/30/23	05/15/23	05/20/23	06/15/2023	07/01/23	12/10/23
37:19	04/03/23	03/13/23	04/18/23	06/02/23	06/20/23	07/20/2023	08/01/23	12/29/23
37:20	04/17/23	03/24/23	05/02/23	06/16/23	06/20/23	07/20/2023	08/01/23	01/12/24
37:21	05/01/23	04/10/23	05/16/23	06/30/23	07/20/23	08/17/2023	09/01/23	01/26/24
37:22	05/15/23	04/24/23	05/30/23	07/14/23	07/20/23	08/17/2023	09/01/23	02/09/24
37:23	06/01/23	05/10/23	06/16/23	07/31/23	08/20/23	09/21/2023	10/01/23	02/26/24
37:24	06/15/23	05/24/23	06/30/23	08/14/23	08/20/23	09/21/2023	10/01/23	03/11/24
38:01	07/03/23	06/12/23	07/18/23	09/01/23	09/20/23	10/19/2023	11/01/23	03/29/24
38:02	07/17/23	06/23/23	08/01/23	09/15/23	09/20/23	10/19/2023	11/01/23	04/12/24
38:03	08/01/23	07/11/23	08/16/23	10/02/23	10/20/23	11/16/2023	12/01/23	04/27/24
38:04	08/15/23	07/25/23	08/30/23	10/16/23	10/20/23	11/16/2023	12/01/23	05/11/24
38:05	09/01/23	08/11/23	09/16/23	10/31/23	11/20/23	12/14/2023	01/01/24	05/28/24
38:06	09/15/23	08/24/23	09/30/23	11/14/23	11/20/23	12/14/2023	01/01/24	06/11/24
38:07	10/02/23	09/11/23	10/17/23	12/01/23	12/20/23	01/18/2024	02/01/24	06/28/24
38:08	10/16/23	09/25/23	10/31/23	12/15/23	12/20/23	01/18/2024	02/01/24	07/12/24
38:09	11/01/23	10/11/23	11/16/23	01/02/24	01/20/24	02/15/2024	03/01/24	07/28/24
38:10	11/15/23	10/24/23	11/30/23	01/16/24	01/20/24	02/15/2024	03/01/24	08/11/24
38:11	12/01/23	11/07/23	12/16/23	01/30/24	02/20/24	03/21/2024	04/01/24	08/27/24
38:12	12/15/23	11/22/23	12/30/23	02/13/24	02/20/24	03/21/2024	04/01/24	09/10/24

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

ROY COOPER
GOVERNOR

June 22, 2023

EXECUTIVE ORDER NO. 282

DISASTER DECLARATION FOR THE CITY OF CHERRYVILLE IN GASTON COUNTY

WHEREAS, the North Carolina Emergency Management Act, Chapter 166A of the North Carolina General Statutes, authorizes the issuance of a disaster declaration for an emergency area as defined in N.C. Gen. Stat. § 166A-19.3(7) that has been impacted by a Type I disaster as defined in N.C. Gen. Stat. § 166A-19.21(b); and

WHEREAS, on May 16, 2023, the City of Cherryville (hereinafter “the City” or “Cherryville”) in Gaston County, North Carolina experienced damages from straight-line winds and a supercell thunderstorm; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.22, the Mayor and City Council of Cherryville declared a state of emergency on May 17, 2023, and revised the state of emergency on June 12, 2023; and

WHEREAS, due to the impacts of the events, local and state emergency management officials conducted a joint preliminary damage assessment on May 17 and 19, 2023 for Cherryville; and

WHEREAS, Cherryville has incurred more than \$10,000 in disaster-related damages, the damages exceed one (1) percent of the City’s operating budget, Cherryville has a current Hazard Mitigation plan in place through Cleveland, Gaston, Lincoln Regional Plan and participates in the National Flood Insurance Program; and

WHEREAS, the President of the United States has not declared a Robert T. Stafford Disaster Relief and Emergency Assistance Act (hereinafter “Stafford Act”), as amended (42 U.S.C. § 5121-5206), declaration; and

WHEREAS, Cherryville would not qualify based on the preliminary damage assessment for Federal Public Assistance according to the requirements of 44 C.F.R. § 206.48; and

WHEREAS, pursuant to N.C. Gen. Stat. §§ 166A-19.21(a)-(b), the criteria for a Type I disaster are met if: (a) the Secretary of the North Carolina Department of Public Safety has provided a preliminary damage assessment to the undersigned and the General Assembly; (b) local state of emergency declarations have been issued pursuant to N.C. Gen. Stat. § 166A-19.22 in the areas impacted by the Type I disaster; (c) the preliminary damage assessment meets or exceeds the State infrastructure criteria set out in N.C. Gen. Stat. § 166A-19.41(b)(2)a; and (d) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared for Public Assistance; and

WHEREAS, the undersigned has determined that a Type I disaster, as defined in N.C. Gen. Stat. §166A-19.21(b)(1), exists in the State of North Carolina in the City of Cherryville in Gaston County, North Carolina; and

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

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

Section 1.

For purposes of this Executive Order only, the emergency area as defined in N.C. Gen. Stat. § 166A-19.3(7), is the City of Cherryville in Gaston County, North Carolina ("the Emergency Area").

Section 2.

Pursuant to N.C. Gen. Stat. § 166A-19.21(b)(1), a Type I disaster is hereby declared for the Emergency Area.

Section 3.

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

- a. Debris clearance.
- b. Emergency protective measures.

Section 4.

I hereby order that this declaration be (a) distributed to the news media and other organizations calculated to bring its contents to the attention of the public; (b) promptly filed with the Secretary of the North Carolina Department of Public Safety, the North Carolina Secretary of State, and the Gaston County Clerk of Superior Court; and (c) distributed to others as necessary to ensure proper implementation of this declaration.

Section 5.


Pursuant to N.C. Gen. Stat. § 166A-19.21(c)(1), this Type I disaster declaration shall expire sixty (60) days after issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of thirty (30) days each, not to exceed a total of 120 days from the date of first issuance.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 22nd day of June in the year of our Lord two thousand and twenty-three.



 Roy Cooper
 Governor

ATTEST:



 Elaine F. Marshall
 Secretary of State



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 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Marine Fisheries Commission intends to adopt the rules cited as 15A NCAC 18A .0437-.0439, amend the rules cited as 15A NCAC 03I .0101, .0113; 03K .0101, .0110, .0301; 03O .0101, .0109, .0112, .0201, .0301, .0501, .0503; 03R .0117; 18A .0302, .0901, .0906, repeal the rules cited as 15A NCAC 03K .0104, .0401, .0403, .0405; 18A .0704, readopt with substantive changes the rules cited as 15A NCAC 18A .0301, .0401-.0410, .0412-.0422, .0424, .0426-.0430, .0432-.0435, .0501, .0502, .0504, .0601-.0603, .0605-.0616, .0618-.0620, .0701, .0801, readopt without substantive changes the rule cited as 15A NCAC 18A .0423, repeal through readoption the rules cited as 15A NCAC 18A .0305, .0411, .0436, .0503, .0604, .0617, .0621, .0702, .0703, .0705-.0713 and .0802-.0806.

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 rules is available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.

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

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://deq.nc.gov/mfc-proposed-rules>

Proposed Effective Date: April 1, 2024 (15A NCAC 03K .0110; 03R .0117; 18A .0301, .0305, .0401-.0418, .0421-.0424, .0426, .0428-.0430, .0432-.0439, .0501-.0504, .0601-.0621, .0701-.0713, .0801-.0806)

Rules automatically subject to legislative review: S.L. 2019-198: 15A NCAC 03I .0113; 03K .0101, .0104, .0301, .0401, .0403, .0405; 03O .0101, .0109, .0112, .0301, .0501, .0503; 18A .0302, .0419, .0420, .0427; S.L. 2019-37: 15A NCAC 03O .0201

15A NCAC 03I .0101- Pending legislative review of 15A NCAC 03O .0201

15A NCAC 18A .0901, .0906 - Pending legislative review of 15A NCAC 03K .0104

Public Hearing:

Date: August 16, 2023

Time: 6:00 p.m.

Location:

WebEx Events meeting link:
<https://ncdenrits.webex.com/ncdenrits/j.php?MTID=mfc74bc5016579e7a09f2b2ef4c36727d>
Event number: 2425 745 2610
Event password: 1234
Event phone number: 1-415-655-0003
Listening station: Division of Marine Fisheries Central District Office, 5285 Highway 70 West, Morehead City, NC 28557

Reason for Proposed Action:

Shellfish Relay Program

- 15A NCAC 03I .0101 DEFINITIONS
- 15A NCAC 03K .0101 PROHIBITED ACTIVITIES IN POLLUTED SHELLFISH AREAS
- 15A NCAC 03K .0104 PERMITS FOR RELAYING SHELLFISH FROM POLLUTED AREAS
- 15A NCAC 03K .0301 SIZE AND HARVEST LIMITS OF CLAMS
- 15A NCAC 03K .0401 POLLUTED AREA PERMIT REQUIREMENTS
- 15A NCAC 03K .0403 DISPOSITION OF MEATS
- 15A NCAC 03K .0405 OYSTERS, HARD CLAMS, OR MUSSELS PROHIBITED
- 15A NCAC 03O .0201 STANDARDS AND REQUIREMENTS FOR SHELLFISH LEASES AND FRANCHISES
- 15A NCAC 03O .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS
- 15A NCAC 03O .0503 PERMIT CONDITIONS; SPECIFIC
- 15A NCAC 18A .0901 DEFINITIONS
- 15A NCAC 18A .0906 RESTRICTED AREAS

Proposed repeals (15A NCAC 03K .0104, .0401, .0403, .0405) and amendments (15A NCAC 03I .0101, 03K .0101, .0301, 03O .0201, .0501, .0503, 18A .0901, .0906) make conforming changes to remove outdated shellfish relay requirements to reflect the discontinuation of the N.C. Division of Marine Fisheries Shellfish Relay Program. Additional proposed amendments to 15A NCAC 03K .0101 clarify exceptions for activities allowed in polluted shellfish areas that require an Aquaculture Seed Transport Permit, Depuration Permit, or Shellfish Relocation Permit. Additional proposed amendments to 15A NCAC 03I .0101 move three defined terms to 15A NCAC 03O .0201 and update them consistent with Session Law 2019-37, Section 3, to apply to that section of rules about shellfish leases and franchises. Proposed amendments to Paragraphs (c) through (h) of 15A NCAC 03O .0201 incorporate and conform the shellfish production and planting requirements from Session Law 2019-37 for shellfish leases granted before July 1, 2019 and for shellfish leases granted on or after this date; proposed amendments to Paragraph (i) require shellfish lease or franchise holders to meet the listed production, marking, and permit requirements for current

shellfish leases before being eligible for additional shellfish lease acreage. Doing so would help ensure more efficient and meaningful use of the public trust bottom by preventing persons not in good standing from precluding potential applicants from applying for a shellfish lease in affected areas. A technical change is proposed to 15A NCAC 03I .0101(5)(k) to remove Elizabeth City from the definition of "Office of the Division" since the license office there is permanently closed; the remaining offices are also proposed to be listed in geographic order from south to north. Additional minor changes to this group of rules correct cross-references to other rules.

Data Collection and Harassment Prevention for the Conservation of Marine and Estuarine Resources

15A NCAC 03I .0113 DATA COLLECTION

Proposed amendments set requirements to address harassment by any licensee or person engaged in regulated activity under Chapter 113, Subchapter IV, of the General Statutes (e.g., fishing) of N.C. Division of Marine Fisheries employees that occurs in the process of obtaining data for the conservation of marine and estuarine resources, and data for the protection of public health related to the public health programs that fall under the authority of the N.C. Marine Fisheries Commission. Additional amendments provide the types of data that may be collected. The amendments support the importance of participation by persons engaged in regulated fishing activity in division data collection and provide a safer working environment for division employees.

15A NCAC 03O .0101 PROCEDURES AND REQUIREMENTS TO OBTAIN LICENSES, ENDORSEMENTS, AND COMMERCIAL FISHING VESSEL REGISTRATIONS

15A NCAC 03O .0109 ASSIGNMENT OF STANDARD COMMERCIAL FISHING LICENSE

15A NCAC 03O .0112 FOR-HIRE LICENSE REQUIREMENTS

15A NCAC 03O .0301 ELIGIBILITY AND REQUIREMENTS FOR RECREATIONAL COMMERCIAL GEAR LICENSES

Proposed amendments make it unlawful for a holder of a Standard Commercial Fishing License or Retired Standard Commercial Fishing License (15A NCAC 03O .0101), an assignee of a Standard Commercial Fishing License (15A NCAC 03O .0109), a person involved in regulated activity related to for-hire fishing (15A NCAC 03O .0112), and a holder of a Recreational Commercial Gear License (15A NCAC 03O .0301) to fail to participate in and provide accurate information for data collection in accordance with 15A NCAC 03I .0113 and for survey programs administered by the N.C. Division of Marine Fisheries. The amendments support the importance of participation by persons engaged in regulated fishing activity in division data collection for the conservation of marine and estuarine resources and the protection of public health related to the public health programs that fall under the authority of the N.C. Marine Fisheries Commission, and also provide a safer working environment for division employees.

Oyster Sanctuary Changes

15A NCAC 03R .0117 OYSTER SANCTUARIES

Proposed amendments add the boundaries of the two newest oyster sanctuaries (Cedar Island and Gull Shoal) and correct boundaries for three other oyster sanctuaries (Pea Island, Raccoon Island, and Swan Island) where recently published coordinates were found to be inconsistent with permitted and marked reef boundaries. These changes will protect oysters from bottom disturbing gear and safeguard boaters navigating the sanctuaries. Coordinates for three sanctuaries are proposed to be reorganized to standardize the cardinal directions, for consistency; there are no changes to the overall sanctuary, nor the coordinate pairs themselves.

15A NCAC 18A Readoptions

15A NCAC 03K .0110, 18A .0301, .0302, .0305, .0401-.0424, .0426-.0430, .0432-.0439, .0501-.0504, .0601-.0621, .0701-.0713, .0801-.0806

North Carolina G.S. 150B-21.3A requires State agencies to review their existing rules every 10 years to determine which rules are still necessary, and to either readopt or repeal each rule as appropriate. This group of 85 rules in 15A NCAC 03 and 18A is proposed for the readoption of one rule with no changes, readoption of 55 rules with amendments, repeal through readoption of 23 rules, amendment of two rules, adoption of three rules, and the repeal of one rule pursuant to this requirement. Proposed changes would help ensure that North Carolina remains in full compliance with National Shellfish Sanitation Program requirements, allow the N.C. Division of Marine Fisheries to increase clarity of rules for stakeholders, and allow the division to efficiently support and enforce rules for the protection of public health related to the consumption of shellfish.

Comments may be submitted to: Catherine Blum, P.O. Box 769, Morehead City, NC 28557 (Written comments may also be submitted via an online form available at <https://deq.nc.gov/mfc-proposed-rules>)

Comment period ends: October 2, 2023

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 a written objection to the Rules Review Commission. 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 letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

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 03 - MARINE FISHERIES

SUBCHAPTER 03I – GENERAL RULES

SECTION .0100 – GENERAL RULES

15A NCAC 03I .0101 DEFINITIONS

All definitions set out in G.S. 113, Subchapter IV and the following additional terms shall apply to this Chapter:

- (1) enforcement and management terms:
 - (a) "Commercial quota" means total quantity of fish allocated for harvest by commercial fishing operations.
 - (b) "Educational institution" means a college, university, or community college accredited by an accrediting agency recognized by the U.S. Department of Education; an Environmental Education Center certified by the N.C. Department of Environmental Quality Office of Environmental Education and Public Affairs; or a zoo or aquarium certified by the Association of Zoos and Aquariums.
 - (c) "Internal Coastal Waters" or "Internal Waters" means all Coastal Fishing Waters except the Atlantic Ocean.
 - (d) length of finfish:
 - (i) "Curved fork length" means a length determined by measuring along a line tracing the contour of the body from the tip of the upper jaw to the middle of the fork in the caudal (tail) fin.
 - (ii) "Fork length" means a length determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the middle of the fork in the caudal (tail) fin, except that fork length for billfish is measured from the tip of the lower jaw to the middle of the fork of the caudal (tail) fin.
 - (iii) "Pectoral fin curved fork length" means a length of a beheaded fish from the dorsal insertion of the pectoral fin to the fork of the tail measured along the contour of the body in a line that runs along the

- (iv) top of the pectoral fin and the top of the caudal keel. "Total length" means a length determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the tip of the compressed caudal (tail) fin.
- (e) "Nongovernmental conservation organization" means an organization whose primary mission is the conservation of natural resources.
- (f) "Polluted" means any shellfish growing waters as defined in 15A NCAC 18A .0901:
 - (i) that are contaminated with fecal material, pathogenic microorganisms, poisonous or deleterious substances, or marine biotoxins that render the consumption of shellfish from those growing waters hazardous;
 - (ii) that have been determined through a sanitary survey as defined in 15A NCAC 18A .0901 to be adjacent to a sewage treatment plant outfall or other point source outfall with public health significance;
 - (iii) that have been determined through a sanitary survey as defined in 15A NCAC 18A .0901 to be in or adjacent to a marina;
 - (iv) that have been determined through a sanitary survey as defined in 15A NCAC 18A .0901 to be impacted by other potential sources of pollution that render the consumption of shellfish from those growing waters hazardous; or
 - (v) where the Division of Marine Fisheries is unable to complete the monitoring necessary to determine the presence of contamination or potential pollution sources.
- (g) "Recreational possession limit" means restrictions on size, quantity, season, time period, area, means, and methods where take or possession is for a recreational purpose.
- (h) "Recreational quota" means total quantity of fish allocated for harvest for a recreational purpose.

- (i) "Regular closed oyster season" means March 31 through October 15, unless amended by the Fisheries Director through proclamation authority.
 - (j) "Scientific institution" means one of the following entities:
 - (i) an educational institution as defined in this Item;
 - (ii) a state or federal agency charged with the management of marine or estuarine resources; or
 - (iii) a professional organization or secondary school working under the direction of, or in compliance with mandates from, the entities listed in Sub-items (j)(i) and (ii) of this Item.
- (2) fishing activities:
- (a) "Aquaculture operation" means an operation that produces artificially propagated stocks of marine or estuarine resources, or other non-native species that may thrive if introduced into Coastal Fishing Waters, or obtains such stocks from permitted sources for the purpose of rearing on private bottom (with or without the superadjacent water column) or in a controlled environment. A controlled environment provides and maintains throughout the rearing process one or more of the following:
 - (i) food;
 - (ii) predator protection;
 - (iii) salinity;
 - (iv) temperature controls; or
 - (v) water circulation, utilizing technology not found in the natural environment.
 - (b) "Attended" means being in a vessel, in the water or on the shore, and immediately available to work the gear and be within 100 yards of any gear in use by that person at all times. Attended does not include being in a building or structure.
 - (c) "Blue crab shedding" means the process whereby a blue crab emerges soft from its former hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a controlled environment. A controlled environment provides and maintains throughout the shedding process one or more of the following:
 - (i) food;
 - (ii) predator protection;
 - (iii) salinity;
 - (iv) temperature controls; or
 - (v) water circulation, utilizing technology not found in the natural environment.
 - (d) "Depuration" means mechanical purification or the removal of adulteration from live oysters, clams, or mussels by any artificially controlled means.
 - (e) "Long haul operation" means fishing a seine towed between two vessels.
 - (f) "Peeler crab" means a blue crab that has a soft shell developing under a hard shell and having a white, pink, or red-line or rim on the outer edge of the back fin or flipper.
 - (g) "Possess" means any actual or constructive holding whether under claim of ownership or not.
 - (h) "Recreational purpose" means a fishing activity that is not a commercial fishing operation as defined in G.S. 113-168.
 - ~~(i) "Shellfish marketing from leases and franchises" means the harvest of oysters, clams, scallops, or mussels from privately held shellfish bottoms and lawful sale of those shellfish to the public at large or to a licensed shellfish dealer.~~
 - ~~(j) "Shellfish planting effort on leases and franchises" means the process of obtaining authorized cultch materials, seed shellfish, and shellfish stocks from polluted waters and the placement of those materials on privately held shellfish bottoms for increased shellfish production.~~
 - ~~(k) "Shellfish production on leases and franchises" means:

 - (i) the culture of oysters, clams, scallops, or mussels on shellfish leases and franchises from a sublegal harvest size to a marketable size.
 - (ii) the transplanting (relay) of oysters, clams, scallops, or mussels from areas closed due to pollution to shellfish leases and franchises in open~~

- ~~waters and the natural cleansing of those shellfish.~~
- (4)(i) "Swipe net operations" means fishing a seine towed by one vessel.
 - ~~(m)(j)~~ "Transport" means to ship, carry, or cause to be carried or moved by public or private carrier by land, sea, or air.
 - ~~(n)(k)~~ "Use" means to employ, set, operate, or permit to be operated or employed.
- (3) gear:
- (a) "Bunt net" means the last encircling net of a long haul or swipe net operation constructed of small mesh webbing. The bunt net is used to form a pen or pound from which the catch is dipped or bailed.
 - (b) "Channel net" means a net used to take shrimp that is anchored or attached to the bottom at both ends or with one end anchored or attached to the bottom and the other end attached to a vessel.
 - (c) "Commercial fishing equipment or gear" means all fishing equipment used in Coastal Fishing Waters except:
 - (i) cast nets;
 - (ii) collapsible crab traps, a trap used for taking crabs with the largest open dimension no larger than 18 inches and that by design is collapsed at all times when in the water, except when it is being retrieved from or lowered to the bottom;
 - (iii) dip nets or scoops having a handle not more than eight feet in length and a hoop or frame to which the net is attached not exceeding 60 inches along the perimeter;
 - (iv) gigs or other pointed implements that are propelled by hand, whether or not the implement remains in the hand;
 - (v) hand operated rakes no more than 12 inches wide and weighing no more than six pounds and hand operated tongs;
 - (vi) hook and line, and bait and line equipment other than multiple-hook or multiple-bait trotline;
 - (vii) landing nets used to assist in taking fish when the initial and primary method of taking is by the use of hook and line;
 - (d) "Corkline" means the support structure a net is attached to that is nearest to the water surface when in use. Corkline length is measured from the outer most mesh knot at one end of the corkline following along the line to the outer most mesh knot at the opposite end of the corkline.
 - (e) "Dredge" means a device towed by engine power consisting of a frame, tooth bar or smooth bar, and catchbag used in the harvest of oysters, clams, crabs, scallops, or conchs.
 - (f) "Fixed or stationary net" means a net anchored or staked to the bottom, or some structure attached to the bottom, at both ends of the net.
 - (g) "Fyke net" means an entrapment net supported by a series of internal or external hoops or frames, with one or more lead or leaders that guide fish to the net mouth. The net has one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap fish is completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).
 - (h) "Gill net" means a net set vertically in the water to capture fish by entanglement of the gills in its mesh as a result of net design, construction, mesh length, webbing diameter, or method in which it is used.
 - (i) "Headrope" means the support structure for the mesh or webbing of a trawl that is nearest to the water surface when in use. Headrope length is measured from the outer most mesh knot at one end of the headrope following along the line to the outer most mesh knot at the opposite end of the headrope.
 - (j) "Hoop net" means an entrapment net supported by a series of internal or
 - (viii) minnow traps when no more than two are in use;
 - (ix) seines less than 30 feet in length;
 - (x) spears, Hawaiian slings, or similar devices that propel pointed implements by mechanical means, including elastic tubing or bands, pressurized gas, or similar means.

- external hoops or frames. The net has one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap the fish is completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).
- (k) "Lead" means a mesh or webbing structure consisting of nylon, monofilament, plastic, wire, or similar material set vertically in the water and held in place by stakes or anchors to guide fish into an enclosure. Lead length is measured from the outer most end of the lead along the top or bottom line, whichever is longer, to the opposite end of the lead.
 - (l) "Mechanical methods for clamming" means dredges, hydraulic clam dredges, stick rakes, and other rakes when towed by engine power, patent tongs, kicking with propellers or deflector plates with or without trawls, and any other method that utilizes mechanical means to harvest clams.
 - (m) "Mechanical methods for oystering" means dredges, patent tongs, stick rakes, and other rakes when towed by engine power, and any other method that utilizes mechanical means to harvest oysters.
 - (n) "Mesh length" means the distance from the inside of one knot to the outside of the opposite knot, when the net is stretched hand-tight in a manner that closes the mesh opening.
 - (o) "Pound net set" means a fish trap consisting of a holding pen, one or more enclosures, lead or leaders, and stakes or anchors used to support the trap. The holding pen, enclosures, and lead(s) are not conical, nor are they supported by hoops or frames.
 - (p) "Purse gill net" means any gill net used to encircle fish when the net is closed by the use of a purse line through rings located along the top or bottom line or elsewhere on such net.
 - (q) "Seine" means a net set vertically in the water and pulled by hand or power to capture fish by encirclement and confining fish within itself or against another net, the shore or bank as a result of net design, construction, mesh length, webbing diameter, or method in which it is used.
- (4) "Fish habitat areas" means the estuarine and marine areas that support juvenile and adult populations of fish species, as well as forage species utilized in the food chain. Fish habitats as used in this definition, are vital for portions of the entire life cycle, including the early growth and development of fish species. Fish habitats in all Coastal Fishing Waters, as determined through marine and estuarine survey sampling, include:
 - (a) "Anadromous fish nursery areas" means those areas in the riverine and estuarine systems utilized by post-larval and later juvenile anadromous fish.
 - (b) "Anadromous fish spawning areas" means those areas where evidence of spawning of anadromous fish has been documented in Division sampling records through direct observation of spawning, capture of running ripe females, or capture of eggs or early larvae.
 - (c) "Coral" means:
 - (i) fire corals and hydrocorals (Class Hydrozoa);
 - (ii) stony corals and black corals (Class Anthozoa, Subclass Scleractinia); or
 - (iii) Octocorals; Gorgonian corals (Class Anthozoa, Subclass Octocorallia), which include sea fans (*Gorgonia* sp.), sea whips (*Leptogorgia* sp. and *Lophogorgia* sp.), and sea pansies (*Renilla* sp.).
 - (d) "Intertidal oyster bed" means a formation, regardless of size or shape, formed of shell and live oysters of varying density.
 - (e) "Live rock" means living marine organisms or an assemblage thereof attached to a hard substrate, excluding mollusk shells, but including dead coral or rock. Living marine organisms associated with hard bottoms, banks, reefs, and live rock include:
 - (i) Coralline algae (Division Rhodophyta);
 - (ii) *Acetabularia* sp., mermaid's fan and cups (*Udotea* sp.), watercress (*Halimeda* sp.), green feather, green grape algae (*Caulerpa* sp.)(Division Chlorophyta);
 - (iii) *Sargassum* sp., *Dictyopteris* sp., *Zonaria* sp. (Division Phaeophyta);

- (iv) sponges (Phylum Porifera);
 - (v) hard and soft corals, sea anemones (Phylum Cnidaria), including fire corals (Class Hydrozoa), and Gorgonians, whip corals, sea pansies, anemones, Solengastrea (Class Anthozoa);
 - (vi) Bryozoans (Phylum Bryozoa);
 - (vii) tube worms (Phylum Annelida), fan worms (Sabellidae), feather duster and Christmas treeworms (Serpulidae), and sand castle worms (Sabellaridae);
 - (viii) mussel banks (Phylum Mollusca: Gastropoda); and
 - (ix) acorn barnacles (Arthropoda: Crustacea: Semibalanus sp.).
- (f) "Nursery areas" means areas that for reasons such as food, cover, bottom type, salinity, temperature, and other factors, young finfish and crustaceans spend the major portion of their initial growing season. Primary nursery areas are those areas in the estuarine system where initial post-larval development takes place. These are areas where populations are uniformly early juveniles. Secondary nursery areas are those areas in the estuarine system where later juvenile development takes place. Populations are composed of developing sub-adults of similar size that have migrated from an upstream primary nursery area to the secondary nursery area located in the middle portion of the estuarine system.
- (g) "Shellfish producing habitats" means historic or existing areas that shellfish, such as clams, oysters, scallops, mussels, and whelks use to reproduce and survive because of such favorable conditions as bottom type, salinity, currents, cover, and cultch. Included are those shellfish producing areas closed to shellfish harvest due to pollution.
- (h) "Strategic Habitat Areas" means locations of individual fish habitats or systems of habitats that provide exceptional habitat functions or that are particularly at risk due to imminent threats, vulnerability, or rarity.
- (i) "Submerged aquatic vegetation (SAV) habitat" means submerged lands that:
- (i) are vegetated with one or more species of submerged aquatic vegetation including bushy pondweed or southern naiad (*Najas guadalupensis*), coontail (*Ceratophyllum demersum*), eelgrass (*Zostera marina*), horned pondweed (*Zannichellia palustris*), naiads (*Najas* spp.), redhead grass (*Potamogeton perfoliatus*), sago pondweed (*Stuckenia pectinata*, formerly *Potamogeton pectinatus*), shoalgrass (*Halodule wrightii*), slender pondweed (*Potamogeton pusillus*), water stargrass (*Heteranthera dubia*), water starwort (*Callitriche heterophylla*), waterweeds (*Elodea* spp.), widgeongrass (*Ruppia maritima*), and wild celery (*Vallisneria americana*). These areas may be identified by the presence of above-ground leaves, below-ground rhizomes, or reproductive structures associated with one or more SAV species and include the sediment within these areas; or
 - (ii) have been vegetated by one or more of the species identified in Sub-item (4)(i)(i) of this Rule within the past 10 annual growing seasons and that meet the average physical requirements of water depth (six feet or less), average light availability (secchi depth of one foot or more), and limited wave exposure that characterize the environment suitable for growth of SAV. The past presence of SAV may be demonstrated by aerial photography, SAV survey, map, or other documentation. An extension of the past 10 annual growing seasons criteria may be considered when average environmental conditions are altered by drought, rainfall, or storm force winds.

This habitat occurs in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In defining SAV habitat, the Marine Fisheries Commission recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not intend the submerged aquatic vegetation definition, or this Rule or 15A NCAC 03K .0304 and .0404, to apply to or conflict with the non-development control activities authorized by that Act.

- (5) licenses, permits, leases and franchises, and record keeping:
 - (a) "Assignment" means temporary transferal to another person of privileges under a license for which assignment is permitted. The person assigning the license delegates the privileges permitted under the license to be exercised by the assignee, but retains the power to revoke the assignment at any time, and is still the responsible party for the license.
 - (b) "Designee" means any person who is under the direct control of the permittee or who is employed by or under contract to the permittee for the purposes authorized by the permit.
 - (c) "For hire vessel", as defined by G.S. 113-174, means when the vessel is fishing in State waters or when the vessel originates from or returns to a North Carolina port.
 - (d) "Franchise" means a franchise recognized pursuant to G.S. 113-206.
 - (e) "Holder" means a person who has been lawfully issued in the person's name a license, permit, franchise, lease, or assignment.
 - (f) "Land" means:
 - (i) for commercial fishing operations, when fish reach the shore or a structure connected to the shore.
 - (ii) for purposes of trip tickets, when fish reach a licensed seafood dealer, or where the fisherman is the dealer, when fish reach the shore or a structure connected to the shore.
 - (iii) for recreational fishing operations, when fish are retained in possession by the fisherman.
 - (g) "Licensee" means any person holding a valid license from the Department to

take or deal in marine fisheries ~~resources~~ resources, except as otherwise defined in 15A NCAC 03O .0109.

- (h) "Logbook" means paper forms provided by the Division and electronic data files generated from software provided by the Division for the reporting of fisheries statistics by persons engaged in commercial or recreational fishing or for-hire operators.
- (i) "Master" means captain or operator of a vessel or one who commands and has control, authority, or power over a vessel.
- (j) "New fish dealer" means any fish dealer making application for a fish dealer license who did not possess a valid dealer license for the previous license year in that name. For purposes of license issuance, adding new categories to an existing fish dealers license does not constitute a new dealer.
- (k) "Office of the Division" means physical locations of the Division conducting license and permit transactions in Wilmington, Morehead City, Washington, Morehead City, Roanoke Island, and Elizabeth City, and Roanoke Island, North Carolina. Other businesses or entities designated by the Secretary to issue Recreational Commercial Gear Licenses or Coastal Recreational Fishing Licenses are not considered Offices of the Division.
- (l) "Responsible party" means the person who coordinates, supervises, or otherwise directs operations of a business entity, such as a corporate officer or executive level supervisor of business operations, and the person responsible for use of the issued license in compliance with applicable statutes and rules.
- (m) "Tournament organizer" means the person who coordinates, supervises, or otherwise directs a recreational fishing tournament and is the holder of the Recreational Fishing Tournament License.
- (n) "Transaction" means an act of doing business such that fish are sold, offered for sale, exchanged, bartered, distributed, or landed.
- (o) "Transfer" means permanent transferal to another person of privileges under a license for which

transfer is permitted. The person transferring the license retains no rights or interest under the license transferred.

- (p) "Trip ticket" means paper forms provided by the Division and electronic data files generated from software provided by the Division for the reporting of fisheries statistics by licensed fish dealers.

Authority G.S. 113-134; 113-174; 113-182; 143B-289.52.

15A NCAC 03I .0113 BIOLOGICAL SAMPLING DATA COLLECTION

(a) For the purpose of this Rule, "responsible person" shall mean any licensee or person engaged in regulated activity under Chapter 113, Subchapter IV, of the General Statutes.

(b) It shall be unlawful for any licensee under Chapter 113, Subchapter IV, of the General Statutes responsible person to refuse to allow the Fisheries Director or the Fisheries Director's agents to obtain biological data, harvest information, or other statistical data necessary or useful to the conservation and management of marine and estuarine resources from for the taking of fish in the licensee's possession by the responsible person. Such data shall include, but is not limited to, may include:

- (1) species identification, identification;
(2) species length, length;
(3) species weight, weight;
(4) species age, age;
(5) species sex, sex;
(6) number, number of species;
(7) quantity of catch;
(8) area of catch, catch;
(9) harvest method, and of quantity catch, method;
(10) gear and gear specifications;
(11) target species;
(12) number of hours and days the responsible person spent fishing;
(13) state, county, and zip code of responsible person;
(14) number of individuals fishing with responsible person; and
(15) social and economic data, including fishing expenditures.

(c) It shall be unlawful for any responsible person to refuse to allow the Fisheries Director or the Fisheries Director's agents to obtain data for the protection of public health related to the public health programs that fall under the authority of the Marine Fisheries Commission.

(d) It shall be unlawful for any responsible person to harass the Fisheries Director or the Fisheries Director's agents in any way related to the requirements of Paragraphs (b) and (c) of this Rule, including verbal or physical harassment or sexual harassment. For the purpose of this Rule, "harassment" shall be defined consistent with 50 CFR 600.725(o), (t), and (u), including to:

- (1) harass;
(2) sexually harass, including making sexual connotations;

- (3) oppose;
(4) impede;
(5) intimidate;
(6) interfere;
(7) prohibit or bar by command, impediment, threat, coercion, interference, or refusal of reasonable assistance, the Fisheries Director or the Fisheries Director's agents from conducting his or her duties; or
(8) tamper with or destroy samples or equipment;
50 CFR 600.725(o), (t), and (u), is incorporated by reference except as provided in Paragraph (e) of this Rule, including subsequent amendments and editions. A copy of the reference material can be found at https://www.ecfr.gov/current/title-50/chapter-VI/part-600/subpart-H/section-600.725, at no cost.
(e) Exceptions to 50 CFR 600.725(t) include "assault".

Authority G.S. 113-134; 113-170.3; 113-174.1; 113-181; 113-182; 113-221.2; 143B-289.52.

SUBCHAPTER 03K - OYSTERS, CLAMS, SCALLOPS, AND MUSSELS

SECTION .0100 – SHELLFISH, GENERAL

15A NCAC 03K .0101 PROHIBITED ACTIVITIES IN POLLUTED SHELLFISH AREAS

(a) It shall be unlawful to possess, sell, or take oysters, clams, or mussels from areas that have been designated as polluted by proclamation by the Fisheries Director except as provided in Rules .0103, .0104, .0107, and .0401 of this Subchapter, except in accordance with:

- (1) a Depuration Permit as set forth in Rule .0107 of this Section;
(2) an Aquaculture Seed Transplant Permit; or
(3) a Shellfish Relocation Permit. The Fisheries Director may, by proclamation, designate sites for relocation where shellfish would otherwise be destroyed due to maintenance dredging, construction, or other development activities.

Individuals shall obtain an Aquaculture Seed Transplant Permit from the Secretary, or a Depuration Permit or a Shellfish Relocation Permit from the Fisheries Director setting forth the time, area, and method by which such shellfish may be taken. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.

(b) The Fisheries Director shall issue shellfish polluted area proclamations if criteria for approved shellfish harvest areas in accordance with 15A NCAC 18A .0900 have not been met. The Fisheries Director may reopen any such closed area by proclamation if criteria for approved shellfish harvest areas in accordance with 15A NCAC 18A .0900 have been met. Copies of these proclamations and maps of these areas are available upon request at the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557; 800-682-2632 or 252-726-7021.

(c) The Fisheries Director may, by proclamation, close areas to the taking of oysters, clams, scallops, and mussels to protect the shellfish populations for management purposes or for protection

of public health related to the public health programs that fall under the authority of the Marine Fisheries Commission not specified in ~~Paragraph (a)~~ Paragraphs (a) or (b) of this Rule.

~~(c)~~(d) It shall be unlawful to possess or sell oysters, clams, or mussels taken from polluted waters outside North Carolina, except as provided in 15A NCAC 03I .0104.

Authority G.S. 113-134; 113-168.5; 113-169.2; 113-182; 113-203; 113-221.1; 113-221.2; 143B-289.52.

15A NCAC 03K .0104 PERMITS FOR RELAYING SHELLFISH FROM POLLUTED AREAS

Authority G.S. 113-134; 113-182; 113-203; 113-221.1; 143B-289.52.

15A NCAC 03K .0110 PUBLIC HEALTH AND CONTROL OF OYSTERS, CLAMS, SCALLOPS, AND MUSSELS

(a) The National Shellfish Sanitation Program Guide for Control of Molluscan Shellfish, Section II: Model Ordinance (Model Ordinance) includes requirements for the sale or distribution of shellfish from approved areas or shellstock shellfish dealers, as defined in 15A NCAC 18A .0301, and to ensure that shellfish have not been adulterated or mislabeled misbranded during cultivation, harvesting, processing, storage, or transport. To protect public health, the Fisheries Director may, by proclamation, impose requirements of the Model Ordinance as set forth in Paragraph (b) of this Rule on any of the following:

- (1) the cultivation, distribution, harvesting, processing, sale, storage, or transport ~~of~~ of:
 - (A) oysters;
 - (B) clams;
 - (C) scallops; ~~or~~ and
 - (D) mussels;
- (2) areas used to store shellfish;
- (3) means and methods to take shellfish;
- (4) vessels used to take shellfish; ~~or~~ and
- (5) shellstock conveyances as defined in 15A NCAC 18A .0301.

(b) Proclamations issued under this Rule may impose any of the following requirements:

- (1) specify time and temperature controls;
- (2) specify sanitation requirements to prevent a food safety hazard, as defined in 15A NCAC 18A .0301, or cross-contamination or adulteration of shellfish;
- (3) specify sanitation control procedures set forth in 21 ~~Code of Federal Regulations (CFR) Part~~ CFR 123.11;
- (4) specify Hazard Analysis Critical Control Point (HACCP) requirements set forth in 21 ~~CFR Part~~ CFR:
 - (A) 123.3 Definitions;
 - (B) 123.6 HACCP Plan;
 - (C) 123.7 Corrective Actions;
 - (D) 123.8 Verification;
 - (E) 123.9 Records; and
 - (F) 123.28 Source Controls;

- (5) specify tagging and labeling requirements;
- (6) implement the National Shellfish Sanitation Program's training requirements for shellfish harvesters and certified shellfish dealers;
- (7) require sales records and collection and submission of information to provide a mechanism for tracing shellfish product back to the water body of origin; and
- (8) require product recall and specify recall procedures.

21 CFR 123.3, 123.6-9, 123.11, and 123.28 are hereby incorporated by reference, including subsequent amendments and editions. A copy of the reference materials material can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=f4cdd666e75f54ceda1d9938f4cdd9ab&mc=true&tpl=/ecfr/browse/Title21/21tab_02.tpl, free of charge. <https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-123?toc=1>, at no cost.

(c) Proclamations issued under this Rule shall suspend appropriate rules or portions of rules under the authority of the Marine Fisheries Commission as specified in the proclamation. The provisions of 15A NCAC 03I .0102 terminating suspension of a rule pending the next Marine Fisheries Commission meeting and requiring review by the Marine Fisheries Commission at the next meeting shall not apply to proclamations issued under this Rule.

Authority G.S. 113-134; 113-182; 113-201; 113-221.1; 113-221.2; 143B-289.52.

SECTION .0300 - HARD CLAMS (MERCENARIA)

15A NCAC 03K .0301 SIZE AND HARVEST LIMITS OF CLAMS

(a) It shall be unlawful to take, land, or possess aboard a vessel more than 6,250 hard clams per commercial fishing operation from public bottom in internal waters. It shall be unlawful to take, possess, sell, or purchase any clams (except Rangia or freshwater clams) less than one inch thick except in accordance with Rule .0305 of this Section. Clams shall be culled where harvested and all clams of less than legal size with their shell, shall be immediately returned to the bottom from which they were taken. In determining whether the size and harvest limits have been exceeded, Marine Fisheries Inspectors shall be authorized and empowered to grade all, or any portion, or any combination of portions of the entire quantity being graded, and in cases of violations, may seize and return to public bottom or otherwise dispose of the clams as authorized by law the entire quantity being graded or any portion thereof.

(b) Size and harvest limits established in Paragraph (a) of this Rule and the season and area limitations established in Rule .0302 of this Section may or may not apply for:

- (1) harvest limits for temporary openings consistent with the requirements of 15A NCAC 18A .0900 and the North Carolina Hard Clam Fishery Management Plan; or
- (2) maintenance dredging operations, when clams would otherwise be destroyed, upon approval by the Division of Marine Fisheries and

- (3) consistent with the North Carolina Hard Clam Fishery Management ~~Plan; or Plan.~~ ~~relaying of clams from polluted waters to private shellfish bottom as permitted by Rule .0104 of this Subchapter.~~

- (2) a statement from the licensee that the information and supporting documentation submitted with the application is true and correct.

- (3) current and valid picture identification of the licensee. Acceptable forms of picture identification are state driver's license, state identification card issued by the Division of Motor Vehicles, military identification card, resident alien card (green card), or passport; or if purchased by mail, a copy thereof.

- (4) certification that the applicant does not have four or more marine or estuarine resource convictions during the previous three years.

- (5) current articles of incorporation and a current list of corporate officers when purchasing a license or Commercial Fishing Vessel Registration in a corporate name. In the case of incorporation of an individual fishing vessel, the name of the vessel master shall also be specified. The licensee shall notify the Morehead City Office of the Division within five days of changing the vessel master.

- (6) a current copy of a written partnership agreement shall be provided when purchasing a license, endorsement, or Commercial Fishing Vessel Registration in a partnership name, if a partnership is established.

- (7) valid documentation papers or current motor boat registration, or copy thereof when purchasing a Commercial Fishing Vessel Registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.

- (8) affirmation of liability insurance and that the operator is knowledgeable of United States Coast Guard (USCG) safety requirements for the vessels used in the operation in accordance with G.S. 113-168.6 when purchasing a Commercial Fishing Vessel Registration with a for-hire endorsement.

- (d) In addition to the requirements of Paragraph (c) of this Rule, proof of residency for non-residents shall be documented by the licensee with certification of the state of residency. Proof of residency for residents of North Carolina shall be documented by the licensee as follows:

- (1) Standard or Retired Standard Commercial Fishing Licenses: A notarized certification from the applicant that the applicant is a resident of the State of North Carolina as defined by G.S. 113-130(4) and:

- (A) a notarized certification from the applicant that a North Carolina State Income Tax Return was filed for the previous calendar or tax year as a North Carolina resident;

- (B) a notarized certification that the applicant was not required to file a

Authority G.S. 113-134; 113-136; 113-137; 113-182; 113-221.2; 143B-289.52.

SECTION .0400 - RANGIA CLAMS

15A NCAC 03K .0401 POLLUTED AREA PERMIT REQUIREMENTS

Authority G.S. 113-134; 113-182; 113-201; 113-202; 143B-289.52.

15A NCAC 03K .0403 DISPOSITION OF MEATS

Authority G.S. 113-134; 113-182; 113-201; 113-202; 143B-298.52.

15A NCAC 03K .0405 OYSTERS, HARD CLAMS, OR MUSSELS PROHIBITED

Authority G.S. 113-134; 113-182; 113-201; 143B-289.52.

SUBCHAPTER 030 - LICENSES, LEASES, FRANCHISES, AND PERMITS

SECTION .0100 - LICENSES

15A NCAC 030 .0101 PROCEDURES AND REQUIREMENTS TO OBTAIN LICENSES, ENDORSEMENTS, AND COMMERCIAL FISHING VESSEL REGISTRATIONS

(a) Division of Marine Fisheries licenses are available at offices of the Division or by mail from the Morehead City Office of the Division, unless otherwise specified. In addition, Recreational Commercial Gear Licenses are available at license agents of the Wildlife Resources Commission in accordance with G.S. 113-270.1.

(b) For the purpose of this Rule, the procedures and requirements for the licensee shall also apply to the responsible party, the person holding power of attorney, the tournament organizer, and the vessel master.

(c) To obtain Division of Marine Fisheries licenses, endorsements, and Commercial Fishing Vessel Registrations, a licensee shall provide a completed application to an office of the Division by mail or in person. Applications submitted without complete and required information shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the applicant with deficiency in the application so noted. The following shall be required for the application:

- (1) full name, physical address, mailing address, date of birth, and signature of the licensee. If the licensee is not appearing before a license agent or a representative of the Division, the licensee's signature shall be notarized.

- (C) North Carolina State Income Tax Return for the previous calendar or tax year; or
- (C) military identification or military dependent identification, and permanent change of station orders or assignment orders substantiating the military individual's active duty assignment at a military facility in North Carolina.
- (2) All other types of licenses:
 - (A) North Carolina voter registration card;
 - (B) current North Carolina Driver's License;
 - (C) current North Carolina Certificate of Domicile;
 - (D) current North Carolina Identification Card issued by the North Carolina Division of Motor Vehicles; or
 - (E) military identification or military dependent identification, and permanent change of station orders or assignment orders substantiating the military individual's active duty assignment at a military facility in North Carolina.
- (e) In addition to the requirements in Paragraphs (c) and (d) of this Rule, the following shall be required:
 - (1) Blanket For-Hire Captain's CRFL: a valid certification from the USCG that allows carrying six or fewer passengers or a certification from the USCG that allows carrying more than six passengers.
 - (2) Blanket For-Hire Vessel CRFL or Non-Blanket For-Hire Vessel License:
 - (A) valid documentation papers or current motor boat registration, or copies thereof for the vessel engaged as for-hire; or
 - (B) a copy of the pending application and a notarized bill of sale if an application for transfer of documentation is pending.
 - (3) Fish Dealer License:
 - (A) the physical address of the established location where business is conducted and, if different, the address where records are kept; and
 - (B) a valid Permit and Certificate of Compliance from the Division of Marine Fisheries Shellfish Sanitation and Recreational Water Quality Section, if purchasing a Fish Dealer License with clam or oyster categories or a consolidated license.
 - (4) Land or Sell License:
 - (A) valid documentation papers or current motor boat registration, or copy thereof; or

- (B) a copy of the pending application and a notarized bill of sale if an application for transfer of documentation is pending.
- The fees for a Land or Sell License shall be based on the vessel's homeport as it appears on the USCG documentation papers or the state in which the vessel is registered, in accordance with G.S. 113-169.5.
- (5) Ocean Fishing Pier License:
 - (A) the information required in G.S. 113-169.4; and
 - (B) linear length of the pier. A Marine Fisheries inspector's signature is required to verify the linear length of the pier before the license can be issued.
 - (6) Recreational Fishing Tournament License to Sell Fish: name and date or dates of the tournament.
 - (7) Spotter Plane License:
 - (A) the information required in G.S. 113-171.1;
 - (B) the current aircraft registration; and
 - (C) a list of operators.
 - (f) For a License to Land Flounder from the Atlantic Ocean, in addition to the requirements in Paragraphs (c) and (d) of this Rule, the following shall be applicable:
 - (1) for the purpose of this Paragraph, "license year" means the period beginning July 1 of a year through June 30 of the following year.
 - (2) to qualify for a License to Land Flounder from the Atlantic Ocean, the applicant shall:
 - (A) have landed in North Carolina at least 1,000 pounds of flounder from a single vessel each year from the Atlantic Ocean during any two of the 1992-93, 1993-94, 1994-95 license years for which the person had a vessel that was licensed to land in North Carolina;
 - (B) have been licensed under G.S. 113-152 or 113-153 during any two of the 1992-93, 1993-94, or 1994-95 license years; and
 - (C) hold a valid Standard or Retired Standard Commercial Fishing License or valid Land or Sell License.
 - (3) it shall be unlawful for a person to hold more Licenses to Land Flounder from the Atlantic Ocean than the number of vessels that the person owns that individually met the eligibility requirements of Parts (f)(2)(A) and (f)(2)(B) of this Rule.
 - (4) the License to Land Flounder from the Atlantic Ocean is only valid when used on the vessel specified at the time of license issuance.
 - (5) at the time of issuance, the applicant for the License to Land Flounder from the Atlantic Ocean shall specify the name of the vessel

master for each License to Land Flounder from the Atlantic Ocean issued.

(6) the holder of the License to Land Flounder from the Atlantic Ocean shall notify the Morehead City Office of the Division of Marine Fisheries within five days of change as to the vessel master identified on the license.

(7) Licenses to Land Flounder from the Atlantic Ocean are issued for the current license year.

(g) For a Recreational Fishing Tournament License to Sell Fish, in addition to the requirements in Paragraphs (c) and (d) of this Rule, the following shall be applicable:

(1) it shall be unlawful for anyone other than the holder of the Recreational Fishing Tournament License to Sell Fish to sell fish taken during a recreational fishing tournament.

(2) fish to be sold under the Recreational Fishing Tournament License to Sell Fish shall be sold only to licensed fish dealers and shall comply with all applicable rules of the Marine Fisheries Commission or provisions of proclamations issued by the Fisheries Director as authorized by the Marine Fisheries Commission.

(3) it shall be unlawful for a licensed recreational fishing tournament organizer to fail to accurately and legibly complete a North Carolina Recreational Fishing Tournament Disposition of Proceeds from the Sale of Fish Form provided by the Division of Marine Fisheries and submit the form to the Division within 30 days after the last day of the tournament.

(h) It shall be unlawful for a license, endorsement, or Commercial Fishing Vessel Registration holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address, in accordance with G.S. 113-169.2.

(i) If requested by the Division, it shall be unlawful for a licensee to fail to participate in and provide accurate information for data collection in accordance with 15A NCAC 03I .0113 and for survey programs administered by the Division.

Authority G.S. 113-134; 113-168; 113-168.1-6; 113-169.2-5; 113-171.1; 113-174.3; 113-182; 143B-289.52.

15A NCAC 030 .0109 ASSIGNMENT OF STANDARD COMMERCIAL FISHING LICENSE

(a) For the purpose of this Rule, "licensee" shall mean the person issued a Standard Commercial Fishing License and "assignee" shall mean the individual to whom the licensee assigns a Standard Commercial Fishing License in accordance with the requirements of this Rule.

(b) If requested by the Division of Marine Fisheries, it shall be unlawful for a licensee or assignee to fail to participate in and provide accurate information for data collection in accordance with 15A NCAC 03I .0113 and for survey programs administered by the Division.

~~(b)(c)~~ The Division of Marine Fisheries shall provide assignment forms to the licensee upon request. Only Division assignment forms shall be used to obtain an assignment. On the assignment

form, the licensee shall designate what, if any, endorsements are included in the assignment. Endorsements shall not be assigned independent of the Standard Commercial Fishing License. It shall be unlawful for the licensee or the assignee to fail to submit within five days the completed assignment form to any office of the Division in person or by mail to the Morehead City Office. The Morehead City Office is located at 3441 Arendell Street, Morehead City, North Carolina, 28557. If the completed assignment form is not received by the Division within five days from the date it was signed, the assignment shall be null and void. Incomplete forms shall be returned to the licensee with deficiency in the form so noted. An assignment is in effect from the date specified on the assignment form and when:

- (1) the assignment form is complete with all required information;
- (2) signatures of the current license holder and the assignee are notarized; and
- (3) the assignee has in the assignee's possession the current licensee's original actual Standard Commercial Fishing License, including applicable endorsements in accordance with G.S. 113-169.2.

~~(e)(d)~~ For an extension of time for assignments, a new assignment form shall be completed in accordance with Subparagraphs (b)(1) through (b)(3) of this Rule.

~~(d)(e)~~ Assignments shall terminate:

- (1) when the date specified on the assignment form is reached;
- (2) if the licensee or assignee are determined ineligible for a license or assignment;
- (3) if the Division receives a notarized statement from the current license holder stating a revised date for an earlier assignment termination;
- (4) upon the licensee or assignee's death; or
- (5) when the Standard Commercial Fishing License expires.

~~(e)(f)~~ It shall be unlawful for an individual assigned a Standard Commercial Fishing License when involved in a commercial fishing operation to fail to have the original actual Standard Commercial Fishing License, any assigned endorsements, and a copy of the assignment form in the individual's possession ready at hand for inspection in accordance with G.S. 113-168.1.

~~(f)(g)~~ All landings occurring during the time of the assignment shall be credited to the licensee, not the assignee.

~~(g)(h)~~ It shall be unlawful to be assigned more than a single Standard Commercial Fishing License at any one time. It shall be unlawful to assign a Standard Commercial Fishing License to more than one individual at any one time. Assignments shall only be made by the licensee and shall not be further assigned by assignees. Masters identified on the Standard Commercial Fishing Licenses of corporations consisting of an individual fishing vessel shall not assign such licenses.

~~(h)(i)~~ It shall be unlawful for a person to accept assignment of a Standard Commercial Fishing License for which they are ineligible.

~~(i)(j)~~ It shall be unlawful for any assignee of a Standard Commercial Fishing License not to return the assignment and the Standard Commercial Fishing License with any assigned endorsements to the licensee within five days of notice that the

assignment has been terminated or a demand by the licensee to return the license.

Authority G.S. 113-134; 113-135; 113-168.1; 113-168.2; 113-168.5; 113-169.2; 113-182; 113-187; 143B-289.52.

15A NCAC 030 .0112 FOR-HIRE LICENSE REQUIREMENTS

(a) The license requirements for an operator of a vessel engaged in a for-hire operation are set forth in G.S. 113-174.3. Either the vessel owner or the for-hire vessel operator may seek to obtain the applicable for-hire vessel license. Only the vessel owner shall seek to obtain the applicable registration and endorsement required by G.S. 113-168.6. For the purpose of this Rule, "for-hire vessel operator" shall include the holder of a Blanket For-Hire Captain's Coastal Recreational Fishing License, Blanket For-Hire Vessel Coastal Recreational Fishing License, or Non-Blanket For-Hire Vessel License, as set forth in G.S. 113-174.3.

(b) It shall be unlawful for a for-hire vessel operator to operate without:

- (1) holding the United States Coast Guard certification required in Rule .0101(a) of this Section;
- (2) having a copy of the for-hire license in possession and ready at hand for inspection; and
- (3) having current picture identification in possession and ready at hand for inspection.

(c) If requested by the Division of Marine Fisheries, it shall be unlawful for a for-hire vessel operator or responsible person to fail to participate in and provide accurate information for biological sampling data collection in accordance with 15A NCAC 03I.0113 and for survey programs administered by the Division. For the purpose of this Rule, "responsible person" shall mean any licensee or person engaged in regulated activity under Chapter 113, Subchapter IV, of the General Statutes, including regulated activity related to for-hire fishing.

(d) Requirements for display of licenses and registrations for a vessel engaged in for-hire recreational fishing are set forth in Rule .0106 of this Section.

Authority G.S. 113-134; 113-168.6; 113-174.1; 113-174.3; 113-181; 143B-289.52.

SECTION .0200 – SHELLFISH LEASES AND FRANCHISES

15A NCAC 030 .0201 STANDARDS AND REQUIREMENTS FOR SHELLFISH LEASES AND FRANCHISES

(a) For the purpose of this Section:

- (1) "extensive shellfish culture" shall mean shellfish grown on the bottom without the use of cages, racks, bags, or floats.
- (2) "intensive shellfish culture" shall mean shellfish grown on the bottom or in the water column using cages, racks, bags, or floats.
- (3) "plant" shall mean providing evidence of purchasing shellfish seed or planting shellfish

seed or authorized cultch materials on a shellfish lease or franchise.

- (4) "produce" shall mean the culture and harvest of oysters, clams, scallops, or mussels from a shellfish lease or franchise and lawful sale of those shellfish to the public at large or to a licensed shellfish dealer.

(a)(b) All areas of the public bottom underlying Coastal Fishing Waters shall meet the following standards and requirements, in addition to the standards in G.S. 113-202, in order to be deemed suitable for leasing for shellfish aquaculture purposes:

- (1) the proposed shellfish lease area shall not contain a "natural shellfish bed," as defined in G.S. 113-201.1, or have 10 bushels or more of shellfish per acre;
- (2) the proposed shellfish lease area shall not be closer than 250 feet from a developed shoreline or a water-dependent shore-based structure, except no minimum setback is required when the area to be leased borders the applicant's property, the property of "riparian owners" as defined in G.S. 113-201.1 who have consented in a notarized statement, or is in an area bordered by undeveloped shoreline. For the ~~purposes~~ purpose of this Rule, a water-dependent shore-based structure shall include docks, wharves, boat ramps, bridges, bulkheads, and groins;
- (3) the proposed shellfish lease area shall not be closer than 250 feet to an existing lease;
- (4) the proposed shellfish lease area, either alone or when considered cumulatively with other existing leases in the area, lease areas in the vicinity, shall not interfere with navigation or with existing, traditional uses of the area; and
- (5) the proposed shellfish lease area shall not be less than one-half acre and shall not exceed 10 acres.

~~(b)(c)~~ To be suitable for leasing for shellfish aquaculture purposes, shellfish water column leases superjacent to a shellfish bottom lease shall meet the standards in G.S. 113-202.1 and shellfish water column leases superjacent to franchises ~~recognized pursuant to G.S. 113-206~~ shall meet the standards in G.S. 113-202.2.

~~(e)(d)~~ ~~Franchises recognized pursuant to G.S. 113-206 and shellfish bottom leases~~ Shellfish bottom leases and franchises granted on or before July 1, 2019 shall be terminated unless they meet the following requirements, in addition to the standards in and as allowed by G.S. 113-202:

- (1) they produce ~~and market~~ 10 bushels of shellfish per acre per year; and
- (2) they are planted with 25 bushels of seed shellfish per acre per year or 50 bushels of cultch per acre per year, or a combination of cultch and seed shellfish where the percentage of required cultch planted and the percentage of required seed shellfish planted totals at least 100 percent.

~~(d)~~(e) Shellfish water column leases granted on or before July 1, 2019 shall be terminated unless they meet the following requirements, in addition to the standards in and as allowed by G.S. 113-202.1 and G.S. 113-202.2:

- (1) they produce ~~and market~~ 40 bushels of shellfish per acre per year; or
- (2) the underlying bottom is planted with 100 bushels of cultch or seed shellfish per acre per year.

(f) Shellfish bottom leases and franchises granted after July 1, 2019 shall be terminated unless they meet the following requirements, in addition to the standards in and as allowed by G.S. 113-202:

- (1) they produce a minimum of 20 bushels of shellfish per acre averaged over the previous three-year period beginning in year five of the shellfish bottom lease or franchise; or
- (2) for intensive culture bottom operations, the holder of the shellfish bottom lease or franchise provides evidence of purchasing a minimum of 23,000 shellfish seed per acre annually and for extensive culture bottom operations, the holder of the lease or franchise plants a minimum of 15,000 shellfish seed per acre per year.

(g) Shellfish water column leases granted after July 1, 2019 shall be terminated unless they meet the following requirements, in addition to the standards in and as allowed by G.S. 113-202.1 and 113-202.2:

- (1) they produce a minimum of 50 bushels of shellfish per acre averaged over the previous three-year period beginning in year five of the shellfish water column lease; or
- (2) the holder of the shellfish water column lease provides evidence of purchasing a minimum of 23,000 shellfish seed per acre annually.

~~(e)~~(h) The following standards shall be applied to determine compliance with Paragraphs ~~(e)~~ and ~~(d)~~(d), (e), (f), and (g) of this Rule:

- (1) ~~Only only~~ shellfish ~~marketed, planted, planted~~ or produced as defined in ~~15A-NCAC 03I.0104~~ as the fishing activities "shellfish marketing from leases and franchises," "shellfish planting effort on leases and franchises," or "shellfish production on leases and franchises" Paragraph (a) of this Rule shall be included in the annual shellfish lease and franchise production reports required by Rule .0207 of this Section.
- (2) ~~If~~ if more than one shellfish lease or franchise is used in the production of shellfish, one of the leases or franchises used in the production of the shellfish shall be designated as the producing lease or franchise for those shellfish. Each bushel of shellfish shall be produced by only one shellfish lease or franchise. Shellfish transplanted between shellfish leases or franchises shall be credited as planting effort on only one lease or franchise.
- (3) ~~Production and marketing~~ production information and planting effort information

shall be compiled and averaged separately to assess compliance with the requirements of this Rule. ~~The shellfish lease or franchise~~ Shellfish bottom leases and franchises granted on or before July 1, 2019 shall meet both the production requirement and the planting effort requirement within the dates set forth in G.S. 113-202.1 and G.S. 113-202.2 to be deemed in ~~compliance for shellfish bottom leases.~~ compliance. Shellfish bottom leases and franchises granted after July 1, 2019 and shellfish water column leases shall meet either the production requirement or the planting effort requirement within the dates set forth in G.S. 113-202.1 and G.S. 113-202.2 to be deemed in ~~compliance for shellfish water column leases.~~ compliance.

(4) ~~All~~ all bushel measurements shall be in standard U.S. bushels.

(5) ~~In~~ in determining production and marketing averages and planting effort averages for information not reported in bushel measurements, the following conversion factors shall be used:

- (A) 300 oysters, 400 clams, or 400 scallops equal one bushel; and
- (B) 40 pounds of scallop shell, 60 pounds of oyster shell, 75 pounds of clam shell, or 90 pounds of fossil stone equal one bushel.

(6) ~~Production and marketing~~ production rate averages shall be computed irrespective of transfer of the shellfish lease or franchise. The ~~production and marketing~~ rates shall be averaged for the following situations using the time periods described:

- (A) for an initial shellfish bottom lease or franchise, over the consecutive full calendar years remaining on the bottom lease or franchise contract after December 31 following the second anniversary of the initial bottom lease or franchise;
- (B) for a renewal shellfish bottom lease or franchise, over the consecutive full calendar years beginning January 1 of the final year of the previous bottom lease or franchise term and ending December 31 of the final year of the current bottom lease or franchise contract;
- (C) for a shellfish water column lease, over the first five-year period for an initial water column lease and over the most recent five-year period thereafter for a renewal water column lease; or
- (D) for a shellfish bottom lease or franchise issued an extension period

under Rule .0208 of this Section, over the most recent five-year period.

- (7) ~~In~~ in the event that a portion of an existing shellfish lease or franchise is obtained by a new lease or franchise holder, the production history for the portion obtained shall be a percentage of the originating lease or franchise production equal to the percentage of the area of lease or franchise site obtained to the area of the originating lease or franchise.

~~(f)(i) Persons To be eligible for additional shellfish lease acreage, persons holding five or more any acres under all a shellfish bottom leases and franchises combined lease or franchise shall meet the requirements established in Paragraph (c) of this Rule before submitting an application for additional shellfish lease acreage to the Division of Marine Fisheries. in:~~

- (1) Paragraphs (d), (e), (f), and (g) of this Rule;
- (2) Rule .0204 of this Section; and
- (3) Rule .0503(a) of this Subchapter.

Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-206; 143B-289.52; S.L. 2019-37, s. 3.

SECTION .0300 – RECREATIONAL COMMERCIAL GEAR LICENSES

15A NCAC 030 .0301 ELIGIBILITY AND REQUIREMENTS FOR RECREATIONAL COMMERCIAL GEAR LICENSES

- (a) Recreational Commercial Gear Licenses shall only be issued to individuals.
- (b) If requested by the Division of Marine Fisheries, it shall be unlawful for a Recreational Commercial Gear License holder to fail to participate in and provide accurate information for data collection in accordance with 15A NCAC 03I .0113 and for survey programs administered by the Division.

Authority G.S. 113-134; 113-173; 113-182; 143B-289.52.

SECTION .0500 - PERMITS

15A NCAC 030 .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS

- (a) To obtain a Division of Marine Fisheries permit, an applicant, responsible party, or person holding a power of attorney shall provide the following information:
 - (1) the full name, physical address, mailing address, date of birth, and signature of the applicant on the application and, if the applicant is not appearing before a license agent or the designated Division of Marine Fisheries contact, the applicant's signature on the application shall be notarized;
 - (2) a current picture identification of the applicant, responsible party, or person holding a power of attorney, acceptable forms of which shall include driver's license, North Carolina Identification card issued by the North Carolina Division of Motor Vehicles, military

identification card, resident alien card (green card), or passport or, if applying by mail, a copy thereof;

- (3) for permits that require a list of designees, the full names and dates of birth of the designees of the applicant who will be acting pursuant to the requested permit;
- (4) certification that the applicant and his or her designees do not have four or more marine or estuarine resource convictions during the previous three years;
- (5) for permit applications from business entities:
 - (A) the business name;
 - (B) the type of business entity: corporation, "educational institution" as defined in 15A NCAC 03I .0101, limited liability company (LLC), partnership, or sole proprietorship;
 - (C) the name, address, and phone number of responsible party and other identifying information required by this Subchapter or rules related to a specific permit;
 - (D) for a corporation applying for a permit in a corporate name, the current articles of incorporation and a current list of corporate officers;
 - (E) for a partnership that is established by a written partnership agreement, a current copy of such agreement shall be provided when applying for a permit; and
 - (F) for business entities other than corporations, copies of current assumed name statements if filed with the Register of Deeds office for the corresponding county and copies of current business privilege tax certificates, if applicable; and

(6) additional information as required for specific permits.

- (b) A permittee shall hold a valid:
 - (1) Standard or Retired Standard Commercial Fishing License in order to hold:
 - (A) an Atlantic Ocean Striped Bass Commercial Gear Permit;
 - (B) a Permit for Weekend Trawling for Live Shrimp; or
 - (C) a Pound Net Set Permit.
- The master designated on the single vessel corporation Standard Commercial Fishing License is the individual required to hold the Permit for Weekend Trawling for Live Shrimp.
- (2) Fish Dealer License in the proper category in order to hold dealer permits for monitoring fisheries under a quota or allocation for that category.
 - (c) An individual who is assigned a valid Standard Commercial Fishing License with applicable endorsements shall be eligible to

hold any permit that requires a Standard Commercial Fishing License except a Pound Net Set Permit.

(d) If mechanical methods to take shellfish are used, a permittee and his designees shall hold a valid Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement in order for a permittee to hold a:

- (1) Depuration Permit;
- (2) ~~Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas;~~
- (3)(2) Permit to Transplant Oysters from Seed Oyster Management Areas; or
- (4) ~~Permit to Transplant Prohibited (Polluted) Shellfish; or~~
- (5)(3) Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises, except as provided in G.S. 113-169.2.

(e) If mechanical methods to take shellfish are not used, a permittee and his designees shall hold a valid Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order for a permittee to hold a:

- (1) Depuration Permit; or
- (2) ~~Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas;~~
- (3)(2) Permit to Transplant Oysters from Seed Oyster Management Areas; or Areas.
- (4) ~~Permit to Transplant Prohibited (Polluted) Shellfish.~~

(f) Aquaculture Operation Permit and Aquaculture Collection Permit:

- (1) A permittee shall hold a valid Aquaculture Operation Permit issued by the Fisheries Director to hold an Aquaculture Collection Permit.
- (2) The permittee or designees shall hold appropriate licenses from the Division of Marine Fisheries for the species harvested and the gear used under the Aquaculture Collection Permit.

(g) Atlantic Ocean Striped Bass Commercial Gear Permit:

- (1) An applicant for an Atlantic Ocean Striped Bass Commercial Gear Permit shall declare one of the following types of gear for an initial permit and at intervals of three consecutive license years thereafter:
 - (A) a gill net;
 - (B) a trawl net; or
 - (C) a beach seine.

For the purpose of this Rule, a "beach seine" shall mean a swipe net constructed of multi-filament or multi-fiber webbing fished from the ocean beach that is deployed from a vessel launched from the ocean beach where the fishing operation takes place. Gear declarations shall be binding on the permittee for three consecutive license years without regard to subsequent annual permit issuance.

- (2) A person is not eligible for more than one Atlantic Ocean Striped Bass Commercial Gear

Permit regardless of the number of Standard Commercial Fishing Licenses, Retired Standard Commercial Fishing Licenses, or assignments held by that person.

(h) Applications submitted without complete and required information shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the applicant with the deficiency in the application noted.

(i) A permit shall be issued only after the application is deemed complete and the applicant certifies his or her agreement to abide by the permit general and specific conditions established under 15A NCAC 03J .0501, .0505, 03K .0103, .0104, .0107, .0111, .0401, .0501 and .0505, 03K .0103 and .0107, Rule .0211 of this Subchapter, and Rules .0502 and .0503 of this Section, as applicable to the requested permit.

(j) In determining whether to issue, modify, or renew a permit, the Fisheries Director or his or her agent shall evaluate factors such as the following:

- (1) potential threats to public health or marine and estuarine resources regulated by the Marine Fisheries Commission;
- (2) the applicant's demonstration of a valid justification for the permit; and
- (3) whether the applicant has a history of eight or more fisheries violations within 10 years.

(k) The Division of Marine Fisheries shall notify the applicant in writing of the denial or modification of any permit request and the reasons therefor. The applicant may submit further information or reasons why the permit should not be denied or modified.

(l) Permits are valid from the date of issuance through the expiration date printed on the permit. Unless otherwise established by rule, the Fisheries Director may establish the issuance timeframe for specific types and categories of permits based on season, calendar year, or other period based upon the nature of the activity permitted, the duration of the activity, compliance with federal or State fishery management plans or implementing rules, conflicts with other fisheries or gear usage, or seasons for the species involved. The expiration date shall be specified on the permit.

(m) For permit renewals, the permittee's signature on the application shall certify all information is true and accurate. Notarized signatures on renewal applications shall not be required.

(n) It shall be unlawful for a permit holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address, in accordance with G.S. 113-169.2.

(o) It shall be unlawful for a permit holder to fail to notify the Division of Marine Fisheries of a change of designee prior to use of the permit by that designee.

(p) Permit applications shall be available at all Division of Marine Fisheries offices.

Authority G.S. 113-134; 113-169.1; 113-169.2; 113-169.3; 113-182; 113-210; 143B-289.52.

**15A NCAC 03O .0503 PERMIT CONDITIONS;
SPECIFIC**

(a) Aquaculture Operation Permit and Aquaculture Collection Permit:

- (1) It shall be unlawful to conduct aquaculture operations using marine and estuarine resources without first securing an Aquaculture Operation Permit from the Fisheries Director.
- (2) It shall be unlawful:
 - (A) to take marine and estuarine resources from Coastal Fishing Waters for aquaculture purposes without first obtaining an Aquaculture Collection Permit from the Fisheries Director;
 - (B) to sell or use for any purpose not related to North Carolina aquaculture marine and estuarine resources taken pursuant to an Aquaculture Collection Permit; or
 - (C) to fail to submit to the Fisheries Director an annual report, due on December 1 of each year on the form provided by the Division of Marine Fisheries, stating the amount and disposition of marine and estuarine resources collected under authority of an Aquaculture Collection Permit.
- ~~(3) Lawfully permitted shellfish-relaying activities authorized by 15A NCAC 03K .0103 and .0104 shall be exempt from requirements to have an Aquaculture Operation Permit or Aquaculture Collection Permit issued by the Fisheries Director.~~
- ~~(4)~~(3) Aquaculture Operation Permits and Aquaculture Collection Permits shall be issued or renewed on a calendar year basis.
- ~~(5)~~(4) It shall be unlawful to fail to provide the Division with a listing of all designees acting pursuant to an Aquaculture Collection Permit at the time of application.
- (b) Atlantic Ocean Striped Bass Commercial Gear Permit:
 - (1) It shall be unlawful to take striped bass from the Atlantic Ocean in a commercial fishing operation without first obtaining an Atlantic Ocean Striped Bass Commercial Gear Permit.
 - (2) It shall be unlawful to obtain more than one Atlantic Ocean Striped Bass Commercial Gear Permit during a license year, regardless of the number of Standard Commercial Fishing licenses, Retired Standard Commercial Fishing licenses, or assignments.
- (c) Blue Crab Shedding Permit: It shall be unlawful to possess more than 50 blue crabs in a shedding operation without first obtaining a Blue Crab Shedding Permit from the Division of Marine Fisheries.
- (d) Coastal Recreational Fishing License Exemption Permit:
 - (1) It shall be unlawful for the responsible party seeking exemption from recreational fishing license requirements for eligible individuals to conduct an organized fishing event held in Joint or Coastal Fishing Waters without first obtaining a Coastal Recreational Fishing License Exemption Permit.
- (2) The Coastal Recreational Fishing License Exemption Permit shall only be issued for recreational fishing activity conducted solely for the participation and benefit of one of the following groups of eligible individuals:
 - (A) individuals with physical or mental impairment;
 - (B) members of the United States Armed Forces and their dependents, upon presentation of a valid military identification card;
 - (C) individuals receiving instruction on recreational fishing techniques and conservation practices from employees of state or federal marine or estuarine resource management agencies or instructors affiliated with educational institutions; and
 - (D) disadvantaged youths as set forth in 42 U.S. Code 12511.

For the purpose of this Paragraph, educational institutions include high schools and other secondary educational institutions.
- (3) The Coastal Recreational Fishing License Exemption Permit shall be valid for the date, time, and physical location of the organized fishing event for which the exemption is granted and the duration of the permit shall not exceed one year from the date of issuance.
- (4) The Coastal Recreational Fishing License Exemption Permit shall only be issued if all of the following, in addition to the information required in Rule .0501 of this Section, is submitted to the Fisheries Director, in writing, at least 30 days prior to the event:
 - (A) the name, date, time, and physical location of the event;
 - (B) documentation that substantiates local, state, or federal involvement in the organized fishing event, if applicable;
 - (C) the cost or requirements, if any, for an individual to participate in the event; and
 - (D) an estimate of the number of participants.
- (e) Dealer permits for monitoring fisheries under a quota or allocation:
 - (1) During the commercial season opened by proclamation or rule for the fishery for which a dealer permit for monitoring fisheries under a quota or allocation shall be issued, it shall be unlawful for a fish dealer issued such permit to fail to:
 - (A) fax or send via electronic mail by noon daily, on forms provided by the Division of Marine Fisheries, the previous day's landings for the permitted fishery to the Division.

Landings for Fridays or Saturdays shall be submitted on the following Monday. If the dealer is unable to fax or electronically mail the required information, the permittee shall call in the previous day's landings to the Division;

- (B) submit the required form set forth in Part (e)(1)(A) of this Rule to the Division upon request or no later than five days after the close of the season for the fishery permitted;
- (C) maintain faxes and other related documentation in accordance with 15A NCAC 03I .0114;
- (D) contact the Division daily, regardless of whether a transaction for the fishery for which a dealer is permitted occurred; and
- (E) record the permanent dealer identification number on the bill of lading or receipt for each transaction or shipment from the permitted fishery.

(2) Atlantic Ocean Flounder Dealer Permit:

- (A) It shall be unlawful for a fish dealer to allow vessels holding a valid License to Land Flounder from the Atlantic Ocean to land more than 100 pounds of flounder from a single transaction at their licensed location during the open season without first obtaining an Atlantic Ocean Flounder Dealer Permit. The licensed location shall be specified on the Atlantic Ocean Flounder Dealer Permit and only one location per permit shall be allowed.
- (B) It shall be unlawful for a fish dealer to possess, buy, sell, or offer for sale more than 100 pounds of flounder from a single transaction from the Atlantic Ocean without first obtaining an Atlantic Ocean Flounder Dealer Permit.

(3) Black Sea Bass North of Cape Hatteras Dealer Permit: It shall be unlawful for a fish dealer to purchase or possess more than 100 pounds of black sea bass taken from the Atlantic Ocean north of Cape Hatteras (35° 15.0321' N) per day per commercial fishing operation during the open season unless the dealer has a Black Sea Bass North of Cape Hatteras Dealer Permit.

(4) Spiny Dogfish Dealer Permit: It shall be unlawful for a fish dealer to purchase or possess more than 100 pounds of spiny dogfish per day per commercial fishing operation unless the dealer has a Spiny Dogfish Dealer Permit.

(5) Striped Bass Dealer Permit:

- (A) It shall be unlawful for a fish dealer to possess, buy, sell, or offer for sale striped bass taken from the following areas without first obtaining a Striped Bass Dealer Permit validated for the applicable harvest area:
 - (i) the Atlantic Ocean;
 - (ii) the Albemarle Sound Management Area as designated in 15A NCAC 03R .0201; or
 - (iii) the Joint and Coastal Fishing Waters of the Central/Southern Management Area as designated in 15A NCAC 03R .0201.

(B) No permittee shall possess, buy, sell, or offer for sale striped bass taken from the harvest areas opened by proclamation without having a valid Division of Marine Fisheries-issued tag for the applicable area affixed through the mouth and gill cover or, in the case of striped bass imported from other states, a similar tag that is issued for striped bass in the state of origin. Division striped bass tags shall not be bought, sold, offered for sale, or transferred. Tags shall be obtained at the Division offices. The Division shall specify the quantity of tags to be issued based on historical striped bass landings. It shall be unlawful for the permittee to fail to surrender unused tags to the Division upon request.

(f) Horseshoe Crab Biomedical Use Permit:

- (1) It shall be unlawful to use horseshoe crabs for biomedical purposes without first obtaining a permit.
- (2) It shall be unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to submit an annual report on the use of horseshoe crabs to the Division of Marine Fisheries, due on February 1 of each year. Such reports shall be filed on forms provided by the Division and shall include a monthly account of the number of crabs harvested, a statement of percent mortality up to the point of release, the harvest method, the number or percent of males and females, and the disposition of bled crabs prior to release.
- (3) It shall be unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to comply with the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Horseshoe Crab. The Atlantic States Marine Fisheries Commission Interstate Fishery Management

Plan for Horseshoe Crab is incorporated by reference including subsequent amendments and editions. Copies of this plan are available via the Internet from the Atlantic States Marine Fisheries Commission at <http://www.asmfc.org/fisheries-management/program-overview> and at the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557, at no cost.

(g) Permit for Weekend Trawling for Live Shrimp:

- (1) It shall be unlawful to take shrimp with trawls from 9:00 p.m. on Friday through 12 noon on Saturday without first obtaining a Permit for Weekend Trawling for Live Shrimp.
- (2) It shall be unlawful for a holder of a Permit for Weekend Trawling for Live Shrimp to use trawls from 12:01 p.m. on Saturday through 4:59 p.m. on Sunday.
- (3) It shall be unlawful for a permit holder during the timeframe specified in Subparagraph ~~(k)(1)~~(g)(1) of this Rule to:
 - (A) use trawl nets to take live shrimp except from areas open to the harvest of shrimp with trawls;
 - (B) take shrimp with trawls that have a combined headrope length of greater than 40 feet in Internal Coastal Waters;
 - (C) possess more than one gallon of dead shrimp (heads on) per trip;
 - (D) fail to have a functioning live bait tank or a combination of multiple functioning live bait tanks, with aerators or circulating water, with a minimum combined tank capacity of 50 gallons; or
 - (E) fail to call the Division of Marine Fisheries Communications Center at 800-682-2632 or 252-726-7021 prior to each weekend use of the permit, specifying activities and location.

(h) Pound Net Set Permit: The holder of a Pound Net Set Permit shall follow the Pound Net Set Permit conditions as set forth in 15A NCAC 03J .0505.

(i) Scientific or Educational Activity Permit:

- (1) It shall be unlawful for institutions or agencies seeking exemptions from license, rule, proclamation, or statutory requirements to collect, hold, culture, or exhibit for scientific or educational purposes any marine or estuarine species without first obtaining a Scientific or Educational Activity Permit.
- (2) The Scientific or Educational Activity Permit shall only be issued for collection methods and possession allowances approved by the Division of Marine Fisheries.
- (3) The Scientific or Educational Activity Permit shall only be issued for approved activities

conducted by or under the direction of Scientific or Educational institutions as defined in 15A NCAC 03I .0101.

- (4) It shall be unlawful for the responsible party issued a Scientific or Educational Activity Permit to fail to submit an annual report on collections and, if authorized, sales to the Division, due on December 1 of each year, unless otherwise specified on the permit. The reports shall be filed on forms provided by the Division. Scientific or Educational Activity permits shall be issued on a calendar year basis.
- (5) It shall be unlawful to sell marine or estuarine species taken under a Scientific or Educational Activity Permit without:
 - (A) the required license for such sale;
 - (B) an authorization stated on the permit for such sale; and
 - (C) providing the information required by 15A NCAC 03I .0114 if the sale is to a licensed fish dealer.
- (6) It shall be unlawful to fail to provide the Division with a list of all designees acting under a Scientific or Educational Activity Permit at the time of application.
- (7) The permittee or designees utilizing the permit shall call the Division of Marine Fisheries Communications Center at 800-682-2632 or 252-726-7021 ~~not~~ no later than 24 hours prior to use of the permit, specifying activities and location.
- (j) Under Dock Oyster Culture Permit:
 - (1) It shall be unlawful to cultivate oysters in containers under docks for personal consumption without first obtaining an Under Dock Oyster Culture Permit.
 - (2) An Under Dock Oyster Culture Permit shall be issued only in accordance with provisions set forth in G.S. 113-210(c).
 - (3) The applicant shall complete and submit an examination, with a minimum of 70 percent correct answers, based on an educational package provided by the Division of Marine Fisheries pursuant to G.S. 113-210(j), demonstrating the applicant's knowledge of:
 - (A) the application process;
 - (B) permit criteria;
 - (C) basic oyster biology and culture techniques;
 - (D) shellfish harvest area closures due to pollution;
 - (E) safe handling practices;
 - (F) permit conditions; and
 - (G) permit revocation criteria.
 - (4) Action by an Under Dock Oyster Culture Permit holder to encroach on or usurp the legal rights of the public to access public trust resources in Coastal Fishing Waters shall result in permit revocation.

Authority G.S. 113-134; 113-169.1; 113-169.2; 113-169.3; 113-182; 113-210; 143B-289.52.

SUBCHAPTER 03R - DESCRIPTIVE BOUNDARIES

SECTION .0100 - DESCRIPTIVE BOUNDARIES

15A NCAC 03R .0117 OYSTER SANCTUARIES

The Oyster Sanctuaries referenced in 15A NCAC 03K .0209 are delineated in the following ~~coastal water areas~~: Coastal Fishing Waters:

- (1) Pamlico Sound area:
 - (a) Croatan Sound: within the area described by a line beginning at a point 35° 48.2842' N - 75° 38.3360' W; running southerly to a point 35° 48.1918' N - 75° 38.3360' W; running westerly to a point 35° 48.1918' N - 75° 38.4575' W; running northerly to a point 35° 48.2842' N - 75° 38.4575' W; running easterly to the point of beginning.
 - (b) Crab Hole: within the area described by a line beginning at a point 35° 43.6833' N - 75° 40.5083' W; running southerly to a point 35° 43.5000' N - 75° 40.5083' W; running westerly to a point 35° 43.5000' N - 75° 40.7500' W; running northerly to a point 35° 43.6833' N - 75° 40.7500' W; running easterly to the point of beginning.
 - (c) Pea Island: within the area described by a line beginning at a point ~~35° 05.4760' N - 76° 23.5370' W~~ 35° 40.0800' N - 75° 36.7998' W; running southerly to a point ~~35° 05.4760' N - 76° 23.4040' W~~ 35° 39.8400' N - 75° 36.7998' W; running westerly to a point ~~35° 05.3680' N - 76° 23.4040' W~~ 35° 39.8400' N - 75° 37.0800' W; running northerly to a point ~~35° 05.3680' N - 76° 23.5370' W~~ 35° 40.0800' N - 75° 37.0800' W; running easterly to the point of beginning.
 - (d) Long Shoal: within the area described by a line beginning at a point ~~35° 33.8600' N - 75° 49.9000' W~~ 35° 33.8600' N - 75° 49.7670' W; running southerly to a point ~~35° 33.8600' N - 75° 49.7670' W~~ 35° 33.7510' N - 75° 49.7670' W; running westerly to a point ~~35° 33.7510' N - 75° 49.7670' W~~ 35° 33.7510' N - 75° 49.9000' W; running northerly to a point ~~35° 33.7510' N - 75° 49.9000' W~~ 35° 33.7510' N - 75° 49.9000' W

- (e) Gibbs Shoal: within the area described by a line beginning at a point 35° 27.3550' N - 75° 55.9190' W; running southerly to a point 35° 27.1010' N - 75° 55.9190' W; running westerly to a point 35° 27.1010' N - 75° 56.2300' W; running northerly to a point 35° 27.3550' N - 75° 56.2300' W; running easterly to the point of beginning.
- (f) Gull Shoal: within the area described by a line beginning at a point 35° 23.4520' N - 75° 58.0533' W; running southerly to a point 35° 22.9481' N - 75° 58.0721' W; running westerly to a point 35° 22.9596' N - 75° 58.5359' W; running northerly to a point 35° 23.4638' N - 75° 58.5173' W; running easterly to the point of beginning.
- (~~f~~)(g) Deep Bay: within the area described by a line beginning at a point 35° 22.9126' N - 76° 22.1612' W; running southerly to a point 35° 22.7717' N - 76° 22.1612' W; running westerly to a point 35° 22.7717' N - 76° 22.3377' W; running northerly to a point 35° 22.9126' N - 76° 22.3377' W; running easterly to the point of beginning.
- (~~g~~)(h) West Bluff: within the area described by a line beginning at a point ~~35° 18.3160' N - 76° 10.2960' W~~ 35° 18.3160' N - 76° 10.0690' W; running southerly to a point ~~35° 18.3160' N - 76° 10.0690' W~~ 35° 18.1290' N - 76° 10.0690' W; running westerly to a point ~~35° 18.1290' N - 76° 10.0690' W~~ 35° 18.1290' N - 76° 10.2960' W; running northerly to a point ~~35° 18.1290' N - 76° 10.2960' W~~ 35° 18.1290' N - 76° 10.2960' W; running easterly to the point of beginning.
- (~~h~~)(i) Middle Bay: within the area described by a line beginning at a point 35° 14.1580' N - 76° 30.1780' W; running southerly to a point 35° 14.1150' N - 76° 30.1780' W; running westerly to a point 35° 14.1150' N - 76° 30.3320' W; running northerly to a point 35° 14.1580' N - 76° 30.3320' W; running easterly to the point of beginning.
- (~~i~~)(j) Swan Island: within the area described by a line beginning at a point ~~35° 05.6170' N - 76° 27.5040' W~~ 35° 05.6414' N - 76° 26.7651' W;

running southerly to a point ~~35° 05.6020' N - 76° 26.7650' W~~ 35° 05.4846' N - 76° 26.7638' W; running westerly to a point ~~35° 05.4850' N - 76° 26.7640' W~~ 35° 05.4992' N - 76° 27.5033' W; running northerly to a point ~~35° 05.4990' N - 76° 27.5030' W~~ 35° 05.6554' N - 76° 27.5041' W; running easterly to the point of beginning.

~~(j)~~(k) Raccoon Island: within the area described by a line beginning at a point ~~35° 05.4760' N - 76° 23.5370' W~~ 35° 05.4760' N - 76° 23.4040' W; running southerly to a point ~~35° 05.4760' N - 76° 23.4040' W~~ 35° 05.3680' N - 76° 23.4040' W; running westerly to a point ~~35° 05.3860' N - 76° 23.4040' W~~ 35° 05.3680' N - 76° 23.5370' W; running northerly to a point ~~35° 05.3680' N - 76° 23.5370' W~~ 35° 05.4760' N - 76° 23.5370' W; running easterly to the point of beginning.

(l) Cedar Island: within the area described by a line beginning at a point 35° 03.4632' N - 76° 22.5603' W; running southerly to a point 35° 03.1653' N - 76° 22.5699' W; running westerly to a point 35° 03.1731' N - 76° 22.9321' W; running northerly to a point 35° 03.4710' N - 76° 22.9226' W; running easterly to the point of beginning.

~~(k)~~(m) West Bay: within the area described by a line beginning at a point 34° 58.8517' N - 76° 21.3632' W; running southerly to a point 34° 58.7661' N - 76° 21.3632' W; running westerly to a point 34° 58.7661' N - 76° 21.4735' W; running northerly to a point 34° 58.8517' N - 76° 21.4735' W; running easterly to the point of beginning.

(2) Neuse River area:

(a) Little Creek: within the area described by a line beginning at a point ~~35° 02.6940' N - 76° 30.9840' W~~ 35° 02.6940' N - 76° 30.7940' W; running southerly to a point ~~35° 02.6940' N - 76° 30.7940' W~~ 35° 02.5380' N - 76° 30.7940' W; running westerly to a point ~~35° 02.5380' N - 76° 30.7940' W~~ 35° 02.5380' N - 76° 30.9840' W; running northerly to a point ~~35° 02.5380' N - 76° 30.9840' W~~ 35° 02.6940' N - 76° 30.9840' W; running easterly to the point of beginning.

(b) Neuse River: within the area described by a line beginning at a point 35° 00.4910' N - 76° 31.9350' W; running southerly to a point 35° 00.3750' N - 76° 31.9350' W; running westerly to a point 35° 00.3750' N - 76° 32.0750' W; running northerly to a point 35° 00.4910' N - 76° 32.0750' W; running easterly to the point of beginning.

Authority G.S. 113-134; 113-182; 113-201; 113-204; 143B-289.52.

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .0300 – SANITATION OF SHELLFISH - GENERAL

15A NCAC 18A .0301 DEFINITIONS

The following definitions shall apply throughout Sections .0300 to ~~.0900~~ through .0800 of this Subchapter:

(1) "Adulterated" ~~means the following:~~ means:

(a) ~~Any~~ any shellfish that have been harvested from ~~prohibited areas;~~ polluted areas as defined in 15A NCAC 03I .0101;

(b) ~~Any~~ any shellfish that have been shucked, packed, or otherwise processed in a plant ~~which that~~ which that has not been permitted by the Division of Marine Fisheries in accordance with these rules or by another state shellfish control "authority" as defined in the National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, Section I: Purposes and Definitions, in accordance with these Rules; This definition is incorporated by reference, including subsequent amendments and editions. A copy of the reference material can be found at <https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp>, at no cost;

(c) any shellfish that may have been contaminated by flood waters in accordance with Rule .0405 of this Subchapter;

~~(e)~~(d) ~~Any~~ any shellfish ~~which that~~ which that exceed the ~~bacteriological~~ bacteriological standards in Rule .0430 of this Subchapter; and

~~(d)~~(e) ~~Any~~ any shellfish ~~which are that~~ which are that have been deemed to be an imminent ~~hazard;~~ hazard.

- (2) ~~"Approved area" means an area determined suitable for the harvest of shellfish for direct market purposes.~~
- (3) ~~"Bulk shipment" means a shipment of loose shellstock.~~
- (4) ~~"Buy boat or buy truck" means any boat which that complies with Rule .0419 of this Subchapter or truck which complies with Rule .0420 of this Subchapter that is used by a person permitted under these Rules to transport shellstock from one or more harvesters to a facility permitted under these Rules.~~
- (5)(2) "Certification number" means the unique identification number assigned by the state shellfish dealer agency to each certified shellfish ~~dealer.~~ dealer for each location. It consists of a ~~one to five digit~~ one-to-five-digit number preceded by the ~~two letter~~ two-letter state abbreviation and followed by the ~~two letter symbol~~ two-letter abbreviation designating the type of operation certified.
- (3) "Clean" means free from dirt, debris, dust, marks, stains, waste materials, litter, or foreign material.
- (6)(4) "Critical control point" means a point, ~~step~~ step, or procedure in a food process at which control can be applied, and a food safety hazard can as a result be prevented, ~~eliminated~~ eliminated, or reduced to acceptable levels.
- (7)(5) "Critical limit" means the maximum or minimum value to which a physical, ~~biological~~ biological, or chemical parameter must be controlled at a critical control point to prevent, ~~eliminate~~ eliminate, or reduce to an acceptable level the occurrence of the identified food safety hazard.
- (8)(6) ~~"Depurate" or "Depuration" "deputation" means mechanical purification or the removal of adulteration from live shellstock by any artificially controlled means.~~ the process of reducing the pathogenic organisms that may be present in shellstock by using a controlled aquatic environment as the treatment process.
- (9)(7) ~~"Depuration facility" means the physical structure wherein depuration is accomplished, including all the appurtenances necessary to the effective operation thereof.~~ any establishment or place where the depuration of shellfish occurs by a shellfish dealer.
- (10)(8) ~~"Division" means the Division of Environmental Health or its authorized agent.~~ Marine Fisheries.
- (9) "Easily cleanable" has the same meaning as defined in the 2017 U.S. Food Code. This definition is incorporated by reference, not including subsequent amendments and editions. A copy of the reference material can be found at <https://www.fda.gov/food/fda-food-code/food-code-2017>, at no cost.
- (10) "Food contact surface" means the parts of equipment, including auxiliary equipment, that may be in contact with the food being processed, or that may drain into the portion of equipment with which food is in contact.
- (11) "Food safety hazard" means any biological, ~~ehemical~~ chemical, or physical property that may cause a food to be unsafe for human consumption.
- (12) "Good repair" means maintained to function as designed and without defect.
- (12)(13) ~~"HACCP plan" means a written document that delineates the procedures a shellfish dealer follows to implement food safety controls.~~
- (13)(14) "Hazard analysis critical control point (HACCP)" means a system of inspection, ~~control~~ control, and monitoring measures initiated by a shellfish dealer to identify microbiological, ~~ehemical~~ chemical, or physical food safety hazards ~~which that~~ are likely to occur in shellfish products produced by the dealer.
- (14)(15) "Heat shock process" means the practice of heating shellstock to facilitate removal of the shellfish meat from the shell.
- (15)(16) ~~"Imminent hazard" means a situation which is likely to cause an immediate threat to human life, and immediate threat of serious physical injury, an immediate threat of serious physical adverse health effects, or a serious risk of irreparable damage to the environment if no immediate action is taken.~~ has the same meaning as defined in G.S. 130A-2.
- (14)(17) "In-shell product" means non-living, processed shellfish with one or both shells present.
- (16)(18) ~~"Misbranded" means the following: as defined in G.S. 106-30 shall include any shellfish that are not labeled in compliance with these Rules.~~
- (a) ~~Any shellfish which are not labeled with a valid identification number awarded by regulatory authority of the state or territory of origin of the shellfish; or~~
- (b) ~~Any shellfish which are not labeled as required by these Rules.~~
- (19) "National Shellfish Sanitation Program (NSSP)" means the cooperative federal-state-industry program for the sanitary control of shellfish that is adequate to ensure that the shellfish produced in accordance with the NSSP Guide For The Control Of Molluscan Shellfish will be safe and sanitary.
- (17) ~~"Operating season" means the season of the year during which a shellfish product is processed.~~
- (18) ~~"Person" means an individual, corporation, company, association, partnership, unit of government or other legal entity.~~

- (20) "Pests" means animals or insects, including dogs, cats, birds, rodents, flies, and larvae.
- (21) "Plant" means the establishment or place where shellfish processing occurs by shellfish dealers.
- (22) "Processing" or "processed" means any activity associated with the handling, shucking, freezing, packing, labeling, or storing of shellfish in preparation for distribution. This includes the activities of a shellstock shipper, shucker-packer, repacker, reshipper, or depuration processor.
- (19) ~~"Prohibited area" means an area unsuitable for the harvesting of shellfish for direct market purposes.~~
- (20)(23) "Recall procedure" means the detailed procedure the permitted shellfish dealer will use to retrieve product from the market when it is determined that the product may not be safe for human consumption as determined by the State Health Director, is adulterated or misbranded.
- (21) ~~"Relaying or transplanting" means the act of removing shellfish from one growing area or shellfish grounds to another area or ground for any purpose.~~
- (22)(24) "Repacking plant" means a shipper, the establishment or place where a shellfish dealer, other than the original shucker-packer, who repacks shucked shellfish into other containers for delivery to the consumer, containers.
- (23)(25) ~~"Reshipper" means a shipper who ships shucked shellfish in original containers, or shellstock, from permitted shellstock dealers to other dealers or to consumers. person that purchases shellfish from a shellfish dealer and sells the product without repacking or relabeling to another shellfish dealer, wholesaler, or retailer.~~
- (26) "Responsible individual" means the individual present at a shellfish dealer that is the supervisor at the time of the inspection. If no individual is the supervisor, then any employee is the responsible individual.
- (24) ~~"Sanitary survey" means the evaluation of factors having a bearing on the sanitary quality of a shellfish growing area including sources of pollution, the effects of wind, tides and currents in the distribution and dilution of polluting materials, and the bacteriological quality of water.~~
- (25)(27) "Sanitize" means the a bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619, has the same meaning as defined in 21 CFR 110.3, which is incorporated by reference including subsequent amendments and editions. A copy of the reference material can be found at <https://www.ecfr.gov/current/title-21/chapter->
- [I/subchapter-B/part-110/subpart-A/section-110.3, at no cost.](#)
- (26)(28) "SELL BY date" means a date conspicuously placed on a container or tag by which a consumer is informed of the latest date the product will remain suitable for sale.
- (27)(29) "Shellfish" means oysters, mussels, scallops scallops, and all varieties of clams. However, clams, whether shucked or in the shell, fresh, frozen, whole, or in part, the term The requirements of Sections .0300 through .0800 of this Subchapter shall not include apply to scallops when if the final product is the shucked adductor muscle only.
- (30) "Shellfish dealer" means a plant to which a Shellfish Dealer Permit and Certificate of Compliance is issued by the Division for the activities of shellstock shipping, shucking or packing, repacking, reshipping, or depuration.
- (28)(31) "Shellstock" means any live molluscan shellfish which that remain in their shells.
- (29)(32) "Shellstock conveyance" means all trucks, vessels, trailers, or other conveyances used to transport shellstock.
- (30) ~~"Shellstock dealer" means a person who buys, sells, stores, or transports or causes to be transported shellstock which was not obtained from a person permitted under these Rules.~~
- (31)(33) "Shellstock plant" means any establishment or place where shellstock are washed, packed, or otherwise prepared for sale. sale by a shellfish dealer.
- (32)(34) "Shucking and packing plant" means any establishment or place where shellfish are shucked and packed for sale. sale by a shellfish dealer.
- (35) "Use" means employ, set, operate, or permit to be operated or employed.
- (33)(36) "Wet storage" means the temporary placement storage by a shellfish dealer of shellstock from approved areas, a growing area in the open status and classified as "approved" or "conditionally approved" as defined in Rule .0901 of this Subchapter, in containers or floats in natural bodies of water water, or in tanks containing natural or synthetic sea water. water at any permitted land-based activity or facility.

Authority G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0302 PERMITS

(a) It shall be unlawful to operate any of the following facilities without first obtaining a Shellfish Dealer Permit and Certificate of Compliance from the Division of Marine Fisheries:

- (1) depuration facilities;
- (2) repacking plants;
- (3) shellstock plants; and
- (4) shucking and packing plants.

- (b) It shall be unlawful to operate as a ~~shellstock~~ shellfish dealer without first obtaining a Shellfish Dealer Permit and Certificate of Compliance from the Division.
- (c) It shall be unlawful to operate as a reshipper without first obtaining a Shellfish Dealer Permit and Certificate of Compliance from the Division if shellfish are purchased and shipped out of state.
- (d) Approval for wet storage of shellstock shall be granted only to persons permitted pursuant to this Rule.
- (e) Application for a permit shall be submitted in writing to the Division. Application forms may be obtained from the Division, P.O. Box 769, 3441 Arendell Street, Morehead City, NC 28557.
- (f) No permit shall be issued by the Division until an inspection by the Division shows that the facility and equipment comply with all applicable Rules in Sections .0300 through .0800 of this Subchapter. The owner or responsible ~~person~~ individual shall sign the completed inspection sheet to acknowledge receipt of the inspection sheet.
- (g) All permits shall be posted in a conspicuous place in the facility.
- (h) All permits shall expire on April 30 of each year and are non-transferrable.
- (i) Plans and specifications for proposed new construction, expansion of operations, or changes in operating processes shall be submitted to the Division for review and approval prior to beginning construction or making a change.
- (j) A permit may be revoked or suspended in accordance with 15A NCAC 030 .0504.

Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0305 APPEALS PROCEDURE

Authority G.S. 130A-230.

SECTION .0400 - SANITATION OF SHELLFISH - GENERAL OPERATION STANDARDS

15A NCAC 18A .0401 APPLICABILITY OF RULES

The rules in this Section shall apply to the operation of all facilities and persons permitted in Rule .0302 of this Subchapter, including shellfish dealers, shellstock plants, reshippers, shucking and packing plants, repacking plants, depuration facilities, permittees with facilities approved for wet storage, and all other businesses and persons that buy, sell, transport, or ship shellfish. ~~These Rules do~~ rules shall not apply to ~~persons~~ individuals possessing shellfish for personal use.

Authority G.S. ~~130A-230;~~ 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0402 GENERAL REQUIREMENTS FOR OPERATION

- ~~(a) During the operating season the plant shall be used for no purpose other than the handling of shellfish. All unnecessary equipment and materials shall be removed from the plant and the floors kept clear for thorough cleaning.~~
- ~~(b)(a) All floors, walls, shucking benches and stools, shucking blocks, tables, skimmers, blowers, colanders, buckets, or any~~

~~other equipment or utensils used in the processing operation shall be cleaned and sanitized daily, or more frequently as may be necessary during the day's operation to prevent the introduction of undesirable microbiological organisms and filth into the shellfish product. Shellfish dealers shall provide mechanical refrigeration that is capable of maintaining an ambient temperature of 45°F or less and be sized to handle one day's production. The mechanical refrigeration shall include an automatic temperature regulating control and be equipped with an accurate, operating thermometer in the refrigerated storage area. If the sole means of refrigeration is a portable unit, that unit shall be capable of operating utilizing alternating current electrical power that will allow the unit to be plugged into a power supply during transport and at the certified facility.~~

~~(e)(b) Ceilings and windows shall also be kept clean. Refrigerators, refrigeration rooms, and ice boxes shall be washed and sanitized. Food contact surfaces shall be easily cleanable, corrosion-resistant, constructed of non-toxic and food-grade materials, and shall be kept in good repair. Shellfish dealers shall only use food contact surface equipment that conforms to standards found in the guidance document within the National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, Section II: Model Ordinance titled "Shellfish Industry Equipment Construction Guide", which is incorporated by reference, including subsequent amendments and editions. A copy of the reference material can be found at <https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp> at no cost.~~

~~(c) Food contact surfaces of equipment, utensils, and containers shall be cleaned at the end of each day or operation and shall be sanitized prior to the start-up of each day's activities. Food contact surfaces shall also be cleaned and sanitized following any interruption during which the surfaces have become contaminated.~~

~~(d) Non-food contact surfaces such as equipment, floors, walls, ceilings, and windows shall be kept clean and in good repair.~~

~~(d)(e) Wheelbarrows, measures, baskets, shovels, and other implements used in the handling of shellstock shall not be used for any other purpose and shall be cleaned and stored in the shellstock room when not in prior to use.~~

~~(f) Shellfish dealers shall provide a temperature measuring device accurate to +/- 2°F for use in monitoring product temperatures.~~

Authority G.S. ~~130A-230;~~ 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0403 SUPERVISION AND TRAINING

(a) The ~~owner~~ shellfish dealer shall personally supervise or shall designate ~~an~~ a responsible individual whose principal duty shall be to supervise and be responsible for compliance with the ~~Rules~~ rules of this Subchapter. No unauthorized ~~persons~~ individuals shall be allowed in any processing area of the plant during periods of operation. For the purpose of this Rule, "unauthorized individual" shall mean an individual that is not designated and trained by the shellfish dealer or responsible individual to perform specific processing tasks in the facility.

(b) The shellfish dealer shall ensure that all employees that manufacture, process, pack, or hold food obtain training in the principles of food hygiene and food safety, including the

importance of employee health and personal hygiene, in accordance with 21 CFR 117.4, which is incorporated by reference, including subsequent amendments and editions. A copy of the reference material can be found at <https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-117/subpart-A/section-117.4> at no cost. Employees shall complete the training within 30 days following the initial hire date. The shellfish dealer or responsible individual shall maintain a record of the completed training.

Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~

15A NCAC 18A .0404 CONSTRUCTION

Shellfish plants shall be ~~adequate in size and construction~~ sized and constructed to permit compliance with the operational provisions of Sections .0300 through .0800 of this Subchapter.

Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~

15A NCAC 18A .0405 PLANT LOCATION FACILITY FLOODING

(a) Shellfish plants shall be located so that they will not be subject to flooding by high tides.

(b) If the facility floors are flooded, processing shall be discontinued until flood waters have receded and the facility and equipment are cleaned and sanitized.

(c) Any shellfish that may have been contaminated by flood waters shall be deemed adulterated and shall be destroyed.

Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 113-221.4; 143B-289.52.~~

15A NCAC 18A .0406 FLOORS

Floors shall be ~~of~~ concrete or other equally impervious material, constructed so that they ~~may be~~ are easily and thoroughly cleaned cleanable, and shall be sloped so that water drains completely and rapidly. For new construction, the joints between walls and floors shall be rounded to expedite cleaning, completely, and kept in good repair. The junction between floors and walls shall be sealed to render them impervious to water in areas where the floor gets wet and is used to store shellfish, process food, or clean equipment and utensils.

Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~

15A NCAC 18A .0407 WALLS AND CEILINGS

Walls to a height of at least two feet above the floor shall be constructed of smooth concrete or other equally impervious material. The remainder of the walls and ceilings shall be smooth concrete, cement plaster, or other material approved by the Division and shall be painted with a light color washable paint.

(a) Walls and ceilings in areas where shellfish are stored, handled, processed, or packaged or where food handling equipment or packaging materials are stored shall be constructed of smooth, easily cleanable, non-corrosive, impervious material. The walls

and ceilings in these areas shall also be light-colored, such as white in color, so that unclean surfaces can be detected.

(b) Doors and windows shall be tightly fitted and kept in good repair so as to keep pests and weather out of the facility.

Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~

15A NCAC 18A .0408 LIGHTING

(a) Natural or artificial lighting shall be provided in all parts of the plant. ~~Light bulbs, fixtures, or other glass suspended within the plant shall be safety type or otherwise protected to prevent contamination in case of breakage.~~ Lighting intensities shall be a minimum of 25 ~~foot-candles~~ foot-candles on working surfaces in packing and shucking ~~rooms, rooms~~ and a minimum of 10 foot-candles measured at a height of 30 inches above the floor throughout the rest of the processing portion of the facility.

(b) Light bulbs, fixtures, or other glass within the plant shall be shatterproof or shielded to prevent food contamination in case of breakage.

Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~

15A NCAC 18A .0409 VENTILATION

Ventilation shall be provided to ~~eliminate prevent~~ odors and ~~econdensation, condensation~~ from contaminating shellfish, food contact surfaces, or food packaging materials.

Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~

15A NCAC 18A .0410 FLY PEST CONTROL

(a) All ~~outside exterior~~ openings shall be ~~screened, screened~~ or provided with wind ~~curtains curtains~~, or be provided with other fly control methods approved by the Division to prevent the entrance of pests. All screens shall be kept in good repair. All ~~outside exterior~~ doors shall open outward and shall be self-closing.

(b) The use and storage of pesticides and rodenticides shall comply with all applicable ~~state State~~ and federal ~~guidelines, laws~~ and rules.

(c) No pets or other animals shall be allowed in those portions of the facility where shellfish, food handling equipment, or packaging materials are stored, handled, processed, or packaged.

Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~

15A NCAC 18A .0411 RODENT AND ANIMAL CONTROL

Authority G.S. ~~130A-230.~~

15A NCAC 18A .0412 PLUMBING AND HAND WASHING FACILITIES

(a) All plumbing shall be in compliance with applicable plumbing codes.

(b) Hand washing facilities shall be provided with running water at a minimum temperature of 100°F dispensed from a hot and cold combination faucet.

(c) Hand washing facilities shall be provided in or adjacent to each bathroom and in shucking and packing rooms. Hand washing facilities in packing areas shall be located where supervisors can observe employee use.

(d) Hand washing facilities shall be separate from three-compartment or other sinks used for cleaning equipment and utensils.

(e) Soap, single service towels in protected dispensers, and an easily cleanable waste receptacle shall be available and used at hand washing facilities. Other hand drying devices may be used if approved by the Division of Marine Fisheries based upon being equally effective at drying hands without the potential for recontamination.

Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0413 WATER SUPPLY

~~(a) The water supply shall be from a source approved by the Division.~~

~~(b) The water supply used shall be located, constructed, maintained, and operated in accordance with the Commission for Public Health's rules governing water supplies. Copies of 15A NCAC 18A .1700 and 15A NCAC 18C may be obtained from the Division.~~

(a) The water supply used shall be in accordance with 15A NCAC 18A .1720 through .1728, 15A NCAC 18C, or 02 NCAC 09C .0703, which are incorporated by reference, including subsequent amendments.

(b) If the water supply is from a private source, samples for bacteriological analysis shall be collected by the Division of Marine Fisheries prior to use and after the water supply has been repaired or disinfected, and submitted for analysis to the State Laboratory of Public Health or other laboratory that is certified in accordance with 10A NCAC 42C .0102, which is incorporated by reference, including subsequent amendments.

(c) Cross-connections with unapproved water supplies shall be prohibited. A backflow or back siphonage of a solid, liquid, or gas containment into the water supply shall be precluded by use of an air gap or backflow prevention device in accordance with applicable plumbing codes.

(d) Hot and cold running water under pressure shall be provided to food preparation, utensil, and hand washing areas and any other areas in which water is required for cleaning. Running water under pressure shall be provided in sufficient quantity to carry out all food preparation, utensil washing, hand washing, cleaning, and other water-using operations.

Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0414 TOILET FACILITIES

~~Separate and convenient toilet facilities shall be provided for each sex employed and shall comply with the N.C. State Building Code, Volume 2, Plumbing. Floors, walls, and ceilings shall be smooth, easily cleanable and kept clean. Fixtures shall be kept~~

~~clean. All toilet wastes and other sewage shall be disposed of in a public sewer system or in the absence of a public sewer system, by an on site sewage disposal system approved by the Department in accordance with G.S. 130A-335.~~

(a) Toilets shall be provided in the plant by the owner or responsible individual and shall be kept clean and in good repair.

(b) Toilet tissue, in a holder, shall be provided by the owner or responsible individual.

(c) Toilet room doors shall not open directly into a processing area and shall be tight-fitting and self-closing.

(d) All toilet wastes and other sewage shall be disposed of in accordance with 15A NCAC 18A .1900 or 15A NCAC 02H .0200, which are incorporated by reference, including subsequent amendments.

Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0415 WASTE DISPOSAL PREMISES

~~Shells, washings, and other wastes shall be disposed of in a sanitary landfill or in a sanitary manner approved by the Division.~~

(a) The premises shall be maintained free from conditions that may constitute an attractant, breeding place, or harborage for pests such as unmowed weeds or grass, uncontained litter or waste, or unused equipment.

(b) To prevent pests and odors, shells and other solid waste shall not be permitted to accumulate on the premises.

Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0416 PERSONAL HYGIENE

(a) All employees shall wash their hands thoroughly with soap and running water before beginning work and again after each ~~interruption~~ interruption or if their hands may have become soiled or contaminated. ~~Signs to this effect shall be posted in conspicuous places in the plant by the operator.~~ Hand washing signs shall be posted by the owner or responsible individual at each hand washing facility in a language understood by employees.

~~(b) All persons handling shucked shellfish shall sanitize their hands before beginning work and again after each interruption.~~

(e)(b) All persons ~~individuals~~ employed or engaged in the ~~handling~~, shucking, or ~~packing~~ packing, or repacking of shellfish shall wear clean, washable outer clothing. Clean plastic or rubber aprons, overalls, and rubber gloves shall be considered satisfactory.

(c) All individuals employed or engaged in the shucking, packing, or repacking of shellfish shall wear hair restraints and have clean fingernails free from nail polish and that are short enough to not extend past the fingertips. Employees shall not wear jewelry other than easily cleanable rings. The use of absorbent wraps or absorbent finger cots shall not be permitted.

(d) Employees shall not eat, drink, use electronic cigarettes or vaping products, or use tobacco in any form in the rooms where shellfish are stored, processed, or handled.

(e) ~~All persons~~ An individual known to be a carrier of any disease which that can be transmitted through the handling of shellfish or who have has an infected wound or open lesion on any exposed

portion of ~~their bodies~~ the body shall be prohibited from handling ~~shellfish~~ shellfish or coming into contact with food contact surfaces.

Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~

15A NCAC 18A .0417 LOCKERS EMPLOYEES' PERSONAL ARTICLES

~~A separate room or locker shall be provided for storing employees' street clothing, aprons, gloves, and personal articles. Employees' street clothing, aprons, gloves, food, drink, and personal articles shall be stored in a room or locker separate from any area where shellfish are shucked or packed or any area that is used for the cleaning or storage of utensils.~~

Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~

15A NCAC 18A .0418 SUPPLY STORAGE

~~(a) Storage room shall be provided for storing shipping containers, tags, and other supplies. Shipping containers, boxes, and other supplies shall be stored in a storage room or area. The storage room or area shall be kept clean.~~

~~(b) Pesticides, rodenticides, chemical agents, sanitizers, and other toxic substances shall be stored separate from processing areas or food contact surfaces. Each of the following categories of toxic substances shall be stored separate from one another:~~

- ~~(1) pesticides and rodenticides;~~
- ~~(2) detergents, sanitizers, and cleaning agents; and~~
- ~~(3) caustic acids, polishes, and other chemicals.~~

~~(c) Cleaning compounds, sanitizers, and other toxic substances shall be labeled and used in accordance with the manufacturer's label directions.~~

Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~

15A NCAC 18A .0419 HARVEST BOATS VESSELS AND VEHICLES

~~All boats used in the harvesting and handling of shellstock shall be kept clean and repaired such that the shellstock thereon shall not be subject to adulteration by bilge water, by leakage of water from prohibited areas, or by other means. Decks, holds, or bins used for shellstock on boats shall not be washed with water from prohibited areas. Human wastes shall not be discharged into shellfish waters.~~

~~(a) It shall be unlawful to use vessels or vehicles that are engaged in the commercial harvest, handling, or transport of shellstock in such a manner that allows contact of shellstock with bilge water, standing water, or other sources of contamination in the vessel or vehicle.~~

~~(b) It shall be unlawful to allow dogs or other animals on or inside vessels or vehicles that are engaged in the commercial harvest or transport of shellstock.~~

~~(c) It shall be unlawful to discharge human waste overboard from vessels or vehicles used in the harvesting of shellstock.~~

Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~

15A NCAC 18A .0420 TRANSPORTING SHELLSTOCK SHELLFISH

~~(a) All shellstock shellfish storage areas in trucks, buy boats, buy trucks, vessels, trailers, and other conveyances used for transporting shellstock shellfish shall be enclosed, tightly constructed, painted with a light color washable paint, kept clean, and shall be subject to inspection by the Division. Division of Marine Fisheries.~~

~~(b) Shellstock shall be shipped under temperature and sanitary conditions in accordance with these Rules which will keep them alive and clean and will prevent adulteration or deterioration. All shellstock shall be kept under mechanical refrigeration at a temperature of 45°F (7.1°C) or below. All conveyances used to transport shellstock shall be equipped with an operating thermometer. It shall be unlawful to transport shellstock and in-shell product unless shipped under mechanical refrigeration and the shipping conveyance is pre-chilled and maintained at an ambient temperature of 45°F or below. The storage area of the shipping conveyance shall be equipped with an accurate, operating thermometer.~~

~~(c) Buy boats and buy trucks shall be kept clean with water from a source approved by the Division under Rule .0413 of this Subchapter. Buy boats and buy trucks shall provide storage space for clean shipping containers, identification tags, and records. It shall be unlawful to transport shucked shellfish unless maintained under temperature control of 45°F or below.~~

Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~

15A NCAC 18A .0421 DAILY-RECORD RECORDS

~~(a) All permitted persons shellfish dealers who conduct any business of buying, selling, or shipping shellfish shall keep an accurate, daily record which that shall show the names and addresses of all persons from whom shellfish are received, the address of any shellfish dealer from whom shellfish are received, the location of the source of shellfish, and the names and addresses of all persons to whom shellfish are sold or shipped. shipped with the exception of retail sales. These records shall be recorded and shall be kept on file for a minimum of one year. year for fresh shellfish, and a minimum of two years for frozen shellfish. All records shall be open to inspection by the Division of Marine Fisheries at the dealer facility at any time during business hours.~~

~~(b) All shellfish dealers who receive shellstock from licensed harvesters shall record the following information at the time of receipt:~~

- ~~(1) harvester name;~~
- ~~(2) harvest area;~~
- ~~(3) time of the start of harvest;~~
- ~~(4) quantity and type of shellfish received;~~
- ~~(5) time shellfish were received; and~~
- ~~(6) time shellfish were mechanically refrigerated.~~

~~(c) Each shellfish shipment shipped by a shellfish dealer shall be accompanied by a shipping document that includes:~~

- (1) name, address, and certification number of shipping dealer;
- (2) name and address of major consignee;
- (3) type and quantity of shellfish product;
- (4) date and time of shipment;
- (5) documentation that shipping conveyance is pre-chilled at 45°F or below prior to shipment; and
- (6) temperature of shellstock recorded by shipping dealer at time of shipment.

(d) A dealer receiving a shellfish shipment from another shellfish dealer shall record the temperature of the shipping conveyance and the temperature of the shellfish product received. These records shall be kept on file for a minimum of one year for fresh shellfish, and a minimum of two years for frozen shellfish. All records shall be open to inspection by the Division at the dealer facility at any time during business hours.

(e) Within 72 hours of any purchase or sale of shellfish, each purchase or sale shall be entered into a permanently bound ledger book, computer record, or any other method that permanently records the information and is organized so that it can be reviewed by the Division.

Authority G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0422 SHELLSTOCK CLEANING

No person shall offer for sale any shellstock ~~which~~ that have not been washed free of ~~bottom~~ harvest area sediments and detritus. Water used for shellstock washing shall be obtained from a water source in accordance with Rule .0413 of this Section or from a growing area in the open status and classified as "approved" or "conditionally approved" as defined in Rule .0901 of this Subchapter.

Authority G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0423 SALE OF LIVE SHELLSTOCK (READOPTED WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 18A .0424 SHELLFISH RECEIVING

No ~~person~~ shellfish dealer shall receive or ~~accept~~ accept:

- (1) any shellfish shellstock from:
 - (a) a licensed shellfish harvester unless unless:
 - (i) the container or package bears the harvest tag ~~or label~~ required by these Rules, as required in Rule 15A NCAC 03K .0109 and in accordance with the HACCP plan; and
 - (ii) the shellstock was harvested from a growing area in the open status and classified as "approved" or "conditionally approved" as defined in Rule .0901 of this Subchapter and as indicated on the harvest tag; or

- (b) another shellfish dealer unless the container or package bears the tag as required in Rule .0425 of this Section or, in the case of a bulk shipment, Rule .0426 of this Section; and

- (2) any shellfish from another shellfish dealer unless:

- (a) it is accompanied by the documentation required in Rule .0421(c) of this Section; and
- (b) the shellfish temperature and other critical limits are in compliance with the HACCP plan.

Authority G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0426 BULK SHIPMENTS BETWEEN SHELLFISH DEALERS

(a) For the purpose of this Rule:

- (1) "bulk shipment" shall mean a shipment of a shellstock lot between shellfish dealers.
- (2) "shellstock lot" shall mean a single type of bulk shellstock or containers of shellstock of no more than one day's harvest from a single growing area harvested by one or more harvesters.

(b) ~~Shipment in bulk~~ Bulk shipments shall not be made except ~~where~~ if the shipment is from only one consignor to one ~~consignee~~ and accompanied by the uniform shipping tag, consignee, both of which shall be shellfish dealers.

(c) When a shellstock lot is shipped, if multiple containers are used they shall be on a wrapped pallet, in a tote, in a net bailer, or other container and the unit shall be tagged with a single tag in accordance with Rule .0425 of this Section. The single tag shall also include a statement that "All shellstock containers in this lot have the same harvest date and area of harvest" and shall include the number of individual containers in the unit.

(d) The shellfish dealer shall provide a transaction record that accompanies the bulk shipment that contains the same information required on a dealer's tag in Rule .0425 of this Section and additionally states the name of the consignee, which shall be a shellfish dealer.

(e) Bulk shipments shall be kept above the floor using pallets to prevent the shellstock from becoming contaminated, unless the shipping conveyance has a channeled floor.

Authority G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0427 SHELLSTOCK SHELLFISH STORAGE

Shellstock held in wet or dry storage must be kept so that they will not become adulterated. All shellstock held in dry storage shall be kept under mechanical refrigeration at a temperature of 45°F (7.1°C) or below. All refrigerated shellstock storage areas shall be equipped with an operating thermometer.

(a) It shall be unlawful to fail to keep shellstock and in-shell product under mechanical refrigeration at a temperature of 45°F

or below unless otherwise required by proclamation issued under the authority of 15A NCAC 03K .0110 or otherwise specified in the HACCP plan.

(b) Refrigerated storage areas shall be equipped with an accurate, operating thermometer.

(c) It shall be unlawful to fail to keep shucked shellfish under temperature control at a temperature of 45°F or below.

Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0428 SAMPLING AND TESTING

Samples of shellfish may be taken and bacteriologically examined for any public health reason under the authority of the Marine Fisheries Commission by agents of the Division of Marine Fisheries at any time or place. This may include bacteriological examination or analysis for poisonous or deleterious substances as listed in the latest approved edition of the National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, Section IV: Guidance Documents, Chapter II: Growing Areas; Action Levels, Tolerances and Guidance Levels for Poisonous or Deleterious Substances in Seafood, which is incorporated by reference, including subsequent amendments and editions. A copy of the reference material can be found at <https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp>, at no cost. Samples of shellfish shall be furnished, upon request, request of the Division, by operators of plants, trucks, carriers, stores, restaurants, and other places where shellfish are sold.

Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0429 STOPSALE EMBARGO OR DISPOSAL OF SHELLFISH

(a) When it has been determined by the Division of Marine Fisheries that shellfish have not been grown, harvested, stored, treated, transported, handled, shucked, packed, or offered for sale in compliance with 15A NCAC 18A Sections .0300 through .0900 of this Subchapter, those shellfish shall may be deemed adulterated, adulterated in accordance with Rule .0438 of this Section, except as required in Rules .0405 and .0430 of this Section.

(b) Shellfish or shellfish products processed or prepared for sale to the public determined to be adulterated or misbranded shall be subject to stopsale or disposal by the Division. The Division may temporarily or permanently issue an order to stop sale or condemn, destroy, or otherwise dispose of all shellfish or shellfish containers found to be adulterated or misbranded, embargo or disposal by the Division in accordance with G.S. 113-221.4. The authority of marine fisheries inspectors to seize shellfish or shellfish products pursuant to G.S. 113-137 shall not be affected by this Rule.

(c) All shellfish shall be disposed of in a manner prescribed by the Division or by a court of appropriate jurisdiction.

(c) If voluntary disposal of adulterated or misbranded shellfish or shellfish products is alternatively chosen by the shellfish dealer, responsible individual, or other person or facility specified in Rule

.0401 of this Section, the product disposal shall be observed by a Division employee.

Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 113-221.4; 143B-289.52.

15A NCAC 18A .0430 BACTERIOLOGICAL AND CONTAMINATION STANDARDS

Shellfish shucked or in the shell and intended or offered for sale in North Carolina that exceed an Escherichia coli Most Probable Number of 230 per 100 grams of sample or a total bacteria count of more than 500,000 per gram or contain pathogenic organisms in sufficient numbers to be hazardous to the public health shall be deemed adulterated by the Division. Shellfish contaminated by any other substance which renders it unsafe for human consumption shall be deemed adulterated by the Division. shall be deemed adulterated by the Division of Marine Fisheries if:

- (1) the concentration of Escherichia coli exceeds a Most Probable Number (MPN), as defined in Rule .0901 of this Subchapter, of 230 per 100 grams of sample;
- (2) the total bacteria count, as determined by a standard plate count, exceeds 500,000 colony-forming units, as defined in Rule .0901 of this Subchapter; or
- (3) the shellfish contain any contaminant that renders it unsafe for human consumption in accordance with the latest approved edition of the National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, Section IV: Guidance Documents, Chapter II: Growing Areas; Action Levels, Tolerances and Guidance Levels for Poisonous or Deleterious Substances in Seafood, which is incorporated by reference, including subsequent amendments and editions. A copy of the reference material can be found at <https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp>, at no cost.

Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0432 PUBLIC DISPLAY OF CONSUMER ADVISORY

All facilities and persons shellfish dealers permitted in by Rule .0302 of this Subchapter and all other businesses and persons that sell or serve raw shellfish shall post one of the following consumer advisories or an equivalent statement in a conspicuous place where it may be readily observed by the public the following consumer advisory: in the area where raw shellfish is sold or served:

- (1) "Consumer Advisory
Eating raw or undercooked oysters, clams, whole scallops, or mussels may cause severe illness. People with the following conditions are at especially high risk: liver disease, alcoholism, diabetes, cancer, stomach

or blood disorder, or weakened immune system. Ask your doctor if you are unsure of your risk. If you eat shellfish and become sick, see a doctor ~~immediately.~~ immediately.; or

- (2) "Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions."

Nothing in this Rule is intended to supersede regulation of restaurants or other establishments subject to 15A NCAC 18A .2600 or the U.S. Food Code.

Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~

15A NCAC 18A .0433 HAZARD ANALYSIS

Each shellfish dealer shall conduct a hazard analysis to determine the food safety hazards that are reasonably likely to occur for each kind of shellfish product processed by that dealer and to identify the preventative measures that the dealer can apply to control those hazards. For the purpose of this Rule, "reasonably likely to occur" shall mean a food safety hazard for which a processor would establish controls because experience, illness data, scientific reports, or other information provide a basis to conclude that there is a reasonable possibility that it will occur in the absence of those controls, as defined in 21 CFR 123.6, which is incorporated by reference, including subsequent amendments and editions. A copy of the reference material can be found at <https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-123>, at no cost.

Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~

15A NCAC 18A .0434 HACCP PLAN

(a) Each shellfish dealer shall have and implement a written HACCP Plan. plan specific to each kind of shellfish product processed. The owner or authorized designee individual shall sign the plan when implemented and after any modification. implemented, which shall signify that the plan has been accepted for implementation by the dealer. The HACCP plan shall also be signed by the owner or authorized individual after any modification or verification of the plan as required by this Rule. The plan shall be reviewed and updated, if necessary, at least annually. The plan shall, at a minimum:

- (1) ~~List~~ list the food safety hazards that are reasonably likely to occur;
- (2) ~~List~~ list the critical control points for each of the food safety hazards;
- (3) ~~List~~ list the critical limits that must be met for each of the critical control points;
- (4) ~~List~~ list the procedures, and frequency thereof, that will be used to monitor each of the critical control points to ensure compliance with the critical limits;
- (5) ~~List~~ list any corrective action plans to be followed in response to deviations from critical limits at critical control points;

- (6) ~~Provide~~ provide a record keeping system that documents critical control point monitoring; and
- (7) ~~List~~ list the verification procedures, and frequency thereof, that the dealer will use.

For the purpose of this Rule, "reasonably likely to occur" shall mean a food safety hazard for which a processor would establish controls because experience, illness data, scientific reports, or other information provide a basis to conclude that there is a reasonable possibility that it will occur in the absence of those controls, as defined in 21 CFR 123.6, which is incorporated by reference, including subsequent amendments and editions. A copy of the reference material can be found at <https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-123>, at no cost.

(b) With the exception of a shellfish dealer that has not been permitted for interstate commerce, the following functions shall be performed by an individual who has successfully completed training in the application of HACCP principles to shellfish processing:

- (1) developing a HACCP plan;
- (2) reassessing and modifying the HACCP plan; and
- (3) performing the record review specified in Paragraph (d) of this Rule.

(c) If a deviation from a critical limit occurs, the shellfish dealer shall take corrective action in accordance with 21 CFR 123.7, which is incorporated by reference, including subsequent amendments and editions. A copy of the reference material can be found at [https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-123/subpart-A/section-123.7#p-123.7\(b\)](https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-123/subpart-A/section-123.7#p-123.7(b)), at no cost.

(d) At least annually, each shellfish dealer shall verify that the HACCP plan is being implemented to control food safety hazards. Verification procedures shall include:

- (1) a reassessment of the plan when a change occurs that could affect the hazard analysis, and a review of any consumer complaints that have been received; and
- (2) a review, including signing and dating by the trained individual or responsible individual, of the records that document the monitoring of critical control points, the taking of corrective actions, and the calibrating of any process-monitoring instruments. This review shall occur within one week of the day that the records are made.

(e) All records required by this Rule shall be retained at the dealer facility for at least one year after the date they were prepared in the case of refrigerated products, and at least two years after the date they were prepared in the case of frozen products and shall include:

- (1) the name and location of the dealer;
- (2) the date and time of the activity that the record reflects;
- (3) the signature or initials of the individual performing the operation; and
- (4) the identity of the product and the production code, if any.

Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 113-221.4; 143B-289.52.

15A NCAC 18A .0435 SANITATION MONITORING REQUIREMENTS

(a) Each shellfish dealer shall monitor, at a minimum, monitor the following sanitation items: items when the plant is operational:

- (1) ~~Safety~~ safety of water;
- (2) ~~Condition~~ condition and cleanliness of food contact surfaces;
- (3) ~~Prevention~~ prevention of ~~cross-contamination;~~ cross-contamination;
- (4) ~~Maintenance~~ maintenance of hand washing, hand ~~sanitizing~~ sanitizing, and toilet facilities;
- (5) ~~Protection~~ protection of shellfish, shellfish packaging ~~materials~~ materials, and food contact surfaces from ~~adulteration;~~ becoming adulterated;
- (6) ~~Proper~~ proper labeling, ~~storage~~ storage, and use of toxic compounds;
- (7) ~~Control~~ control of employees with adverse health conditions; and
- (8) ~~Exclusion~~ exclusion of pests from the facility.

(b) Monitoring records of these sanitation items shall be recorded at least daily and shall include the date and time of the activity that the record reflects, and the signature or initials of the individual performing the operation. The records shall be reviewed and signed by the owner or designated individual within one week of recording.

Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0436 MONITORING RECORDS

Authority G.S. 130A-230.

15A NCAC 18A .0437 IN-SHELL PRODUCT

(a) In-shell product shall be kept under mechanical refrigeration at a temperature of 45°F or below.

(b) In-shell product shall be tagged or labeled to contain the following indelible and legible information listed in sequential order:

- (1) the shellfish dealer's name, address, and certification number assigned by the shellfish control agency in the state of the shellfish dealer's location;
- (2) the original shipper's certification number, except if the in-shell product is depurated, the original shipper's certification number is not required;
- (3) a "SELL BY DATE" that indicates the shelf-life or the words "BEST IF USED BY" followed by a date when the product would be expected to reach the end of its shelf-life. The date shall include month, day, and year;
- (4) if the in-shell product is depurated, the depuration cycle number or lot number;

(5) the most precise identification of the harvest location as is practicable, including the initials of the state of harvest, and the state or local shellfish control authority's designation of the growing area by indexing, administrative, or geographic designation. If the authority in another state has not indexed growing areas, then a geographical or administrative designation shall be used (e.g., Long Bay, shellfish lease or franchise number, or lot number);

(6) the type and quantity of in-shell product; and
(7) the following statement in bold type on each tag or label: "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED AND THEREAFTER KEPT ON FILE, IN CHRONOLOGICAL ORDER, FOR 90 DAYS." "RETAILERS: DATE WHEN LAST SHELLFISH FROM THIS CONTAINER SOLD OR SERVED (INSERT DATE) _____." OR "THIS LABEL IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RELABELED AND THEREAFTER KEPT ON FILE, IN CHRONOLOGICAL ORDER, FOR 90 DAYS." "RETAILERS: DATE WHEN LAST SHELLFISH FROM THIS CONTAINER SOLD OR SERVED (INSERT DATE) _____."

(c) In-shell product shall include one of the following consumer advisories, or equivalent statement:

(1) "Consumer Advisory Eating raw or undercooked oysters, clams, whole scallops, or mussels may cause severe illness. People with the following conditions are at especially high risk: liver disease, alcoholism, diabetes, cancer, stomach or blood disorder, or weakened immune system. Ask your doctor if you are unsure of your risk. If you eat shellfish and become sick, see a doctor immediately."

(2) "Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions."

(d) The statement "Keep Refrigerated" or an equivalent statement shall be included on the tag or label.

(e) If in-shell product for retail sale is packed in individual containers of five pounds or less and shipped in a master container that includes a tag in compliance with Paragraph (b) of this Rule, the individual containers of five pounds or less shall not require tags as specified in Paragraph (b) of this Rule if a lot code number is included on each container that allows traceback of the in-shell product to the master container. A consumer advisory shall be included on each retail package in accordance with Paragraph (c) of this Rule.

Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0438 INSPECTIONS AND COMPLIANCE SCHEDULE

(a) If a critical deficiency is detected during an inspection of a shellfish dealer by a Division of Marine Fisheries inspector:

- (1) the deficiency shall be corrected by the shellfish dealer during that inspection; or
- (2) the shellfish dealer shall immediately cease production affected by the deficiency.

If the shellfish dealer fails to correct the deficiency during the inspection, the Division shall initiate the suspension or revocation process for the Shellfish Dealer Permit and Certificate of Compliance as set forth in 15A NCAC 03O .0504. For the purpose of this Rule, "critical deficiency" shall mean a condition or practice that results in the production of a shellfish product that is adulterated or presents a threat to the health or safety of the consumer.

(b) Shellfish products affected by a critical deficiency shall be controlled to prevent adulterated product from reaching consumers. The Division shall:

- (1) embargo or destroy adulterated shellfish in accordance with Rule .0429 of this Section;
- (2) initiate a recall of adulterated shellfish; and
- (3) notify enforcement officials for the United States Food and Drug Administration, as well as shellfish control authorities in states that are known to have received adulterated shellfish.

(c) If a key or other deficiency is detected during an inspection of a shellfish dealer by a Division inspector, a compliance schedule shall be issued by the Division inspector that provides a time frame by which the deficiency shall be corrected by the shellfish dealer. For the purpose of this Rule, "key or other deficiency" shall mean a deficiency other than a critical deficiency.

(d) If a shellfish dealer fails to meet the compliance schedule, the Division shall proceed with one of the following options:

- (1) revise the existing compliance schedule;
- (2) initiate the suspension or revocation process for the Shellfish Dealer Permit and Certificate of Compliance as set forth in 15A NCAC 03O .0504; or
- (3) seek other administrative remedies.

(e) Nothing in this Rule shall be construed to limit or make null any option for remedy in accordance with Rule 15A NCAC 03O .0504 or other available administrative remedy.

Authority G.S. 113-134; 113-182; 113-221.2; 113-221.4; 143B-289.52.

15A NCAC 18A .0439 RECALL PROCEDURE

Each shellfish dealer shall adopt and adhere to a written procedure for conducting recalls of adulterated or misbranded shellfish products. This written procedure shall be based on, and complementary to, the FDA Enforcement Policy on Recalls, CFR Title 21, Chapter 1, Subchapter A., Part 7-Enforcement Policy. This procedure shall include shellfish dealers notifying the Division of Marine Fisheries and any consignee receiving affected product when a recall begins, as well as removal or correction of the affected product.

Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52.

SECTION .0500 - OPERATION OF SHELLSTOCK PLANTS AND RESHIPERS

15A NCAC 18A .0501 GENERAL REQUIREMENTS FOR SHELLSTOCK PLANTS AND RESHIPERS

The rules in Section .0400 and the rules of this Section shall apply for the operation of shellstock plants and reshippers.

Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0502 GRADING SHELLSTOCK AND COMMINGLING

(a) For the purpose of this Rule:

- (1) "commingling" shall mean the act of combining different lots of shellfish harvested on different days in the same growing area or combining different lots of shellstock harvested from different growing areas.
- (2) "lot" shall mean clams from one day's harvest, from a single growing area, harvested by one or more harvesters.

~~(a)~~(b) The grading of shellstock by a shellfish dealer shall be conducted only in a permitted shellstock plant.

~~(b)~~(c) A separate grading room or area separate from other processing operations shall be required for the grading of shellstock.

(d) The grader used to grade shellstock, and any other accessories or tables used in the grading operation, shall be constructed to be easily cleanable and shall be kept in good repair.

(e) Shellfish dealers shall not commingle any shellfish, except for clams with prior approval of a commingling plan by the Division of Marine Fisheries. A commingling plan shall be approved by the Division based on limiting the dates of harvest and growing areas and maintaining lot identity so that each individual lot of shellfish can be traced back to its harvest source.

Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0503 GRADER

Authority G.S. 130A-230.

15A NCAC 18A .0504 RESHIPERS

~~(a) Reshippers shall meet all applicable requirements for shellstock plants. When shucked shellfish are reshipped, they shall be obtained from a permitted shipper. The shucked shellfish shall be received in approved shipping containers at a temperature of 40°F (4°C) or below. The temperature of the shellfish shall not exceed 40°F (4°C) during the holding and shipping periods.~~

~~(b) Reshippers shall keep adequate and accurate records indicating the source from which shellfish were purchased, the date purchased, the name of the waters from which the shellfish were harvested, and the names and addresses of persons to whom the shellfish were sold for a period of one year.~~

Reshippers shall only purchase shellfish from other shellfish dealers and sell the product to other shellfish dealers, wholesalers, or retailers without repacking or relabeling.

Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52.

SECTION .0600 - OPERATION OF SHELLFISH SHUCKING AND PACKING PLANTS AND REPACKING PLANTS

15A NCAC 18A .0601 ~~GENERAL REQUIREMENTS FOR SHUCKING AND PACKING PLANTS AND REPACKING PLANTS~~

The rules in Section .0400 and the rules of this Section shall apply for the operation of shucking and packing plants and repacking plants.

Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0602 SEPARATION OF OPERATIONS

A shucking and packing plant shall provide separate ~~rooms~~ areas for shellstock storage, shucking, heat shock, and general storage. A ~~separate~~ packing area ~~with delivery shelf that is separate from other processing areas and with a delivery window or shelf as set forth in Rule .0605 of this Section~~ shall be required.

Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0603 HOT WATER SYSTEM

An automatically regulated hot water system shall be provided ~~which that~~ has sufficient capacity to furnish water at a temperature of at least 130°F (54°C) during all hours of shucking and packing plant operation.

Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0604 HANDWASHING FACILITIES

Authority G.S. 130A-230.

15A NCAC 18A .0605 DELIVERY WINDOW OR SHELF

(a) A delivery window or a non-corrosive shelf shall be installed in the partition between the shucking ~~room~~ area and packing area. No shuckers or unauthorized personnel shall be allowed in the packing room or area. The If a delivery window is used it shall be equipped with a shelf completely covered with smooth, non-corrosive metal or other impervious material ~~approved by the Division for such purpose~~, and shall be sloped to drain towards the shucking ~~room~~ area.

(b) No shuckers or individuals that are not designated as packers by the owner or responsible individual shall be allowed in the packing area.

Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0606 NON-FOOD CONTACT SURFACES

All non-food contact surfaces of equipment such as cabinets and shelving shall be ~~non-absorbent~~, impervious and constructed to be easily ~~cleaned~~; cleanable.

Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0607 SHUCKING BENCHES

Shucking benches, tables, and contiguous walls to a height of at least two feet above the bench top, shall be of smooth concrete, non-corrosive metal, or other durable ~~non-absorbent~~ impervious material, free from cracks and pits, and ~~so~~ constructed so that drainage is complete ~~and rapid~~ and is directed away from the stored shellfish. Shucking blocks shall be solid, one-piece construction, removable, and easily cleanable. The stands, ~~stalls~~ stalls, and stools shall be of smooth material and shall be painted with a ~~light colored~~ light-colored washable ~~paint~~; paint, such as white in color, so that unclean surfaces can be detected.

Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0608 EQUIPMENT CONSTRUCTION

(a) All pails, skimmers, measures, tanks, tubs, blowers, paddles, and other equipment, ~~which that~~ come into contact with shucked shellfish or with ice used for direct cooling of shellfish, shall be made of smooth, non-corrosive, impervious materials and constructed so as to be easily cleanable and shall be kept clean and in good repair.

(b) All equipment, including external and internal blower lines and hoses below a point two inches above the overflow level of the tank and blower drain valves, shall be constructed as to be easily ~~cleanable~~; cleanable and there shall be no V-type threads in the food-product zone of the blower.

(c) The blower and skimmer drain shall not be directly connected with the sewer. There shall be an air ~~gap, approved by the Division~~; gap between the blower and skimmer outlets. A floor drain shall be provided.

(d) Air-pump intakes shall be located in a place protected from dirt and other contamination, and shall be equipped with filters.

Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0609 SANITIZING EQUIPMENT

Washing and sanitizing facilities, including a three-compartment wash sink of adequate size to wash the largest utensils used in the ~~plant~~ shucking and packing plant, shall be provided in a section of the plant ~~convenient to~~ so that it can service the work areas. The sink shall be kept in good repair. Permanent hot and cold water connections, with combination supply faucets, shall be installed so that all vats may receive hot and cold water. Either steam, hot water, or a sanitizing solution shall be used to sanitize utensils and equipment.

Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~

15A NCAC 18A .0610 EQUIPMENT SANITATION

All utensils and tools, such as opening knives, shucking pails, measures, skimmers, colanders, tanks, tubs, paddles, and containers ~~which that~~ come in contact with the shellfish shall be thoroughly cleaned and then ~~sanitized; sanitized by:~~

- (1) ~~by steam in a steam chamber or box equipped with an indicating thermometer located in the coldest zone, by exposure to a temperature of 170°F (76°C) for at least 15 minutes, or to a temperature of 200°F (93°C) for at least five minutes;~~
- (2) ~~by immersion in hot water at a temperature of 170°F (76°C) for at least two minutes (a thermometer is required); minutes;~~
- (3) ~~by immersion for at least one minute in, or exposure for at least one minute to, to a constant flow of of, a solution containing not less than 100 parts per million chlorine residual. Utensils and equipment which have to that must be washed in place will shall require washing, rinsing, and sanitizing; or~~
- (4) ~~by a bactericidal treatment method which will provide equivalent sanitization to that provided by the methods authorized in (1), (2), or (3), as determined by the Division. If the bactericidal immersion or spray treatment is employed, testing kits shall be used to ensure that minimum solution strengths are maintained throughout the cleaning process. other equivalent products and procedures approved in 21 CFR 178.1010, which is incorporated by reference, including subsequent amendments and editions. A copy of the reference material can be found at <https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-178/subpart-B/section-178.1010>, at no cost.~~

A testing method or equipment shall be available and used to test chemical sanitizers to ensure minimum prescribed strengths.

Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~

15A NCAC 18A .0611 EQUIPMENT STORAGE

Equipment and utensils ~~which that~~ have been cleaned and ~~given bactericidal treatment~~ sanitized shall be stored in a manner to protect against prevent contamination.

Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~

15A NCAC 18A .0612 ICE

(a) Ice shall be obtained from a water supply approved by the Division of Marine Fisheries pursuant to Rule .0413 of this Subchapter and shall be stored and handled in a sanitary manner, manner to prevent contamination and keep the ice clean.

(b) All equipment used in the handling of ice shall be used for no other purpose and shall be cleaned and sanitized at least once each day the facility is in operation.

Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~

15A NCAC 18A .0613 SHELLFISH SHUCKING

(a) Shellfish shall be shucked in a manner ~~that they are not subject to adulteration. to prevent contamination.~~ Shellstock shall be ~~reasonably~~ free of ~~mud when excessive sediment prior to being~~ shucked. Only live shellstock shall be shucked.

(b) Shucking of shellstock shall only be permitted on ~~approved~~ shucking tables or ~~benches. benches in accordance with Rules .0402 and .0607 of this Subchapter.~~ Floors ~~used by shuckers~~ shall not be used for the storage of shellfish or the retention of shucking pails or other food contact containers.

(c) When shellstock are stored in the shucking room, protection shall be provided for the storage space to prevent ~~possible adulteration~~ the shellstock from becoming adulterated from wash water wastes and from the feet of the employees.

(d) Shucking pails shall be placed so as to exclude the drippings from shells and from the hands of shuckers. The pails shall be rinsed with running tap water before each filling.

(e) ~~Shucked shellfish, when washed, shellfish~~ shall be ~~thoroughly~~ washed on a skimmer or a container approved by the Division of Marine Fisheries with cold running water from a source ~~approved by the Division under in accordance with Rule .0413 of this Subchapter.~~

(f) The return of excess shucked shellfish from the packing room shall not be allowed. All shucked shellfish shall be packed before ~~leaving it leaves~~ the packing room.

(g) If blowers are used for cleansing, the total time that shellfish are in contact with water after leaving the shucker, including the time of washing, rinsing, and any other contact with ~~water water,~~ shall not be more than 30 minutes. In computing the time of contact with water, the length of time that shellfish are in contact with water that is ~~agitated, agitated~~ shall be calculated at twice ~~its~~ the actual length. length of time that the shellfish are in contact with the water. Before packing into containers for shipment or delivery for consumption, the shellfish shall be ~~drained and packed drained.~~ Shellfish shall be packed without any added substance.

~~(h) Pre cooling of shucked shellfish shall be done in equipment which meets National Sanitation Foundation standards or the equivalent.~~

Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~

15A NCAC 18A .0614 CONTAINERS

(a) Containers used for transporting shucked shellfish shall be made from ~~food safe materials approved by the United States Food and Drug Administration. food-safe materials.~~ These containers shall not be reused for packing shellfish.

(b) ~~Shucked shellfish shall be packed and shipped in containers, sealed so that tampering can be detected. Each individual container shall have permanently recorded container, so as to be conspicuous, the shucker/packer's, repacker's, or distributor's~~

~~name and address, and the shucker/packer's or repacker's certification number. The shucker/packer's or repacker's name and address and certification number shall be permanently and visibly recorded on the label of each container used for shucked shellfish.~~

~~(c) Any container of shucked shellfish which that has a capacity of 64 fluid ounces or more shall be dated as of the date shucked include the words "DATE SHUCKED" followed by the date shucked permanently recorded on both the lid and sidewall or bottom, bottom of the container. The date shall consist of either the abbreviation for the month and number of the day of the month or the Julian format (YDDD), the last digit of the four-digit year and the three-digit number corresponding to the day of the year.~~

~~(d) Any container of shucked shellfish which that has a capacity of less than 64 fluid ounces shall indicate a SELL BY date, include the words "SELL BY" or "BEST IF USED BY" followed by a date when the product will reach the end of its projected shelf life. The date shall consist of the abbreviation for the month and number of the day of the month.~~

~~(e) For fresh frozen shellfish, the year shall be added to the date for non-Julian format. If fresh frozen, the container shall be labeled as frozen in equal size type immediately adjacent to the type of shellfish. If a frozen container of shucked shellfish is thawed and repacked, the container shall be labeled as previously frozen.~~

~~(f) Each container of shucked shellfish shall include a consumer advisory. The following statement, or an equivalent statement, shall be included on all containers: "Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions."~~

~~(g) No person shall use containers bearing a certification number other than the number assigned to him, him or her.~~

Authority G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0615 SHELLFISH COOLING

~~Shucked shellfish shall be cooled to an internal temperature of 45°F (7°C) or less within two hours after delivery to the packing room. Storage temperatures shall be 40°F (4°C) or below. No ice or other foreign substance shall be allowed to come into contact with the shellfish after processing has been completed.~~

~~(a) For shellstock that has not been refrigerated prior to processing, shucked meats and in-shell product shall be chilled to an internal temperature of 45°F or less within three hours of shucking or processing.~~

~~(b) For shellstock that has been refrigerated prior to processing, shucked meats and in-shell product shall be chilled to an internal temperature of 45°F or less within four hours after removal from refrigeration.~~

~~(c) If heat shock is used, once shellstock is shucked, the shucked shellfish meats shall be cooled to an internal temperature of 45°F or less within two hours from the time of heat shock.~~

~~(d) Shucked and packed shellfish shall be stored in covered containers at an ambient temperature of 45°F or less or covered in ice.~~

Authority G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0616 SHELLFISH FREEZING

~~(a) If shellfish are to be frozen, they shall be frozen within three days of shucking and packing and the shucked date shall be preceded by the letter (F), packing. Containers of frozen shellfish shall be labeled in accordance with Rule .0614 of this Section.~~

~~(b) A temperature of 0°F (-18°C) 0°F or less shall be maintained in the frozen storage rooms.~~

Authority G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0617 SHIPPING

Authority G.S. 130A-230.

15A NCAC 18A .0618 HEAT SHOCK METHOD OF PREPARATION OF SHELLFISH

~~(a) Facilities. If a shucking and packing plant uses the heat shock process, it shall be done in a separate room adjacent to the shellstock storage room and the shucking room.~~

~~(b) Tank construction. The heat shock tank shall be constructed of smooth, non-corrosive metal, designed to drain quickly and completely and to be easily and thoroughly cleaned, cleanable.~~

~~(c) Booster heaters. All heat shock tanks shall be equipped with booster heaters that are thermostatically controlled.~~

~~(d) Shellstock washing. All shellstock subjected to the heat shock process shall be thoroughly washed with flowing potable water immediately prior to the heat shock operation.~~

~~(e) Water temperature. During the heat shock process the water shall be maintained at not less than 140°F (60°C) or more than 150°F (65°C), 150°F. An accurate thermometer shall be available and used to determine the temperature during the heat shock process. The heat shock tanks shall be drained and cleaned at the end of each day's operation.~~

~~(f) Alternatives to heat shock method. Nothing in these Rules this Rule shall be construed to prohibit any other process which that has been found by the Division of Marine Fisheries to be equally effective.~~

~~(g) Water requirements. At least eight gallons of heat shock water shall be maintained in the tank for each one-half one-half bushel of shellstock being treated. All water used in the heat shock process shall be from a source approved by the Division under in accordance with Rule .0413 of this Subchapter.~~

~~(h) Cooling. Immediately after the heat shock process, all treated shellstock shall be subjected to a cool-down with flowing potable tap water. All heat-shocked heat-shocked shellstock shall be handled in a manner to prevent adulteration of the product, the product from becoming adulterated. Shellfish which that have been subjected to the heat shock process shall be cooled to an internal temperature of 45°F (7°C) or below within two hours after this process and shall be placed in storage at 40°F (4°C) 45°F or below.~~

~~(i) Cleaning. At the close of each day's operation, the heat shock tank shall be completely emptied of all water, mud, and detritus, and thoroughly cleaned and then rinsed with flowing potable water.~~

- (j) ~~Sanitizing~~. All heat shock tanks shall be sanitized immediately before starting each day's operation.
- (k) The procedure for the heat shock process shall be posted in a location that can be viewed by employees to help ensure the correct procedure can be followed.

Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0619 REPACKING OF SHELLFISH

- (a) If repacking is practiced, it shall be ~~done strictly conducted~~ in accordance with all the requirements ~~stipulated~~ for shucking and packing plants in the rules of this Section except those for requirements related to shucking.
- (b) The shucked shellfish to be repacked shall be received at the repacking plant ~~in approved shipping containers~~ at a temperature of ~~32° - 40°F (0° - 4°C)~~ 45°F or less.
- (c) Shellfish shall not be repacked more than one time.
- (d) The temperature of the shellfish shall not exceed an internal temperature of 45°F (7°C) for more than two hours during the repacking process.
- (e) ~~Containers with a capacity of 64 fluid ounces or less in which shucked shellfish are repacked shall indicate a SELL BY date preceded by the letter R. Containers with a capacity above 64 fluid ounces in which shucked shellfish are repacked shall be dated to show the original shucking date and repacking date, which will be preceded by the letter (R).~~ Containers of repacked shellfish shall be repacked and labeled in accordance with Rule .0614 of this Section, except that the original date of shucking shall be added to the new repacked container or the original date of shucking shall be used in establishing the "SELL BY" or "BEST IF USED BY" date.
- (f) Repackers shall keep ~~accurate~~ records indicating the source from which shellfish were purchased, the date packed, the date of purchase, ~~the area within the state or territory from which the shellfish were harvested,~~ and the names and addresses of ~~persons shellfish dealers~~ to whom ~~the~~ shellfish were sold.

Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0620 SHELLFISH THAWING AND REPACKING

- (a) Frozen shellfish shall be thawed ~~under temperatures not to exceed 45° F (7° C)~~ at a temperature of 45°F or less.
- (b) Shellfish held for thawing shall be separated from other shellfish.
- (c) Thawed shellfish shall not exceed ~~45° F (7° C)~~ 45°F for more than two hours during the repacking process.
- (d) Containers of repacked, thawed shellfish shall be labeled as required in Rule .0619 of this Section and shall also be labeled as "PREVIOUSLY FROZEN", or equivalent.
- (e) Thawed ~~shellfish, which shellfish that~~ remain in original ~~containers, containers~~ shall be labeled as required in Rule .0614 of this Section and shall also be labeled as "PREVIOUSLY FROZEN", or equivalent.

Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0621 RECALL PROCEDURE

Authority G.S. 130A-230.

SECTION .0700 - OPERATION OF DEPURATION (MECHANICAL PURIFICATION) FACILITIES

15A NCAC 18A .0701 GENERAL REQUIREMENTS FOR DEPURATION

- (a) ~~The Rules in Section .0400 shall apply for the operation of depuration facilities. In addition to and to the extent not inconsistent with other applicable provisions of North Carolina Marine Fisheries Commission rules, requirements for depuration shall be in accordance with the 2019 Revision of the National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish chapter titled "Depuration", which is incorporated by reference, not including subsequent amendments and editions. A copy of the reference material is available online at:~~ <https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp>, at no cost.
- (b) All laboratory analyses used to evaluate the effectiveness of the depuration process shall be performed by a laboratory found by a Food and Drug Administration (FDA) Shellfish Laboratory Evaluation Officer or by an FDA-certified State Shellfish Laboratory Evaluation Officer to conform or provisionally conform to the requirements established under the National Shellfish Sanitation Program (NSSP).
- (c) If there is an immediate or ongoing critical need for a method for the analysis of depuration process water and shellfish that are used to evaluate the effectiveness of the depuration process and no method approved for use within the NSSP exists, the following may be used:
 - (1) a validated Association of Analytical Communities, Bacteriological Analysis Manual, or Environmental Protection Agency method; or
 - (2) an Emergency Use Method as set forth in the latest approved edition of the NSSP Guide for the Control of Molluscan Shellfish.

Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0702 FACILITY SUPERVISION

15A NCAC 18A .0703 FACILITY DESIGN AND SANITATION

Authority G.S. 130A-230.

15A NCAC 18A .0704 LABORATORY PROCEDURES

Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0705 FACILITY OPERATIONS
 15A NCAC 18A .0706 SHELLFISH SAMPLING PROCEDURES
 15A NCAC 18A .0707 DEPURATION PROCESS
 WATER CONTROL - SAMPLING PROCEDURES
 15A NCAC 18A .0708 DEPURATION TREATMENT
 PROCESS WATER - STANDARDS
 15A NCAC 18A .0709 DEPURATION - SHELLFISH
 MEAT STANDARDS
 15A NCAC 18A .0710 ULTRAVIOLET UNIT
 15A NCAC 18A .0711 SHELLSTOCK STORAGE
 15A NCAC 18A .0712 DEPURATION - TAGGING AND
 RELEASE OF SHELLFISH
 15A NCAC 18A .0713 DEPURATION - RECORDS

Authority G.S. 130A-230.

SECTION .0800 - WET STORAGE OF SHELLSTOCK

15A NCAC 18A .0801 GENERAL REQUIREMENTS FOR WET STORAGE OF SHELLSTOCK

(a) The rules in Section .0400 shall apply for wet storage of shellstock. In addition to and to the extent not inconsistent with other applicable provisions of North Carolina Marine Fisheries Commission Rules, requirements for wet storage shall be in accordance with the 2019 Revision of the National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish (hereinafter referred to as "Model Ordinance") chapter titled "Wet Storage in Approved and Conditionally Approved Growing Areas", which is incorporated by reference except as provided in Paragraph (b) of this Rule, not including subsequent amendments and editions. A copy of the reference material is available online at: <https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp>, at no cost.

(b) Amendments and exceptions to the Model Ordinance chapter titled "Wet Storage in Approved and Conditionally Approved Growing Areas" incorporated by reference include:

- (1) Section @.01, .04, C(1)(a) is amended to read: "Except for a water source in accordance with Rule .0413 of this Subchapter, the quality of the surface source water prior to treatment shall meet, at a minimum, the bacteriological standards for the conditionally approved classification in the open status. Water classified as prohibited or restricted shall not be used as source water."
- (2) the following sections are not incorporated by reference and shall not apply: Sections @.01, .04, C(2)(a)(ii), @.01, .04, C(2)(b), @.01, .04, C(2)(c), and @.01, .04, C(2)(d).

Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0802 PLANT DESIGN: SANITATION:
 AND WET STORAGE
 15A NCAC 18A .0803 WET STORAGE WATER
 15A NCAC 18A .0804 SHELLSTOCK CLEANING
 15A NCAC 18A .0805 WET STORAGE TANKS
 15A NCAC 18A .0806 SHELLSTOCK CONTAINERS

Authority G.S. 130A-230.

SECTION .0900 - CLASSIFICATION OF SHELLFISH GROWING WATERS

15A NCAC 18A .0901 DEFINITIONS

The following definitions shall apply to this Section.

- (1) "Approved" means shellfish growing waters determined suitable by the Division for the harvesting of shellfish for direct market purposes.
- (2) "Closed-system marina" means a marina constructed in canals, basins, tributaries, or any other area with restricted tidal flow.
- (3) "Colony forming unit" means an estimate of the number of viable bacteria cells in a sample as determined by a plate count.
- (4) "Commercial marina" means a marina that offers one or more of the following services: fuel, transient dockage, haul-out facilities, or repair services.
- (5) "Conditionally approved" means shellfish growing waters that are subject to predictable intermittent pollution but that may be used for harvesting shellfish for direct market purposes when management plan criteria are met.
- (6) "Division" means the Division of Marine Fisheries or its authorized agent.
- (7) "Estimated 90th percentile" means a statistic that measures the variability in a sample set that shall be calculated by:
 - (a) calculating the arithmetic mean and standard deviation of the sample result logarithms (base 10);
 - (b) multiplying the standard deviation in Sub-Item (a) of this Item by 1.28;
 - (c) adding the product from Sub-Item (b) of this Item to the arithmetic mean; and
 - (d) taking the antilog (base 10) of the results from Sub-Item (c) of this Item to determine the estimated 90th percentile.
- (8) "Fecal coliform" means bacteria of the coliform group that will produce gas from lactose in a multiple tube procedure liquid medium (EC or A-1) within 24 plus or minus two hours at 44.5° C plus or minus 0.2° C in a water bath.
- (9) "Geometric mean" means the antilog (base 10) of the arithmetic mean of the sample result logarithm.

- (10) "Marina" means any water area with a structure (such as a dock, basin, floating dock) that is utilized for docking or otherwise mooring vessels and constructed to provide temporary or permanent docking space for more than 10 boats.
- (11) "Marine biotoxins" means any poisonous compound produced by marine microorganisms and accumulated by shellstock.
- (12) "Median" means the middle number in a given sequence of numbers, taken as the average of the two middle numbers when the sequence has an even number of numbers.
- (13) "Most probable number (MPN)" means a statistical estimate of the number of bacteria per unit volume and is determined from the number of positive results in a series of fermentation tubes.
- (14) "National Shellfish Sanitation Program (NSSP)" means the cooperative federal-state-industry program for the sanitary control of shellfish that is adequate to ensure that the shellfish produced in accordance with the NSSP Guide For The Control Of Molluscan Shellfish will be safe and sanitary.
- (15) "Open-system marina" means a marina constructed in an area where tidal currents have not been impeded by natural or man-made barriers.
- (16) "Private marina" means any marina that is not a commercial marina as defined in this Rule.
- (17) "Prohibited" means shellfish growing waters unsuitable for the harvesting of shellfish for direct market purposes.
- (18) "Public health emergency" means any condition that may immediately cause shellfish waters to be unsafe for the harvest of shellfish for human consumption.
- (19) "Restricted" means shellfish growing waters from which shellfish may be harvested only by permit and are subjected to a treatment process through ~~relaying or~~ depuration that renders the shellfish safe for human consumption.
- (20) "Sanitary survey" means the written evaluation of factors that affect the sanitary quality of a shellfish growing area including sources of pollution, the effects of wind, tides, and currents in the distribution and dilution of polluting materials, and the bacteriological quality of water.
- (21) "Shellfish" means the term as defined in G.S. 113-129, except the term shall not include scallops when the final product is the shucked adductor muscle only.
- (22) "Shellfish growing area" means a management unit that defines the boundaries of a sanitary survey and that is used to track the location where shellfish are harvested.

- (23) "Shellfish growing waters" means marine or estuarine waters that support or could support shellfish life.
- (24) "Shellstock" means live molluscan shellfish in the shell.
- (25) "Shoreline survey" means an in-field inspection by the Division to identify and evaluate any potential or actual pollution sources or other environmental factors that may impact the sanitary quality of a shellfish growing area.
- (26) "Systematic random sampling strategy" means a sampling strategy designed to assess the bacteriological water quality of shellfish growing waters impacted by non-point sources of pollution and scheduled sufficiently far in advance to support random collection with respect to environmental conditions.

Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0906 RESTRICTED AREAS

- (a) Shellfish growing waters may be classified as restricted if:
 - (1) a sanitary survey indicates there are no significant point sources of pollution; and
 - (2) levels of fecal pollution, human pathogens, or poisonous or deleterious substances are at such levels that shellstock can be made safe for human consumption by either relaying or depuration.
- ~~(b) Relaying of shellfish shall be conducted in accordance with all applicable rules, including 15A NCAC 03K and 15A NCAC 18A .0300.~~
- ~~(c)~~(b) Depuration of shellfish shall be conducted in accordance with all applicable rules, including 15A NCAC 03K and 15A NCAC 18A .0300 and .0700.
- ~~(d)~~(c) For shellfish growing waters classified as restricted and used as a source of shellstock for depuration, the microbiological survey, as set forth in Rule .0903(c)(3) of this Section, shall indicate the bacteriological water quality does not exceed the following standards based on results generated using the systematic random sampling strategy:
 - (1) a median fecal coliform most probable number (MPN) or geometric mean MPN of 88 per 100 milliliters;
 - (2) a median fecal coliform colony-forming units (CFU) or geometric mean CFU of 88 per 100 milliliters;
 - (3) an estimated 90th percentile of 260 MPN per 100 milliliters for a five-tube decimal dilution test; or
 - (4) an estimated 90th percentile of 163 CFU per 100 milliliters for a membrane filter membrane-Thermotolerant Escherichia coli (mTEC) test.

Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rule cited as 15A NCAC 07H .0309.

Link to agency website pursuant to G.S. 150B-19.1(c): https://www.deq.nc.gov/permits-regulations/rules-regulations/proposed-main/proposed-rules

Proposed Effective Date: January 1, 2024

Public Hearing:

Date: August 24, 2023

Time: 1:15 p.m.

Location: Aloft Wilmington at Coastline Center, 501 Nutt Street, Wilmington, NC 28401

Reason for Proposed Action: The Coastal Resources Commission proposes these amendments to current rules to allow an Ocean Hazard Area Exception to apply to all property owners and not just property platted prior to June 1, 1979.

Comments may be submitted to: Braxton Davis, 400 Commerce Avenue, Morehead City, NC 28557; phone (252) 515-5400; email Braxton.Davis@ncdenr.gov

Comment period ends: October 2, 2023

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 984-236-1850.

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 07 - COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0300 - OCEAN HAZARD AREAS

15A NCAC 07H .0309 USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS

(a) The following types of development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of this Section if all other provisions of this Subchapter and other state and local regulations are met:

- (1) campsites;
(2) driveways and parking areas with clay, packed sand, or gravel;
(3) elevated decks not exceeding a footprint of 500 square feet. Existing decks exceeding a footprint of 500 square feet may be replaced with no enlargement beyond their original dimensions;
(4) beach accessways consistent with Rule .0308(c) of this Section;
(5) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less;
(6) uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, packed sand or gravel, and a footprint of 200 square feet or less;
(7) temporary amusement stands consistent with Section .1900 of this Subchapter;
(8) sand fences;
(9) swimming pools; and
(10) fill not associated with dune creation that is obtained from an upland source and is of the same general characteristics as the sand in the area in which it is to be placed.

In all cases, this development shall be permitted only if it is landward of the vegetation line or pre-project vegetation line, whichever is applicable; involves no alteration or removal of primary or frontal dunes which would compromise the integrity of the dune as a protective landform or the dune vegetation; is not essential to the continued existence or use of an associated principal development; and meets all other non-setback requirements of this Subchapter.

(b) Where application of the ~~oceanfront~~ Ocean Hazard Area setback requirements of Rule .0306(a) of this Section would preclude placement of a structure on a lot existing as of June 1, 1979, the structure shall be permitted seaward of the applicable setback line in Ocean Erodible Areas, State Ports Inlet Management Areas, and Inlet Hazard Areas, but not Unvegetated Beach Areas. Areas, the structure shall be permitted seaward of the applicable setback line if each of the following conditions are met:

- (1) The development is set back from the ocean the maximum feasible distance possible on the existing lot and the development is designed to minimize encroachment into the setback area;
(2) The development is at least 60 feet landward of the vegetation line, measurement line, or pre-project vegetation line, whichever is applicable;
(3) The development is not located on or oceanward of a frontal dune, but is entirely behind the landward toe of the frontal dune;
(4) The development incorporates each of the following design standards, which are in

addition to those required by Rule .0308(d) of this Section;

- (A) All pilings shall have a tip penetration that extends to at least four feet below mean sea level;
- (B) ~~The footprint of the structure shall be no more than 1,000 square feet, and~~ the total floor area of the structure shall be no more than 2,000 square feet. For the purpose of this Section, roof-covered decks and porches that are structurally attached shall be included in the calculation of footprint;
- (C) Driveways and parking areas shall be constructed of clay, packed sand or gravel except in those cases where the development does not abut the ocean and is located landward of a paved public street or highway currently in use. In those cases, other material may be used; and
- (D) No portion of a building's total floor area, including elevated portions that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings, may extend oceanward of the total floor area of the landward-most habitable building or structure. The alignment shall be measured from the most oceanward point of the adjacent building or structure's roof line, including roofed decks. An "adjacent" property is one that shares a boundary line with the site of the proposed development. When no adjacent building or structure exists, or the geometry or orientation of a lot or shoreline precludes the placement of a building in line with the landward most adjacent structure of similar use, an average line of construction shall be determined by the Director of the Division of Coastal Management based on an approximation of the average seaward-most positions of the rooflines of adjacent structures along the same shoreline, extending 500 feet in either direction. If no structures exist within this distance, the proposed structure shall meet the applicable setback from the Vegetation Line but shall not be held to the landward-most adjacent structure or an average line of structures. The ocean hazard setback shall extend landward of the vegetation line, static vegetation line or measurement line, whichever is

applicable, a distance no less than 60 feet.

- (5) All other provisions of this Subchapter and other state and local regulations are met. If the development is to be serviced by an on-site waste disposal system, a copy of a valid permit for such a system shall be submitted as part of the CAMA permit application.
- (c) The following types of water dependent development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of this Section if all other provisions of this Subchapter and other state and local regulations are met:
 - (1) piers providing public access; and
 - (2) maintenance and replacement of existing state-owned bridges, and causeways and accessways to such bridges.
- (d) Replacement or construction of a pier house associated with an ocean pier shall be permitted if each of the following conditions is met:
 - (1) The ocean pier provides public access for fishing and other recreational purposes whether on a commercial, public, or nonprofit basis;
 - (2) Commercial, non-water dependent uses of the ocean pier and associated pier house shall be limited to restaurants and retail services. Residential uses, lodging, and parking areas shall be prohibited;
 - (3) The pier house shall be limited to a maximum of two stories;
 - (4) A new pier house shall not exceed a footprint of 5,000 square feet and shall be located landward of mean high water;
 - (5) A replacement pier house may be rebuilt not to exceed its most recent footprint or a footprint of 5,000 square feet, whichever is larger;
 - (6) The pier house shall be rebuilt to comply with all other provisions of this Subchapter; and
 - (7) If the pier has been destroyed or rendered unusable, replacement or expansion of the associated pier house shall be permitted only if the pier is being replaced and returned to its original function.
- (e) In addition to the development authorized under Paragraph (d) of this Rule, ~~small-scale~~, small-scale, non-essential development that does not induce further growth in the Ocean Hazard Area, such as the construction of single family piers and ~~small-scale~~ small-scale erosion control measures that do not interfere with natural oceanfront processes, shall be permitted in the Ocean Hazard Area along those portions of shoreline that exhibit features characteristic of an Estuarine Shoreline. Such features include the presence of wetland vegetation, and lower wave energy and erosion rates than in the adjoining Ocean Erodible Area. Such development shall be permitted under the standards set out in Rule .0208 of this Subchapter. For the purpose of this Rule, ~~small-scale~~ small-scale is defined as those projects which are eligible for authorization under 15A NCAC 07H .1100, .1200, and 15A NCAC 07K .0203.

(f) Transmission lines necessary to transmit electricity from an offshore energy-producing facility may be permitted provided that each of the following conditions is met:

- (1) The transmission lines are buried under the ocean beach, nearshore area, and primary and frontal dunes, all as defined in Rule .0305 of this Section, in such a manner so as to ensure that the placement of the transmission lines involves no alteration or removal of the primary or frontal dunes; and
- (2) The design and placement of the transmission lines shall be performed in a manner so as not to endanger the public or the public's use of the beach.

(g) Existing stormwater outfalls as of the last amended date of this rule within the Ocean Hazard AEC that are owned or

maintained by a State agency or local government, may be extended oceanward subject to the provisions contained within 15A NCAC 07J .0200. Outfalls may be extended below mean low water and may be maintained in accordance with 15A NCAC 07K .0103. Shortening or lengthening of outfall structures within the authorized dimensions, in response to changes in beach width, is considered maintenance under 15A NCAC 07K .0103. Outfall extensions may be marked with signage and shall not prevent pedestrian or vehicular access along the beach. This Paragraph does not apply to existing stormwater outfalls that are not owned or maintained by a State agency or local government.

Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a; 113A-113(b)(6)b; 113A-113(b)(6)d; 113A-124.

Note from the Codifier: The rules published in this Section of the NC Register are emergency rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code. The agency must subsequently publish a proposed temporary rule on the OAH website (www.ncoah.com/rules) and submit that adopted temporary rule to the Rules Review Commission within 60 days from publication of the emergency rule or the emergency rule will expire on the 60th day from publication. This section of the Register may also include, from time to time, a listing of emergency rules that have expired. See G.S. 150B-21.1A and 26 NCAC 02C .0600 for adoption and filing requirements.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Rule-making Agency: N.C. Department of Health and Human Services/Director, DHSR

Rule Citation: 10A NCAC 14E .0101, .0102, .0104, .0106-.0112, .0201, .0202, .0207, .0315

Effective Date: June 30, 2023

Codifier determined that agency's findings of need did not meet criteria for emergency rule on June 22, 2023.

Reason for Action: On May 16, 2023, Senate Bill 20 became law as S.L. 2023-14. This new law entitled "An Act to Make Various Changes to Health Care Laws and to Appropriate Funds for Health Care Programs" made revisions to various state laws governing abortions in North Carolina. The Department was made aware of the proposed changes on May 2, 2023, when a Proposed Conference Committee Substitute was issued that made the changes to the State's abortion laws. The revisions in Part I and Section 2.4 of Part II of the law go into effect on July 1, 2023, less than 2 months after the Department became aware of the proposed changes. Among other changes, S.L. 2023-14 makes significant changes to defining when an abortion is lawful. Current rules governing the certification of abortion clinics are found in Subchapter 14E of Title 10A of the Administrative Code. Given the changes to the law that will become effective July 1, and the fact that the Department cannot complete temporary or permanent rulemaking by that date, the Department is making certain amendments to the existing rules to conform with those provisions in S.L. 2023-14 that become effective on July 1st. The adoption of emergency rules will ensure continuity of care for patients, will resolve any uncertainty about the rules applicable to impacted providers from July 1st until the Department is able to promulgate temporary or permanent rules, and will protect the health and safety of people obtaining reproductive health care, and to provide certainty to medical providers. Therefore, the Department seeks to amend Subchapter 14E of Title 10A under emergency procedures.

Current rules governing the certification of abortion clinics are found in Subchapter 14E of Title 10A of the Administrative Code. The authority for these current rules derives from N.C.G.S. 14-45.1. Session Law 2023-14, Part 1, Section 1.1 repeals N.C.G.S. 14-45.1 effective July 1, 2023. The General Assembly stated in S.L. 2023-14 that:

SECTION 2.4. No later than October 1, 2023, the Department of Health and Human Services shall adopt the rules necessary to administer this Part.

SECTION 2.5 Section 2.4 of this Part becomes effective July 1, 2023. The remainder of this Part becomes effective on October 1, 2023.

These newly enacted provisions provide a mandate for the Department to adopt rules necessary to regulate abortion clinics between July 1, 2023 and October 1, 2023, at which time additional authority for the rulemaking, including those rules governing the licensure of abortion clinics, is granted to the Medical Care Commission, as required by Section 2.2 of S.L. 2023-14. Given the changes to the law that will become effective July 1, and the fact that the Department cannot complete temporary or permanent rulemaking by this imminently approaching date, the Department must act with urgency to make certain amendments to the existing rules to conform with those provisions in S.L. 2023-14 that become effective on July 1st. Further, the repeal of existing laws governing abortions in North Carolina, which also is effective July 1, 2023, requires the Department to act swiftly in making conforming changes to these rules. While the Department understands that NCGS 150B-21.7 may apply to the existing rules regarding clinic certification, it is promulgating these emergency rules to solve any uncertainty about the rules that apply to abortion clinics in North Carolina beginning July 1, 2023 until notice and comment rulemaking is completed. The adoption of emergency rules will ensure continuity of care for patients, resolve any uncertainty about the rules applicable to impacted providers beginning July 1st until the Department is able to promulgate temporary or permanent rules, and critically, will protect the health and safety of women in obtaining lawful abortions in a clinic regulated by the Department. Adherence to notice and hearing requirements is contrary to the public interest for the immediate and critical near term because it is not possible to complete notice and comment rulemaking by July 1, 2023. However, temporary rulemaking in conjunction with this emergency rulemaking will adhere to notice and hearing requirements.

TITLE 10A - DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHAPTER 14 - DIRECTOR, DIVISION OF HEALTH SERVICE REGULATION

SUBCHAPTER 14E - CERTIFICATIONS OF CLINICS FOR ABORTION LICENSURE OF SUITABLE FACILITIES FOR THE PERFORMANCE OF SURGICAL ABORTIONS

SECTION .0100 – CERTIFICATION LICENSURE PROCEDURE

10A NCAC 14E .0101 DEFINITIONS

The following definitions will apply throughout this Subchapter:

- (1) "Abortion" means the termination of a pregnancy as defined in G.S. ~~90-21.81(4)~~; 90-21.81(1c).
- (2) "Clinic" means a freestanding facility (a facility neither physically attached nor operated by a licensed hospital) for the performance of abortions completed during the first ~~20~~ 12 weeks of pregnancy.
- (3) "Complication" includes but is not limited to hemorrhage, infection, uterine perforation, cervical laceration, or retained products of conception.
- (4) "Division" means the Division of Health Service Regulation of the North Carolina Department of Health and Human Services.
- (5) "Gestational age" means the length of pregnancy as indicated by the date of the first day of the last normal monthly menstrual period, if known, or as determined by ultrasound.
- (6) "Governing authority" means the individual, agency, group, or corporation appointed, elected or otherwise designated, in which the ultimate responsibility and authority for the conduct of the abortion clinic is vested pursuant to Rule .0302 of this Subchapter.
- (7) "Health Screening" means an evaluation of an employee or contractual employee, including tuberculosis testing, to identify any underlying conditions that may affect the person's ability to work in the clinic.
- (8) "New clinic" means one that is not certified as an abortion clinic by the Division as of July 1, ~~2014~~, 2023, and has not been certified or licensed within the previous six months of the application for ~~certification~~; licensure.
- (9) "Qualified Physician" means a licensed physician who advises, procures, or causes a miscarriage or abortion as defined in G.S. ~~44-45.1(g)~~; 90-21.81(7a).
- (10) "Registered Nurse" means a person who holds a valid license issued by the North Carolina Board of Nursing to practice professional nursing in accordance with the Nursing Practice Act, G.S. 90, Article 9A.

History Note: Authority G.S. ~~44-45.1(a)~~; ~~44-45.1(g)~~; 143B-10; ~~S.L. 2013-366, s. 4(e)~~; S.L. 2023-14, s. 2.4;
Eff. February 1, 1976;
Readopted Eff. December 19, 1977;
Amended Eff. October 1, 2015; July 1, 1994; December 1, 1989;
June 30, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 24, ~~2019~~; 2019;
Codifier determined that agency's findings of need did not meet criteria for emergency rule on June 22, 2023;
Emergency Amendment Eff. June 30, 2023.

10A NCAC 14E .0102 CONFERENCE

Before proceeding with construction and operational plans, a potential sponsor or owner of a freestanding abortion clinic shall discuss with the staff of the Division of Health Service Regulation the scope of the proposed facility. This will provide an opportunity for the owner and the Division's staff to discuss ~~certification~~ licensure requirements.

History Note: Authority G.S. ~~44-45.1(a)~~; 143B-10; S.L. 2023-14, s. 2.4;
Eff. February 1, 1976;
Readopted Eff. December 19, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 24, ~~2019~~; 2019;
Codifier determined that agency's findings of need did not meet criteria for emergency rule on June 22, 2023;
Emergency Amendment Eff. June 30, 2023.

10A NCAC 14E .0104 PLANS

Prior to issuance of a ~~certificate~~ license pursuant to Rule .0107 of this Section, a clinic shall submit two copies of the building plans to the Division for ~~certification~~ licensure purposes when the clinic requires a review by the Division and the Department of Insurance, according to the North Carolina Administration and Enforcement Requirements Code, 2012 edition, including subsequent amendments and editions. Copies of the North Carolina Administration Code are available from the International Code Council at http://www.ecodes.biz/ecodes_support/Free_Resources/2012NorthCarolina/12NorthCarolina_main.html at no cost. When the local jurisdiction has authority from the North Carolina Building Code Council to review the plans, the clinic shall submit only one copy of the plans to the Division. In that case, the clinic shall submit an additional set of plans directly to the local jurisdiction.

History Note: Authority G.S. ~~44-45.1(a)~~; 143B-10; S.L. 2023-14, s. 2.4;
Eff. February 1, 1976;
Readopted Eff. December 19, 1977;
Amended Eff. October 1, 2015;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 24, ~~2019~~; 2019;
Codifier determined that agency's findings of need did not meet criteria for emergency rule on June 22, 2023;
Emergency Amendment Eff. June 30, 2023.

10A NCAC 14E .0106 APPLICATION

- (a) Prior to the admission of patients, an application from the clinic for ~~certification~~ licensure shall be submitted to and approved by the Division.
- (b) Application forms may be obtained by contacting the Division.
- (c) The application form shall set forth the ownership, staffing patterns, clinical services to be rendered, professional staff in charge of services, and general information that would be helpful to the Division's understanding of the clinic's operating program.
- (d) After construction requirements in Section .0200 of this Subchapter have been met and the application for ~~certification~~

licensure has been received and approved, the Division shall conduct an on-site, certification licensure survey.

(e) Each certificate license must be renewed at the beginning of each calendar year. The governing authority shall file an application for renewal of certification licensure with the Division at least 30 days prior to the date of expiration on forms furnished by the Division. Failure to file a renewal application shall result in expiration of the certificate license to operate.

History Note: Authority G.S. ~~14-45.1(a)~~; 131E-153.2; S.L. 2023-14, s. 2.4;

Eff. February 1, 1976;

Readopted Eff. December 19, 1977;

Amended Eff. July 1, 1994;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 24, ~~2019~~; 2019;

Codifier determined that agency's findings of need did not meet criteria for emergency rule on June 22, 2023;

Emergency Amendment Eff. June 30, 2023.

10A NCAC 14E .0107 ISSUANCE OF CERTIFICATE LICENSE

(a) The Division shall issue a certificate license if it finds the facility can:

- (1) Comply with all requirements described in this Subchapter; and
- (2) Assure that, in the event that complications arise from the abortion procedure, an OB-GYN board certified or board eligible physician shall be available.

(b) Each certificate license shall be issued only for the premises and persons or organizations named in the application and shall not be transferable.

(c) The governing authority shall notify the Division in writing, within 10 working days, of any change in the name of the facility or change in the name of the administrator.

(d) The facility shall report to the Division all incidents, within 10 working days, of vandalism to the facility such as fires, explosions or other action causing disruption of services.

History Note: Authority G.S. ~~14-45.1(a)~~; 131E-153.2; S.L. 2023-14, s. 2.4;

Eff. February 1, 1976;

Readopted Eff. December 19, 1977;

Amended Eff. July 1, 1994;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 24, ~~2019~~; 2019;

Codifier determined that agency's findings of need did not meet criteria for emergency rule on June 22, 2023;

Emergency Amendment Eff. June 30, 2023.

10A NCAC 14E .0108 POSTING

Certificates Licenses shall be posted in a conspicuous place on the premises.

History Note: Authority G.S. ~~14-45.1(a)~~; 143B-10; S.L. 2023-14, s. 2.4;

Eff. February 1, 1976;

Readopted Eff. December 19, 1977;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 24, ~~2019~~; 2019;

Codifier determined that agency's findings of need did not meet criteria for emergency rule on June 22, 2023;

Emergency Amendment Eff. June 30, 2023.

10A NCAC 14E .0109 RENEWAL

Each certificate, license, unless previously suspended or revoked, pursuant to the applicable rules and statutes shall be renewable annually upon the filing of an application, payment of the non-refundable renewal fee as defined in G.S. ~~131E-269~~, 131E-153.2, and approval by the Division.

History Note: Authority G.S. ~~14-45.1(a)~~; ~~131E-269~~; 131E-153.2; 143B-10; S.L. 2023-14, s. 2.4;

Eff. February 1, 1976;

Readopted Eff. December 19, 1977;

Amended Eff. October 1, 2015;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 24, ~~2019~~; 2019;

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Emergency Amendment Eff. June 30, 2023.

10A NCAC 14E .0110 REVOCATION

The Department shall deny, suspend, or revoke a certificate license in any case where it finds that substantial failure to comply with these regulations renders the facility unsuitable for the performance of abortions.

History Note: Authority G.S. ~~14-45.1(a)~~; 131E-153.2; 143B-10; 150B-23; S.L. 2023-14, s. 2.4;

Eff. February 1, 1976;

Amended Eff. December 1, 1989;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 24, ~~2019~~; 2019;

Codifier determined that agency's findings of need did not meet criteria for emergency rule on June 22, 2023;

Emergency Amendment Eff. June 30, 2023.

10A NCAC 14E .0111 INSPECTIONS

(a) Any clinic certified licensed by the Division to perform abortions shall be inspected by representatives of the Division annually and as it may deem necessary as a condition of holding such license. An inspection shall be conducted whenever the purpose of the inspection is to determine whether the clinic complies with the rules of this Subchapter or whenever there is reason to believe that some condition exists which is not in compliance with the rules of this Subchapter.

(b) The Division shall have authority to investigate any complaint relative to the care, treatment, or complication of any patient.

(c) Representatives of the Division shall make their identities known to the person in charge prior to inspection of the clinic.

(d) Representatives of the Division may review any records in any medium necessary to determine compliance with the rules of this Subchapter, while maintaining the confidentiality of the complainant and the patient, unless otherwise required by law.

(e) The clinic shall allow the Division to have immediate access to its premises and the records necessary to conduct an inspection and determine compliance with the rules of this Subchapter.

(f) A clinic shall file a plan of correction for cited deficiencies within 10 business days of receipt of the report of the survey. The Division shall review and respond to a written plan of correction within 10 business days of receipt of the corrective action plan.

History Note: Authority G.S. ~~14-45.1(a)~~; ~~14-45.1(a1)~~; 143B-10; ~~S.L. 2013-366, s. 4(e)~~; S.L. 2023-14, s. 2.4; Eff. February 1, 1976; Readopted Eff. December 19, 1977; Amended Eff. October 1, 2015; July 1, 1994; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 24, ~~2019~~; 2019; Codifier determined that agency's findings of need did not meet criteria for emergency rule on June 22, 2023; Emergency Amendment Eff. June 30, 2023.

10A NCAC 14E .0112 ALTERATIONS

Any ~~certificate~~ license holder or prospective applicant desiring to make specified types of alteration or addition to a clinic or to construct a new clinic, before commencing such alteration, addition or new construction shall submit plans and specifications therefor to the Division for preliminary inspection and approval or recommendations with respect to compliance with the regulations and standards herein authorized.

History Note: Authority G.S. ~~14-45.1(a)~~; 143B-10; S.L. 2023-14, s. 2.4; Eff. February 1, 1976; Readopted Eff. December 19, 1977; Amended Eff. December 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 24, ~~2019~~; 2019; Codifier determined that agency's findings of need did not meet criteria for emergency rule on June 22, 2023; Emergency Amendment Eff. June 30, 2023.

SECTION .0200 - MINIMUM STANDARDS FOR CONSTRUCTION AND EQUIPMENT

10A NCAC 14E .0201 BUILDING CODE REQUIREMENTS

(a) The physical plant for a clinic shall meet or exceed minimum requirements of the North Carolina State Building Code for Group B occupancy (business office facilities) which is incorporated herein by reference including subsequent amendments and editions. Copies of the Code can be obtained from the International Code Council online at <http://shop.iccsafe.org/north-carolina-doi.discounts?ref=NC> for a cost of five hundred twenty-seven dollars (\$527.00), or accessed electronically free of charge at <http://www.ecodes.biz>.
(b) The requirements contained in this Section shall apply to new clinics and to any alterations, repairs, rehabilitation work, or additions which are made to a previously ~~certified~~ licensed facility.

History Note: Authority G.S. ~~14-45.1(a)~~; 143B-10; S.L. 2023-14, s. 2.4; Eff. February 1, 1976; Readopted Eff. December 19, 1977; Amended Eff. October 1, 2015; July 1, 1994; December 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 24, ~~2019~~; 2019; Codifier determined that agency's findings of need did not meet criteria for emergency rule on June 22, 2023; Emergency Amendment Eff. June 30, 2023.

10A NCAC 14E .0202 SANITATION

Clinics that are ~~certified~~ licensed by the Division to perform abortions shall comply with the Rules governing the sanitation of hospitals, nursing homes, adult care homes, and other institutions, contained in 15A NCAC 18A .1300 which is hereby incorporated by reference including subsequent amendments and editions. Copies of 15A NCAC 18A .1300 may be obtained at no charge from the Division of Public Health, Environmental Health Section, 1632 Mail Service Center, Raleigh, NC 27699-1632, or accessed electronically free of charge from the Office of Administrative Hearings at <https://www.oah.nc.gov/>.

History Note: Authority G.S. ~~14-45.1(a)~~; 143B-10; S.L. 2023-14, s. 2.4; Eff. February 1, 1976; Readopted Eff. December 19, 1977; Amended Eff. August 1, 2019; October 1, 2015; July 1, 1994; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 24, ~~2019~~; 2019; Codifier determined that agency's findings of need did not meet criteria for emergency rule on June 22, 2023; Emergency Amendment Eff. June 30, 2023.

10A NCAC 14E .0207 AREA REQUIREMENTS

The following areas shall comply with Rule .0206 of this Section, and are considered minimum requirements for clinics that are ~~certified~~ licensed by the Division to perform abortions:

- (1) receiving area;
- (2) examining room;
- (3) preoperative preparation and holding room;
- (4) individual patient locker facilities or equivalent;
- (5) procedure room;
- (6) recovery room;
- (7) clean workroom;
- (8) soiled workroom;
- (9) medicine room may be defined as area in the clean workroom if a self-contained secure cabinet complying with security requirements of state and federal laws is provided;
- (10) separate and distinct areas for storage and handling clean and soiled linen;
- (11) patient toilet;
- (12) personnel lockers and toilet facilities;
- (13) laboratory;
- (14) nourishment station with storage and preparation area for serving meals or in-between meal snacks;

- (15) janitor's closets;
- (16) adequate space and equipment for assembling, sterilizing and storing medical and surgical supplies;
- (17) storage space for medical records; and
- (18) office space for nurses' charting, doctors' charting, communications, counseling, and business functions.

- (1) the floors, walls, woodwork and windows must be cleaned, and accumulated waste material must be removed at least daily;
- (2) the premises must be kept free from rodents and insect infestation;
- (3) bath and toilet facilities must be maintained in a clean and sanitary condition at all times; and linen that comes directly in contact with the patient shall be provided for each individual patient. No such linen shall be interchangeable from one patient to another before being cleaned, sterilized, or laundered.
- (4)

History Note: Authority G.S. ~~14-45.1(a)~~; 143B-10; S.L. 2023-14, s. 2.4;

Eff. February 1, 1976;

Readopted Eff. December 19, 1977;

Amended Eff. October 1, 2015; December 24, 1979;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 24, ~~2019~~; 2019;

Codifier determined that agency's findings of need did not meet criteria for emergency rule on June 22, 2023;

Emergency Amendment Eff. June 30, 2023.

Copies of 15A NCAC 18A .1300 may be obtained at no charge from the Division of Public Health, Environmental Health Section, 1632 Mail Service Center, Raleigh, NC, 27699-1632, or accessed electronically free of charge from the Office of Administrative Hearings at <https://www.oah.nc.gov/>.

History Note: Authority G.S. ~~14-45.1(a)~~; 143B-10; S.L. 2023-14, s. 2.4;

Eff. February 1, 1976;

Readopted Eff. December 19, 1977;

Amended Eff. August 1, 2019; October 1, 2015; December 1, 1989;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 24, ~~2019~~; 2019;

Codifier determined that agency's findings of need did not meet criteria for emergency rule on June 22, 2023;

Emergency Amendment Eff. June 30, 2023.

SECTION .0300 – GOVERNING AUTHORITY

10A NCAC 14E .0315 HOUSEKEEPING

Clinics that are ~~certified~~ licensed by the Division to perform abortions shall meet the standards for sanitation as required by the Division of Public Health, Environmental Health Section, in the rules and regulations governing the sanitation of hospitals, nursing homes, adult care homes, and other institutions, set forth in 15A NCAC 18A .1300, including subsequent amendments and editions, with special emphasis on the following:

APPROVED RULES

*This Section includes a listing of rules approved by the Rules Review Commission followed by the full text of those rules. The rules that have been approved by the RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

Rules approved by the Rules Review Commission at its meeting on June 15, 2023 Meeting.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

CHILD CARE COMMISSION

<u>Staff/Child Ratios for Centers</u>	10A NCAC 09 .0713*	37:14 NCR
<u>Cooperative Arrangement for Instructional Needs</u>	10A NCAC 09 .2513	37:14 NCR
<u>Enhanced Space Requirements</u>	10A NCAC 09 .2809	37:14 NCR

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Failure to Qualify: Annual In-Service Firearms Training</u>	12 NCAC 09E .0107*	37:06 NCR
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ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Neuse River Basin</u>	15A NCAC 02B .0315*	37:06 NCR
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DENTAL EXAMINERS, BOARD OF

<u>Dental Hygiene Licensure by Credentials</u>	21 NCAC 16C .0501*	37:16 NCR
<u>Dental Radiology Course and Examination Requirements</u>	21 NCAC 16H .0105*	37:16 NCR
<u>Continuing Education Required</u>	21 NCAC 16I .0201*	37:16 NCR
<u>Exemption from and Credit for Continuing Education</u>	21 NCAC 16R .0204*	37:16 NCR

NURSING, BOARD OF

<u>License Required</u>	21 NCAC 36 .0221	37:18 NCR
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OPTOMETRY, BOARD OF EXAMINERS IN

<u>National Board Examinations</u>	21 NCAC 42B .0107*	37:18 NCR
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REAL ESTATE COMMISSION

<u>Residential Property and Owners' Association Disclosure S...</u>	21 NCAC 58A .0114*	37:18 NCR
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STATE HUMAN RESOURCES COMMISSION

<u>Separation</u>	25 NCAC 01C .1007*	37:16 NCR
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TITLE 10A - DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 09 .0713 STAFF/CHILD RATIOS FOR CENTERS

(a) The staff/child ratios and group sizes for single-age groups of children in centers shall be as follows:

Age of Children	Ratio Staff/Children	Maximum Group Size
0 to 12 Months	1/5	10
12 to 24 Months	1/6	12
2 to 3 Years	1/10	20

3 to 4 Years	1/15	25
4 to 5 Years	1/20	25
5 Years and Older	1/25	25

- (1) when combining age groups, the staff/child ratio for the youngest child in the group shall be maintained for the entire group;
- (2) children of all ages may be cared for together in groups for the first and last operating hour of the day, provided the staff/child ratio for the youngest child in the group is maintained;
- (3) a child two years of age and older may be placed with children under one year of age

when a physician certifies that the developmental age of the child makes this placement appropriate;

- (4) when determined to be developmentally appropriate by the operator and parent, a child age two or older may be placed one age level above his or her chronological age without affecting the staff/child ratio for that group. This provision shall be limited to one child per group;
- (5) except as provided in Subparagraphs (2) and (3) of this Paragraph, children under one year of age shall be kept separate from children two years of age and over;
- (6) except as provided in Subparagraph (2) of this Paragraph, children between the ages of 12 months and 24 months shall not be grouped with older children unless all children in the group are less than three years of age;
- (7) when only one caregiver is required to meet the staff/child ratio and no children under two years of age are in care, that caregiver may concurrently perform food preparation or other duties that are not direct child care responsibilities as long as supervision of the children as specified in 10A NCAC 09 .1801 is maintained;
- (8) except as provided in Subparagraph (7) of this Paragraph, staff members and child care administrators who are counted in meeting the staff/child ratios as stated in this Rule shall not concurrently perform food preparation or other duties that are not direct child care responsibilities; and
- (9) when only one caregiver is required to meet the staff/child ratio, the operator shall select one of the following options for emergency relief:
 - (A) the center shall post the name, address, and telephone number of an adult who has agreed in writing to be available to provide emergency relief; or
 - (B) there shall be a second adult on the premises who is available to provide emergency relief.
- (10) the staff/child ratio applicable to a classroom as described in this Paragraph shall be posted in that classroom in an area that parents are able to view at all times.

(b) The staff/child ratios for a center located in a residence with a licensed capacity of 3 to 12 children when any preschool-age child is enrolled, or with a licensed capacity of 3 to 15 children when only school-age children are enrolled, are as follows:

Age of Children	Ratio Staff/Children
0 to 12 Months	1/5 preschool children plus three additional school-age children
12 to 24 Months	1/6 preschool children plus two additional school-age children
2 to 13 Years	1/10

3 to 13 Years	1/12
All school-age	1/15

(c) The staff/child ratio applicable to a classroom for a center located in a residence as described in Paragraph (b) of this Rule shall be posted in that classroom in an area that parents are able to view at all times.

(d) When only one caregiver is required to meet the staff/child ratio for a center located in a residence, as described in Paragraph (b) of this Rule and children under two years of age are in care, that person shall not concurrently perform food preparation or other duties that are not direct child care responsibilities.

(e) When only one caregiver is required to meet the staff/child ratio for a center located in a residence, as described in Paragraph (b) of this Rule the operator shall select one of the following options for emergency relief:

- (1) the center shall post the name, address, and telephone number of an adult who has agreed in writing to be available to provide emergency relief and who can respond within a reasonable period of time; or
- (2) there shall be a second adult on the premises who is available to provide emergency relief.

(f) Upon the Division's receipt of a written request, a center may choose to group children in multi-age groups rather than single-aged groups. The staff/child ratios and group sizes for multi-age groups of children in centers shall be as follows:

Age of Children	Ratio Staff/Children	Maximum Group Size
0 to 36 months	1/4	8
12 months to 36 months	1/5	10
24 months to 47 months	1/6	10
4 years of age to 6 years of age	1/9	18
6 years of age through 12 years of age	1/19	25

- (1) Before meeting the ratios outlined in this Paragraph or before changing from multi-age group ratios to single-age group ratios, the Division must be notified in writing;
- (2) Paragraphs (a) through (e) of this Rule do not apply to centers that choose to meet the ratios outlined in this Paragraph, with the exception of Subparagraphs (a)(7), (8) and (9) of this Rule; Children 36 months through 47 months may remain in the classroom with infants provided there is an agreed upon transition plan between the child care facility, the child's parents or legal guardian, and local partners if the plan includes future care outside of the center. Transition plans must be initiated at least six months prior to a child's third birthday, maintained in each child's file, and be available for review by the Division; and
- (4) The staff/child ratio applicable for a multi-age group as described in this Paragraph shall be

posted in that classroom in an area that parents are able to view at all times.

History Note: Authority G.S. 110-85; 110-91(7); 143B-168.3; Eff. December 1, 1988; Amended Eff. January 1, 2006; July 1, 1998; July 1, 1994; January 1, 1992; August 1, 1990; November 1, 1989; Readopted Eff. October 1, 2017; Amended Eff. July 1, 2023; February 1, 2021.

10A NCAC 09 .2513 COOPERATIVE ARRANGEMENT FOR INSTRUCTIONAL NEEDS

(a) For purposes of this Rule, "cooperative arrangement for instructional needs" means an arrangement between a group of parents to provide care for their school-age children in one of the parent's homes for the purpose of supervising and facilitating the children's online, virtual, or remote elementary or secondary education instruction.

(b) Pursuant to G.S. 110-86(2)(i), cooperative arrangements for instructional needs are not child care and therefore are exempt from licensure.

History Note: Authority G.S. 110-85; 110-86; 110-88; 110-91; Eff. July 1, 2023.

10A NCAC 09 .2809 ENHANCED SPACE REQUIREMENTS

(a) There shall be at least 30 square feet inside space per child per the total licensed capacity and 100 square feet outside space for each child using the outdoor learning environment at any one time.

(b) There shall be an area that can be arranged for administrative and private conference activities.

History Note: Authority G.S. 110-88(7); 110-90(4); 143B-168.3; Eff. April 1, 1999; Prior to amendment of May 1, 2006 this language was located in Rule .1604; Amended Eff. May 1, 2006; Readopted Eff. March 1, 2019; Amended Eff. July 1, 2023; February 1, 2021.

TITLE 12 - DEPARTMENT OF JUSTICE

12 NCAC 09E .0107 FAILURE TO QUALIFY: ANNUAL IN-SERVICE FIREARMS TRAINING

(a) Where an officer is employed with an agency that establishes a higher standard for annual in-service firearms training than those specified in this Subchapter and the officer has failed to meet the requirements of the employing agency as of December 31 of each calendar year, such officer shall meet the requirements of this Rule for continued certification. Prior to transfer to another agency, the officer shall meet the requirements of this Rule.

(b) Upon notification to the Division via Form F-9B 'Report of Non-Compliance of Mandatory In-Service Training' that an officer has failed to meet the requirements for in-service firearms

training and qualification as specified in 12 NCAC 09E .0106(a) of this Subchapter, the law enforcement officer's certification shall be suspended. Form F-9B is located on the Commission's website: <https://ncdoj.gov/law-enforcement-training/criminal-justice/forms-and-publications/#91-112-wpfd-in-service-p2>.

(c) The Division shall rescind the suspension indicated in Paragraph (b) of this Rule upon receipt from an agency representative of Form F-9C 'Return to Duty Request', indicating the suspended officer has completed the in-service firearms training and qualification pursuant to 12 NCAC 09E .0106(a) and (b). Form F-9C is located on the Commission's website: <https://ncdoj.gov/law-enforcement-training/criminal-justice/forms-and-publications/#91-112-wpfd-in-service-p2>.

(d) The suspended officer shall be granted limited enrollment in a presentation of the "Basic Law Enforcement Training" course to complete the training pursuant to 12 NCAC 09B .0205(b)(5)(B). Such enrollment and successful completion must occur within the calendar year of the suspension of law enforcement officer certification.

(e) Failure to enroll and successfully complete the training pursuant to 12 NCAC 09B .0205(b)(5)(B) within the calendar year of the suspension of certification shall subject the officer to training evaluation as specified in 12 NCAC 09B .0403.

History Note: Authority G.S. 17C-6; 17C-10; Eff. July 1, 1989; Amended Eff. January 1, 2005; August 1, 2000; March 1, 1992; March 1, 1990; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019; Amended Eff. July 1, 2023.

TITLE 15A - DEPARTMENT OF ENVIRONMENTAL QUALITY

15A NCAC 02B .0315 NEUSE RIVER BASIN

(a) Classifications assigned to the waters within the Neuse River Basin are set forth in the Neuse River Basin Classification Schedule, which may be inspected at the following places:

- (1) the Internet at <https://deq.nc.gov/about/divisions/water-resources/water-planning/classification-standards/river-basin-classification>; and
- (2) the following offices of the North Carolina Department of Environmental Quality:
 - (A) Raleigh Regional Office
3800 Barrett Drive
Raleigh, NC 27609
 - (B) Washington Regional Office
943 Washington Square Mall
Washington, NC 27889
 - (C) Wilmington Regional Office
127 Cardinal Drive Extension
Wilmington, NC 28405; and
 - (D) Division of Water Resources
Central Office
512 North Salisbury Street
Raleigh, NC 27604.

(b) The Neuse River Basin Classification Schedule was amended effective March 1, 1977, with a total of 179 streams in the Neuse River Basin reclassified from Class D to Class C.

(c) The Neuse River Basin Classification Schedule was amended effective December 13, 1979, as follows: Little River Index No. 27-57-(21.5) from source to the dam at Wake Forest Reservoir was reclassified from Class A-II to Class A-II and B.

(d) The Neuse River Basin Classification Schedule was amended effective September 14, 1980, as follows: The Eno River from Durham County State Road 1003 to U.S Highway 501 Index No. 27-2-(16) was reclassified from Class C and B to Class A-II and B.

(e) The Neuse River Basin Classification Schedule was amended effective August 9, 1981, to remove the swamp water designation from waters designated SA in the Neuse River Basin.

(f) The Neuse River Basin Classification Schedule was amended effective January 1, 1982, as follows: The Trent River from the mouth of Brice Creek to the Neuse River Index No. 27-101-(39) was reclassified from Class SC Sw to Class SB Sw.

(g) The Neuse River Basin Classification Schedule was amended effective April 1, 1982, as follows:

- (1) Longview Branch from source to Crabtree Creek Index No. 27-33-(21) was reclassified from Class C1 to Class C; and
- (2) Watson Branch from source to Walnut Creek Index No. 27-34-(8) was reclassified from Class C1 to Class C.

(h) The Neuse River Basin Classification Schedule was amended effective December 1, 1983, to add the Nutrient Sensitive Waters classification to the entire river basin above Falls Lake Dam.

(i) The Neuse River Basin Classification Schedule was amended effective January 1, 1985, as follows: Nobel Canal from source to Swift Creek Index No. 27-97-(2) was reclassified from Class C1 to Class C.

(j) The Neuse River Basin Classification Schedule was amended effective August 1, 1985, as follows:

- (1) Southeast Prong Beaverdam Creek from source to Beaverdam Creek Index No. 27-33-15-(2) was reclassified from Class C1 to Class C;
- (2) Pigeon House Branch from source to Crabtree Creek Index No. 27-33-(18) was reclassified from Class C1 to Class C;
- (3) Rocky Branch from source to Pullen Road Index No. 27-34-6-(1) was reclassified from Class C1 to Class C; and
- (4) Chavis Branch from source to Watson Branch Index No. 27-37-8-1 was reclassified from Class C1 to Class C.

(k) The Neuse River Basin Classification Schedule was amended effective February 1, 1986, to reclassify Class A-II streams in the Neuse River Basin to Class WS-III.

(l) The Neuse River Basin Classification Schedule was amended effective May 1, 1988, to add the Nutrient Sensitive Waters classification to the waters of the Neuse River Basin below the Falls Lake Dam.

(m) The Neuse River Basin Classification Schedule was amended effective July 1, 1988, as follows:

- (1) Smith Creek Index No. 27-23-(1) from source to the dam at Wake Forest Reservoir was reclassified from Class WS-III to WS-I;
- (2) Little River Index No. 27-57-(1) from source to the N.C. Hwy. 97 Bridge near Zebulon and tributaries to this portion of the Little River were reclassified from Class WS-III to WS-I; and
- (3) an unnamed tributary to Buffalo Creek just upstream of Robertson's Pond in Wake County from source to Buffalo Creek including Leo's Pond was reclassified from Class C to B.

(n) The Neuse River Basin Classification Schedule was amended effective October 1, 1988, as follows:

- (1) Lake Johnson and Lake Raleigh, which are a portion of Walnut Creek (Lake Johnson, Lake Raleigh) Index No. 27-34-(1), were reclassified from Class WS-III to Class WS-III B; and
- (2) Haw Creek (Camp Charles Lake) Index No. 27-86-3-7 from the backwaters of Camp Charles Lake to dam at Camp Charles Lake was reclassified from Class C to Class B.

(o) The Neuse River Basin Classification Schedule was amended effective January 1, 1990, as follows:

- (1) Neuse-Southeast Pamlico Sound ORW Area, which includes waters within a line beginning at the southwest tip of Ocracoke Island and extending northwest along the Tar-Pamlico River Basin and Neuse River Basin boundary line to Lat. 35 degrees 06' 30", then in a southwest direction to Ship Point, and tributaries to the Neuse-Southeast Pamlico Sound ORW Area, were reclassified from Class SA NSW to Class SA NSW ORW; and
- (2) Core Sound Index No. 27-149 from northeastern limit of White Oak River Basin, which is a line from Hall Point to Drum Inlet, to Pamlico Sound, and tributaries to Core Sound except Thorofare and John Day Ditch, were reclassified from Class SA NSW to Class SA NSW ORW.

(p) The Neuse River Basin Classification Schedule was amended effective August 1, 1990, as follows:

- (1) a portion of the Little River Index No. 27-2-21-(1) from source to Little River Reservoir Dam and tributaries to this portion of the South Fork Little River except Forrest Creek (Foster Creek) from source to NC Highway 57 were reclassified from Class WS-III NSW to Class WS-III NSW HQW and Forrest Creek (Foster Creek) Index No. 27-2-21-2-2-(1) from source to NC Highway 57 was reclassified from Class C NSW to Class C NSW HQW;
- (2) a portion of Greens Creek (Oriental Restricted Area) Index No. 27-129, including tributaries to this portion of Greens Creek, from inside a line beginning at a point on the northwest side of the mouth of Whittaker Creek and running due southeast 100 yards to a stake in the Neuse

River, then running in a southwesterly direction 100 yards from shore to a stake due south of Whorton's Point, then in a straight line to flash beacon #6, then in a straight line to Windmill Point, then in a northerly direction to a point on the southern shore directly across from the western edge of the mouth of Kershaw Creek, then to a point on the western edge of Kershaw Creek, then along the northern shore line to Dewey Point including a portion of Smith Creek from source to a point 0.1 miles downstream of Morris Creek, Shop Gut, Morris Creek, Unnamed Tributary #1 and #2 to Smith Creek, Kershaw Creek, Unnamed Tributary #1, #2, and #3 to Greens Creek, Camp Creek (Oriental Harbor), Raccoon Creek, and Oriental Seawall to the point of beginning were reclassified from Class SC NSW to Class SC NSW HQW;

- (3) a portion of Chapel Creek Index No. 27-150-7 from source to a line 0.1 miles downstream of Bee Tree Creek and tributaries to this portion of Chapel Creek were reclassified from Class SC Sw NSW to Class SC Sw NSW HQW;
- (4) a portion of Swindell Bay Index No. 27-150-8 from source to the narrows was reclassified from Class SC Sw NSW to Class SC Sw NSW HQW;
- (5) Mason Creek Index No. 27-150-9 from source to the Bay River and the tributary to Mason Creek, which is Lewis Creek, were reclassified from Class SC Sw NSW to Class SC Sw NSW HQW;
- (6) Harper Creek Index No. 27-150-10 from source to the Bay River was reclassified from Class SC Sw NSW to Class SC Sw NSW HQW;
- (7) Moore Creek Index 27-150-12 from source to the Bay River and the tributary to Moore Creek, which is Chappel Creek, were reclassified from Class SC Sw NSW to Class SC Sw NSW HQW;
- (8) Smith Creek Index No. 27-150-14 from source to the Bay River was reclassified from Class SC Sw NSW to Class SC Sw NSW HQW;
- (9) Little Vandemere Creek Index No. 27-150-15-1 from source to Vandemere Creek was reclassified from Class SC Sw NSW to Class SC Sw NSW HQW;
- (10) Long Creek Index No. 27-150-15-2 from source to Vandemere Creek was reclassified from Class SC Sw NSW to Class SC Sw NSW HQW; and
- (11) Cedar Creek Index No. 27-150-3 from source to Vandemere Creek was reclassified from Class SC Sw NSW to Class SC Sw NSW HQW.

(q) The Neuse River Basin Classification Schedule was amended effective December 1, 1990, as follows:

- (1) Northwest Creek from its source to the Neuse River Index No. 27-105 was reclassified from Class SC Sw NSW to Class SB Sw NSW;
- (2) Upper Broad Creek Index No. 27-106-(7) from Pamlico County SR 1103 at Lees Landing to the Neuse River was reclassified from Class SC Sw NSW to Class SB Sw NSW; and
- (3) Goose Creek Index No. 27-107-(11) from Wood Landing to the Neuse River was reclassified from Class SC Sw NSW to Class SB Sw NSW.

(r) The Neuse River Basin Classification Schedule was amended effective July 1, 1991, with the reclassification of the Bay River Index No. 27-150-(1) within a line running from Flea Point to the Hammock, east to a line running from Bell Point to Darby Point, including Harper Creek, Tempe Gut, Moore Creek and Newton Creek, and excluding that portion of the Bay River landward of a line running from Poorhouse Point to Darby Point from Classes SC Sw NSW and SC Sw NSW HQW to Class SA NSW.

(s) The Neuse River Basin Classification Schedule was amended effective August 3, 1992, as follows:

- (1) Class WS-I, WS-II or WS-III waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules 15A NCAC 02B .0100 - .0300, which became effective on August 3, 1992.
- (2) Additional waters classified as Class C were reclassified to a WS classification and additional waters classified as Class B were reclassified to a Class WS & B classification due to proximity and linkage to water supply waters.
- (3) Additional Class WS-I, WS-II, or WS-III waters were reclassified to remove the WS classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(t) The Neuse River Basin Classification Schedule was amended effective April 1, 1994, as follows:

- (1) Lake Crabtree Index No. 27-33-(1) was reclassified from Class C NSW to Class B NSW;
- (2) Eno River from Orange County State Road 1561 to Durham County State Road 1003 Index No. 27-10-(16) was reclassified from Class WS-IV NSW to Class WS-IV B NSW; and
- (3) Silver Lake Index No. 27-43-5 was reclassified from Class WS-III NSW to Class WS-III B NSW.

(u) The Neuse River Basin Classification Schedule was amended effective July 1, 1996, with the reclassification of Austin Creek Index Nos. 27-23-3-(1) and 27-23-3-(2) from its source to Smith Creek from Classes WS-III NSW and WS-III NSW CA to Class C NSW.

(v) The Neuse River Basin Classification Schedule was amended effective September 1, 1996, with the reclassification of an unnamed tributary to Hannah Creek (Tuckers Lake) Index No. 27-52-6-0.5 from Class C NSW to Class B NSW.

(w) The Neuse River Basin Classification Schedule was amended effective April 1, 1997, with the reclassification of the Neuse River Index No. 27-(36) from the mouth of Marks Creek to a point 1.3 miles downstream of Johnston County State Road 1908 and tributaries to this portion of the Neuse River to Class WS-IV NSW and the Neuse River Index No. 27-(38.5) from a point 1.3 miles downstream of Johnston County State Road 1908 to the Johnston County Water Supply intake, which is located 1.8 miles downstream of Johnston County State Road 1908, and tributaries to this portion of the Neuse River to Class WS-IV CA NSW.

(x) The Neuse River Basin Classification Schedule was amended effective August 1, 1998, with the revision of the Critical Area and Protected Area boundaries surrounding the Falls Lake water supply reservoir. The revisions to these boundaries are the result of the US Army Corps of Engineers raising the lake's normal pool elevation. The results of these revisions are the Critical and Protected Area boundaries (classifications) may extend further upstream than the current designations. The Critical Area for a WS-IV reservoir is defined as 0.5 miles and draining to the normal pool elevation. The Protected Area for a WS-IV reservoir is defined as 5 miles and draining to the normal pool elevation. The normal pool elevation of the Falls Lake reservoir changed from 250.1 feet mean sea level (msl) to 251.5 feet msl.

(y) The Neuse River Basin Classification Schedule was amended effective August 1, 2002, with the reclassification of portions of Neuse River Index No. 27-(56), including tributaries to those portions of the Neuse River, from a point 0.7 mile downstream of the mouth of Coxes Creek to a point 0.6 mile upstream of Lenoir County proposed water supply intake from Class C NSW to Class WS-IV NSW and from a point 0.6 mile upstream of Lenoir County proposed water supply intake to Lenoir proposed water supply intake from Class C NSW to Class WS-IV CA NSW.

(z) The Neuse River Basin Classification Schedule was amended effective July 1, 2004, with the reclassification of the Neuse River Index Nos. 27-(20.7), 27-21, and 27-21-1 from the dam at Falls Lake to a point 0.5 mile upstream of the Town of Wake Forest Water Supply Intake, which is the former water supply intake for Burlington Mills Wake Finishing Plant, and tributaries to this portion of the Neuse River in Wake County from Class C NSW to Class WS-IV NSW and the Neuse River Index No. 27-(20.1) from a point 0.5 mile upstream of the Town of Wake Forest proposed water supply intake to Town of Wake Forest proposed water supply intake from Class C NSW to Class WS-IV NSW CA. Fantasy Lake Index No. 27-57-3-1-1, a former rock quarry within a WS-II NSW water supply watershed, was reclassified from Class WS-II NSW to Class WS-II NSW CA.

(aa) The Neuse River Basin Classification Schedule was amended effective November 1, 2007, with the reclassification of the entire watershed of Deep Creek (Index No. 27-3-4) from source to Flat River from Class WS-III NSW to Class WS-III ORW NSW.

(bb) The Neuse River Basin Classification Schedule was amended effective January 15, 2011, with the reclassification of Class C NSW waters upstream of the dam at Falls Reservoir to Class WS-V NSW and Class B NSW waters upstream of the dam at Falls Reservoir to Class WS-V & B NSW. Waters within the Falls Watershed are within a designated Critical Water Supply Watershed and are subject to a special management strategy specified in Rules .0275 through .0283 of this Subchapter.

(cc) The Neuse River Basin Classification Schedule was amended effective July 1, 2012, as follows:

- (1) Johnston County owned quarry near Little River Index No. 27-57-(20.2) was reclassified from Class C NSW to Class WS-IV NSW CA. The Division of Water Resources maintains a Geographic Information Systems data layer of this quarry;
- (2) a portion of the Neuse River Index Number 27-(41.7) from a point close to 1.4 miles downstream of Gar Gut to a point close to 1.7 miles upstream of Bawdy Creek was reclassified from Class WS-V NSW to Class WS-IV NSW; and
- (3) a portion of the Neuse River Index No. 27-(49.5) from a point close to 0.5 mile upstream of S.R. 1201 to S.R. 1201, which is the location of a Johnston County intake, was reclassified from Class WS-IV NSW to Class WS-IV NSW CA.

(dd) The Neuse River Basin Classification Schedule was amended effective July 1, 2023, as follows:

- (1) City of Durham owned Nello Teer Quarry near Eno River Index No. 27-2-(19) was reclassified from Class WS-IV NSW to Class WS-IV NSW CA. The Division of Water Resources maintains a Geographic Information Systems data layer of this quarry; and
- (2) a portion of the Eno River Index No. 27-2-(19) from a point close to 0.7 miles downstream of U.S. Highway 501 to a City of Durham raw intake located about 1.1 miles downstream of U.S. Highway 501 was reclassified from Class WS-IV NSW to Class WS-IV NSW CA.

History Note: Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1); Eff. February 1, 1976; Amended Eff. November 1, 2007; July 1, 2004 (see SL 2001-361); August 1, 2002; August 1, 1998; April 1, 1997; September 1, 1996; July 1, 1996; April 1, 1994; August 3, 1992; July 1, 1991; Amended Eff. January 15, 2011 (this permanent rule replaces the temporary rule approved by the RRC on December 16, 2010); Amended Eff. July 1, 2012; Readopted Eff. November 1, 2019; Amended Eff. July 1, 2023.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

21 NCAC 16C .0501 DENTAL HYGIENE LICENSURE BY CREDENTIALS

(a) An applicant for a dental hygiene license by credentials shall submit to the Board:

- (1) a notarized application form provided by the Board at www.ncdentalboard.org that includes

- the information and materials required by Rule .0301(a) of this Subchapter;
 - (2) the nonrefundable licensure by credentials fee set forth in 21 NCAC 16M .0102;
 - (3) an affidavit from the applicant stating for the two year period set out in G.S. 90-224.1(c)(1):
 - (A) the dates that and locations where the applicant has practiced dental hygiene;
 - (B) that the applicant has provided at least 2,000 hours of clinical care to patients; and
 - (C) that the applicant holds an active, unrestricted dental hygiene license issued by another U.S. state or any U.S. territory, and has done so without any period of interruption; and
 - (4) a statement disclosing and explaining any investigations, malpractice claims, or state or federal agency complaints, judgments, or settlements that are related to licensure and are not disclosed elsewhere in the application.
- (b) In addition to the requirements of Paragraph (a) of this Rule, an applicant for a dental hygiene license by credentials shall request the applicable entity to send the following required information or documents, in a sealed envelope or via secure electronic transmission, directly from the entity to the Board office:
- (1) the applicant's official transcripts from a dental hygiene program accredited by the Commission on Dental Accreditation of the American Dental Association;
 - (2) a certificate of the applicant's licensure status from the regulatory authority or other occupational or professional regulatory authority and a disclosure of all disciplinary actions taken or investigations pending, from all licensing jurisdictions where the applicant holds or has ever held a dental hygiene license or other occupational or professional license;
 - (3) scores from:
 - (A) the National Board Dental Hygiene Examination administered by the Joint Commission on National Dental Examinations; and
 - (B) a clinical examination accepted by the Board based on the criteria set out in Rule .0303(d) of this Subchapter;
 - (4) a report of any pending or final malpractice actions against the applicant verified by any malpractice insurance carrier covering the applicant; and
 - (5) a letter of coverage history from all current and all previous malpractice insurance carriers covering the applicant.

For purposes of this Rule, "secure electronic transmission" means an electronic method of communication that ensures that completeness, integrity, and confidentiality of information are maintained during transmission.

- (c) An application shall be complete when the Board receives all information and documentation set forth in Paragraphs (a) and (b) of this Rule and the applicant's passing scores on all examinations required by this Rule. Partial applications that are not completed within one year of the date the first document is submitted to the Board shall be disregarded as expired without a refund of the application fee.
- (d) An applicant for dental hygiene licensure by credentials shall pass the Board's written examinations in sterilization and jurisprudence as set out in Rule .0303(a) of this Subchapter. Applicants who do not pass either written examination after three attempts within one year in accordance with Rule .0311(b) of this Subchapter shall not be eligible for reexamination under Rule .0311(c) of this Subchapter and may not reapply for licensure by credentials.
- (e) Any applicant who changes his or her address shall notify the Board office in writing within 10 business days.
- (f) Any license obtained through fraud or by any false representation shall be revoked.

History Note: Authority G.S. 90-223; 90-224.1; 90-229; Temporary Adoption Eff. January 1, 2003; Eff. January 1, 2004; Recodified from Rule .0401 Eff. June 1, 2006; Amended Eff. September 1, 2014; February 1, 2010; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018; Amended Eff. July 1, 2023; March 1, 2020.

21 NCAC 16H .0105 DENTAL RADIOLOGY COURSE AND EXAMINATION REQUIREMENTS

- (a) If a dental radiology course and the course's final examination meet the requirements of this Rule, the Board will recognize the course and final examination as satisfying the dental radiology training and equivalency examination requirements set out in G.S. 90-29(c)(12).
- (b) For the Board to recognize a dental radiology course and its final examination:
 - (1) The course shall include at least 7 hours of didactic, lecture-based instruction and at least 14 hours of laboratory instruction.
 - (2) The course curriculum shall include instruction and training in clinical dental radiology, in the production and use of dental x-rays, and on digital x-ray equipment. The course shall enable the student to:
 - (A) identify in sequence the steps necessary for operating dental x-ray equipment;
 - (B) identify the requirements of a diagnostic digital image;
 - (C) differentiate the effect of variations in amperage, kilo-voltage, distance, and exposure time on the resulting digital images;
 - (D) identify the terms used to measure radiation;
 - (E) establish guidelines for maintaining radiation safety and the ALARA ("as

- low as reasonably achievable") principle;
- (F) follow principles of radiologic health practices and radiation biology;
 - (G) identify radiation safety techniques and monitoring devices;
 - (H) identify the parts and identification marks on dental x-ray sensors;
 - (I) identify and compare intraoral sensors according to size and customary usage;
 - (J) identify methods of sensor handling and storage;
 - (K) identify and perform in sequence the steps in processing digital images;
 - (L) differentiate between preliminary interpretation and diagnosis of the digital images;
 - (M) identify the anatomical landmarks of the face and skull;
 - (N) identify any dental radiograph according to its location in the maxilla or mandible, and position it on a digital image mount;
 - (O) identify the types of radiographic errors caused by faulty exposure techniques;
 - (P) identify the types of radiographic errors caused by incorrect digital mount positioning and angulation of the central ray;
 - (Q) identify the types of radiographic errors caused by faulty digital processing techniques;
 - (R) identify the conditions that cause digital images to be fogged;
 - (S) identify the advance preparations necessary before exposing digital images;
 - (T) carry out the task of digital image exposure to completion;
 - (U) use the paralleling technique to produce digital images of diagnostic quality addressing contrast, density, and definition;
 - (V) explain the principles of digital imaging and quality assurance;
 - (W) identify errors when using digital imaging in technique and processing;
 - (X) explain the utilization of beam aligning devices; and
 - (Y) describe the use of hand-held radiation exposure devices following guidelines from the Radiation Protection Section of the Department of Health and Human Services, Radiology Compliance Branch ("Radiation Protection Section"), which are incorporated by reference, including subsequent amendments and editions, and are available at no cost online at www.ncradiation.net/Xray/dentdose.htm.
- (3) The laboratory portion of the course shall have no more than six students per instructor, and shall include practice on dental radiography manikins. Students shall not practice on peer students unless the unit is turned off and all requirements of the Board's sterilization and infection control rule, 21 NCAC 16J .0103, are satisfied. Students shall be required to achieve a passing score of at least 80 percent on a written examination on radiation safety prior to taking radiographs.
 - (4) To complete the course, students shall be required to achieve a passing score of at least 80 percent on a written examination upon completion of the didactic, lecture-based portion of the course and to achieve a passing score of at least 80 percent on a final laboratory examination. The final laboratory examination shall be conducted on a manikin and include completion of a full mouth series.
 - (5) The facility used as the training location for the course shall:
 - (A) assume all overhead costs involved in offering the course;
 - (B) comply with the Board's rules regarding sanitation, sterilization, and infection control set out in 21 NCAC 16J, the applicable guidelines of the Radiation Protection Section, and the OSHA guidelines and standards related to dentistry, which are incorporated by reference, including subsequent amendments and editions, and are available at no cost online at www.osha.gov/dentistry/standards;
 - (C) provide access to a room large enough to accommodate the number of participants for lecture purposes;
 - (D) have the number of x-ray machines necessary based on the course curriculum and enrollment to ensure there are no more than two students per machine; and
 - (E) have facilities for digital radiography.
 - (6) The didactic and laboratory portions of the course shall be taught by:
 - (A) an instructor of dental radiography at an institution accredited by the Commission on Dental Accreditation ("CODA"), a list of which is available at no cost at www.ada.org/coda and is incorporated by reference, including subsequent amendments and editions; or

(B) an instructor who has received a certification to teach dental radiography from a CODA-accredited institution, and has completed three hours of continuing education in the area of radiology every other year. The continuing education courses shall be offered by Board-approved continuing education course sponsors as set out in 21 NCAC 16I .0202 or 21 NCAC 16R .0202.

- (7) The course sponsor shall provide students with all supplies.
- (8) Course advertising shall comply with the Board's rules regarding advertisement of dental services set out in 21 NCAC 16P.

(c) A course sponsor seeking Board recognition of a dental radiology course shall submit to the Board office:

- (1) the course outline, syllabus, and handouts;
- (2) slides and other lecture materials;
- (3) examinations and grading criteria; and
- (4) the name, resume, and verification of credentials satisfying Subparagraph (b)(6) of this Rule for all course instructors.

(d) After the course sponsor submits all the information and documents required by Paragraph (c) of this Rule, the course will be reviewed by the Board for compliance with this Rule at the next scheduled Board meeting. The Board may delay reviewing a course until a later meeting if the Board's workload makes the review impracticable. If the Board delays reviewing a course, it shall notify the course sponsor. A course shall be recognized by a majority vote of the Board. A list of recognized courses is available on the Board's website at www.ncdentalboard.org.

(e) Upon receipt of evidence that a previously recognized course is not in compliance with this Rule, the Board will notify the course sponsor in writing of each item of noncompliance. Within 30 days from the date of the notice of noncompliance, the course sponsor shall provide a written response to the Board office which shall respond to each item of noncompliance. The response shall provide documentation of corrections made, and shall show each item is in compliance with this Rule. If the course sponsor fails to respond or correct noncompliance, the Board's recognition of the course shall be withdrawn. As of the date recognition is withdrawn, the course and its examination shall not satisfy the dental radiology training and equivalency examination requirements set out in G.S. 90-29(c)(12).

History Note: Authority G.S. 90-29(c)(12); 90-48; Eff. July 1, 2023.

21 NCAC 16I .0201 CONTINUING EDUCATION REQUIRED

(a) As a condition of license renewal, each dental hygienist shall complete six clock hours of continuing education each calendar year. The hours may be acquired through self-study courses. To count toward the mandatory continuing education requirement, self-study courses shall be related to clinical patient care and offered by a Board-approved sponsor listed in Rule .0202 of this Section. The dental hygienist shall pass a test administered by the

self-study course sponsor and obtain a certificate of completion from the sponsor.

(b) An unexpired certification in CPR is required in addition to the mandatory continuing education hours.

(c) Upon receipt of a written request from the dental hygienist, the Board will grant exemptions from the requirements set out in this Rule and in Rule .0206 of this Section as follows:

- (1) A dental hygienist who practices not more than 250 clock hours in a calendar year shall be classified as a semi-retired dental hygienist, and shall:
 - (A) be exempt from the requirement set out in Paragraph (a) of this Rule to complete six clock hours of continuing education each calendar year; and
 - (B) maintain an unexpired CPR certification.
- (2) A retired dental hygienist who does not practice any dental hygiene shall be exempt from all continuing education and CPR certification requirements.

(d) If a dental hygienist who has been exempted from continuing education requirements wishes to resume practicing for more hours than permitted by his or her classification under Paragraph (c) of this Rule, the Board shall require an unexpired CPR certification and continuing education courses for the calendar year in which he or she increases practice hours in accordance with this Rule and Rule .0206 of this Section when reclassifying the dental hygienist. A dental hygienist who has been classified as retired and wishes to resume practice shall satisfy the reinstatement requirements of 21 NCAC 16C .0601.

History Note: Authority G.S. 90-225.1; 90-229; Eff. May 1, 1994; Amended Eff. April 1, 2015; November 1, 2008; April 1, 2001; August 1, 1998; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018; Recodified from 21 NCAC 16I .0102 Eff. January 1, 2020; Amended Eff. July 1, 2023.

21 NCAC 16R .0204 EXEMPTION FROM AND CREDIT FOR CONTINUING EDUCATION

(a) Upon receipt of written evidence, the Board will grant exemptions from the mandatory continuing education requirements set out in Rules .0201 and .0206 of this Section as follows:

- (1) A dentist who practices not more than 250 clock hours in a calendar year shall be classified as a semi-retired Class I dentist, and shall:
 - (A) be exempt from the requirement set out in Rule .0201(a) of this Section to complete 15 clock hours of continuing education each calendar year;
 - (B) complete the course required in Rule .0201(b) of this Section if the dentist prescribes controlled substances; and
 - (C) maintain an unexpired CPR certification.

CHAPTER 36 – BOARD OF NURSING

21 NCAC 36 .0221 LICENSE REQUIRED

(a) No cap, pin, uniform, insignia, or title shall be used to represent to the public that an unlicensed person is a registered nurse or a licensed practical nurse as defined in G.S. 90-171.43.

(b) The repetitive performance of a common task or procedure that does not require the professional judgment of a registered nurse or licensed practical nurse shall not be considered the practice of nursing for which a license is required. Tasks that may be delegated to a Nurse Aide I and a Nurse Aide II shall be established by the Board pursuant to 21 NCAC 36 .0403. Tasks may be delegated to an unlicensed person that:

- (1) frequently recur in the daily care of a client or group of clients;
- (2) are performed according to an established sequence of steps;
- (3) involve little or no modification from one client-care situation to another;
- (4) may be performed with a predictable outcome; and
- (5) do not inherently involve ongoing assessment, interpretation, or decision-making that cannot be logically separated from the tasks themselves.

Client-care services that do not meet all of these criteria shall be performed by a licensed nurse.

(c) A registered nurse or licensed practical nurse shall not delegate the professional judgment required to implement a treatment or pharmaceutical regimen that is likely to produce side effects, toxic effects, allergic reactions, or other unusual effects or that may rapidly endanger a client's life or well-being and that is prescribed by an individual authorized by State law to prescribe such a regimen. A nurse who assumes responsibility directly or through delegation for implementing a treatment or pharmaceutical regimen shall be accountable for:

- (1) recognizing side effects;
- (2) recognizing toxic effects;
- (3) recognizing allergic reactions;
- (4) recognizing immediate desired effects;
- (5) recognizing unusual and unexpected effects;
- (6) recognizing changes in a client's condition that contraindicates continued administration of the pharmaceutical or treatment regimen;
- (7) anticipating those effects that may rapidly endanger a client's life or well-being; and
- (8) making judgments and decisions concerning actions to take in the event such effects occur.

(d) If health care needs of a client are incidental to the personal care needs of the client, a nurse shall not be accountable for care performed by clients themselves, their families or significant others, or by caretakers who provide personal care to the individual.

(e) Pharmacists may administer drugs in accordance with 21 NCAC 46 .2507 and .2514.

History Note: Authority G.S. 90-85.3; 90-85.15B; 90-171.23(b); 90-171.43; 90-171.95B Eff. May 1, 1982;

- (2) A dentist who practices not more than 1,000 clock hours in a calendar year shall be classified as a semi-retired Class II dentist, and shall:
 - (A) be exempt from one half of the total continuing education hours required in Rule .0201(a) of this Section;
 - (B) complete the course required in Rule .0201(b) of this Section if the dentist prescribes controlled substances;
 - (C) complete the continuing education requirement on substance abuse and mental health set out in Rule .0206 of this Section; and
 - (D) maintain an unexpired CPR certification.
- (3) A retired dentist who does not practice any dentistry shall be exempt from all continuing education and CPR certification requirements.

(b) If a dentist who has been exempted from continuing education requirements wishes to resume practicing for more hours than permitted by his or her classification under Paragraph (a) of this Rule, the Board shall require continuing education courses for the calendar year in which he or she increases practice hours in accordance with this Rule and Rules .0201 and .0206 of this Section when reclassifying the dentist. A dentist who has been classified as retired and wishes to resume practice shall satisfy the reinstatement requirements of 21 NCAC 16B .1101.

(c) Dentists shall receive 10 hours credit per year for continuing education when engaged in any of the following:

- (1) service on a full-time basis on the faculty of an educational institution with involvement in education, training, or research in dental or dental hygiene programs; or
- (2) service on a full-time basis with a federal, state, or county government agency whose operation is related to dentistry. Verification of credit hours shall be maintained in the manner specified in Rule .0203 of this Section.

(d) Dentists who do not work on a full-time basis but work at least 20 hours per week in an institution or entity described in Subparagraph (c)(1) or (2) of this Rule shall receive five hours credit per year for continuing education.

(e) Dentists shall receive up to two hours of continuing education credits per year for providing dental services on a volunteer basis at any state, city, or county operated site. Credit will be given at ratio of 1:5, with one hour credit given for every five hours of volunteer work.

(f) Eligible licensees as defined by 21 NCAC 16B .0901 shall be granted a waiver of their mandatory continuing education requirements.

History Note: Authority G.S. 90-31.1; 90-38; Eff. July 1, 2015; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018; Amended Eff. July 1, 2023; December 1, 2020.

Amended Eff. July 1, 2004; April 1, 2002; December 1, 2000; July 1, 2000; January 1, 1996; February 1, 1994; April 1, 1989; January 1, 1984;
Emergency Amendment Eff. September 10, 2004;
Amended Eff. April 1, 2008; December 1, 2004;
Readopted Eff. January 1, 2019;
Amended Eff. July 1, 2023.

CHAPTER 42 – BOARD OF EXAMINERS IN OPTOMETRY

21 NCAC 42B .0107 NATIONAL BOARD EXAMINATIONS

(a) Each applicant shall direct the National Board of Examiners in Optometry (NBEO) to release his or her official score report to the Board as evidence of having achieved a passing score as determined by the NBEO on:

- (1) Parts I, II, and III of the National Board of Examiners in Optometry (NBEO) Examinations if offered in the calendar year the applicant graduated from an accredited school or college of optometry;
(2) NBEO's Treatment and Management of Ocular Disease Examination if offered in the calendar year the applicant graduated from an accredited school or college of optometry; and
(3) NBEO's Injection Skills Examination.

(b) The applicant shall authorize the release of his or her official NBEO score report to the Board prior to the approval by the Board of his or her application to take the North Carolina clinical practicum examination.

History Note: Authority G.S. 90-117.5; 90-118; Eff. February 1, 1976; Readopted Eff. May 30, 1978; Amended Eff. June 1, 2014; April 1, 2011; July 1, 1998; May 1, 1995; April 1, 1993; June 1, 1989; September 30, 1981; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015; Amended Eff. July 1, 2023.

CHAPTER 58 - REAL ESTATE COMMISSION

21 NCAC 58A .0114 RESIDENTIAL PROPERTY AND OWNERS' ASSOCIATION DISCLOSURE STATEMENT

(a) Every owner of real property subject to a transfer of the type governed by Chapter 47E of the General Statutes shall complete a Residential Property and Owners' Association Disclosure Statement (hereinafter "Disclosure Statement") and furnish a copy of the complete statement to a purchaser in accordance with the requirements of G.S. 47E-4. The Disclosure Statement is a form prescribed by the Commission and available on the Commission's website at https://www.ncrec.gov/Forms/Consumer/rec422.pdf. The Disclosure Statement shall include the items set forth in G.S.

47E-4(b1)(1) and the following information pertaining to the property:

- (1) property address;
(2) owner's name(s), signature(s), and date of Disclosure Statement completion;
(3) year the dwelling was constructed;
(4) any historic designation or registration status which places a restriction on the property;
(5) noise, odor, smoke, or other nuisance from commercial, industrial, or military sources impacting the property;
(6) existence of any private road(s) abutting or adjoining the property and the maintenance agreements, if applicable;
(7) type of heating, cooling, water heater fuel sources along with the year each system was manufactured;
(8) type of fuel source, and, if the fuel source is stored in a tank, whether the tank is above or below ground and leased or owned by the seller;
(9) type of water supply source and sewage disposal system, and if serviced by a septic system, identify the number of bedrooms allowed pursuant to permit;
(10) any violations impacting the property, such as local ordinances, restrictive covenants, building codes, or other land-use restrictions;
(11) whether any portion of the property is designated as within a Special Flood Hazard Area pursuant to Title 44, Chapter 1, Subchapter B, Part 65 of the Code of Federal Regulations, has a flood elevation certificate, is insured for flood damage, has experienced damage from natural events causing water seepage, or has had a claim filed for flood damage or received federal financial assistance for flood damage; and
(12) if there is any problem, malfunction, or defect with the property's:
(A) roof, fireplaces, or chimneys;
(B) foundation, basement, crawl space, or slab;
(C) windows, doors, patio, deck;
(D) garage or other structural component of the property;
(E) electrical, heating, cooling, or elevator systems;
(F) plumbing, water supply, sewer, or septic systems;
(G) fixtures or appliances to be conveyed with the purchase;
(H) drainage, grading or soil stability; and
(I) condition caused by wood destroying insects or organisms.

(b) A broker shall furnish a current Disclosure Statement published on the Commission's website to the property owner(s) for completion.

(c) A broker representing either an owner or a purchaser of any real property subject to Chapter 47E of the North Carolina

General Statutes shall disclose to the purchaser any material facts the broker knows or reasonably should know about the property. A broker's duty to disclose is separate from that of the owner's, and the owner's Disclosure Statement does not obviate the broker's duty to disclose. A material fact is a fact that a reasonable person would recognize as relevant to a purchaser in deciding to purchase the property the suppression of which could reasonably result in a different decision.

History Note: Authority G.S. 47E-4(b); 47E-4(b1); 93A-3(c); 93A-6;
Eff. October 1, 1998;
Amended Eff. July 1, 2014; January 1, 2013; January 1, 2012; July 1, 2010; July 1, 2009; January 1, 2008; July 1, 2006; September 1, 2002; July 1, 2000;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;
Amended Eff. July 1, 2023; July 1, 2021; July 1, 2018.

TITLE 25 - OFFICE OF STATE HUMAN RESOURCES

25 NCAC 01C .1007 SEPARATION

- (a) An employee may be separated when:
- (1) the employee is unavailable for work, meaning that all applicable leave credits and leave benefits have been exhausted and agency management does not grant leave without pay, as defined in 25 NCAC 01E .1101, the employee is unable to return to all of the position's essential duties as set forth in the employee's job description or designated work schedule due to a medical condition or the vagueness of a medical prognosis, and the employee and agency are unable to reach agreement on a return to work arrangement that meets both the needs of the agency and the employee's condition;
 - (2) notwithstanding any unexhausted applicable leave credits and leave benefits, the employee is unable to return to all of the position's essential duties as set forth in the employee's job description or designated work schedule due to a court order, due to a loss of required credentials, due to a loss of other required certification, or due to other extenuating circumstances that render the employee unable to perform the position's essential duties as set forth in the employee's job description or designated work schedule, and the employee and the agency are unable to reach agreement on a return to work arrangement that meets both the needs of the agency and the employee's situation; or
 - (3) notwithstanding any unexhausted applicable leave credits and leave benefits, when an employee is on workers' compensation leave of

absence, or when an employee is working with temporary or permanent work restrictions due to a work-related injury, and the employee is unable to return to all of the position's essential duties as set forth in the employee's job description or designated work schedule due to a medical condition or the vagueness of a medical prognosis, and the employee and the agency are unable to reach agreement on a return to work arrangement that meets both the needs of the agency and the employee's medical condition, a separation may occur on the earliest of the following dates:

- (A) after the employee has reached maximum medical improvement for the work related injury for which the employee is on workers' compensation leave of absence and the agency is unable to accommodate the employee's permanent work restrictions related to such injury; or
- (B) 12 months after the date of the employee's work related injury.

(b) The employing agency shall send the employee written notice of the proposed separation in a Pre-Separation Letter. The letter shall include the employing agency's planned date of separation, the efforts undertaken to avoid separation, and why the efforts were unsuccessful. This letter shall be sent to the employee at least 15 calendar days prior to the employing agency's planned date of separation. This letter shall include a deadline for the employee to respond in writing no less than five calendar days prior to the employing agency's planned date of separation.

(c) If the agency and employee are unable to agree on terms of continued employment or the employee does not respond to the Pre-Separation Letter, the employing agency shall send the employee written notice in a Letter of Separation. The letter shall be sent no earlier than 20 calendar days after the Pre-Separation Letter is sent to the employee. The Letter of Separation shall state the actual date of separation, specific reasons for the separation, and set forth the employee's right of appeal. Such a separation shall not be considered a disciplinary dismissal as described in G.S. 126-34.02 or G.S. 126-35. It is an involuntary separation and may be grieved or appealed. The burden of proof on the agency in the event of a grievance is not to demonstrate just cause as that term exists in G.S. 126-34.02 or G.S. 126-35. Rather, the agency's burden shall only be to prove that the employee was unavailable.

(d) "Applicable leave credits and benefits" is defined as the sick, vacation, bonus, incentive, and compensatory leave that the employee may earn, but does not include short-term or long-term disability.

History Note: Authority G.S. 126-4(7a); 126-34.02;
Eff. November 1, 1989;
Recodified from 25 NCAC 01D .0519 Eff. December 29, 2003;
Amended Eff. April 1, 2015; January 1, 2007; October 1, 2004;
Readopted Eff. April 1, 2016;
Amended Eff. July 1, 2023.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission August 17, 2023 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 984-236-1850. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Jeanette Doran (Chair)
Robert A. Bryan, Jr. (2nd Vice Chair)
Jay R. Hemphill
Jeff Hyde
Robert A. Rucho

Appointed by House

Andrew P. Atkins (1st Vice Chair)
Wayne R. Boyles, III
Barbara A. Jackson
Randy Overton
Paul Powell

COMMISSION COUNSEL

Brian Liebman	984-236-1948
Lawrence Duke	984-236-1938
William W. Peaslee	984-236-1939
Seth M. Ascher	984-236-1934

RULES REVIEW COMMISSION MEETING DATES

August 17, 2023	October 19, 2023
September 21, 2023	November 16, 2023

AGENDA

RULES REVIEW COMMISSION

Thursday, August 17, 2023, 9:00 A.M.

1711 New Hope Church Rd., Raleigh, NC 27609

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-up matters
 - A. Environmental Management Commission - 15A NCAC 02D .0103, .0501, .0546, .0605, .1903, .1904, .1905, .2203; 02Q .0104, .0105, .0206, .0304, .0305, .0307, .0505, .0507, .0508, .0710 (Duke)
 - B. Environmental Management Commission - 15A NCAC 02H .1301, .1401, .1402, .1403, .1404, .1405 (Liebman)
 - C. Marine Fisheries Commission - 15A NCAC 03M .0101 (Duke)
 - D. Coastal Resources Commission - 15A NCAC 07H .0208, .0308; 07K .0207; 07M .0602, .0603 (Liebman)
 - E. Coastal Resources Commission - 15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510; 07I .0406, .0506, .0702; 07J .0203, .0204, .0206, .0207, .0208, .0312 (Liebman)
 - F. Coastal Resources Commission - 15A NCAC 07H .2305 (Duke)
 - G. Coastal Resources Commission - 15A NCAC 07M .0201, .0202, .0401, .0402, .0403, .0701, .0703, .0704, .1001, .1002, .1101 (Peaslee)
- IV. Review of Filings (Permanent Rules) for rules filed between June 21, 2023 through July 20, 2023
 1. Sheriffs' Education and Training Standards Commission (Peaslee)
 2. Private Protective Services Board (Liebman)
 3. Environmental Management Commission 05A NCAC 02B (Duke)
 4. Environmental Management Commission 15A NCAC 02D, Q (Liebman)
 5. Wildlife Resources Commission (Duke)
 6. Local Government Commission (Duke)
 7. Board of Certified Public Accountant Examiners (Ascher)
 8. Board of Examiners in Optometry (Duke)
 9. Board of Pharmacy (Peaslee)
 10. Veterinary Medical Board (Ascher)
 11. Office of Administrative Hearings

- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- VI. Existing Rules Review
- VII. Commission Business
 - o Next meeting: September 21, 2023

**Commission Review
Log of Permanent Rule Filings
June 21, 2023 through July 20, 2023**

SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

The rules in Subchapter 10B govern the commission organization and procedure (.0100); enforcement rules (.0200); minimum standards for employment as a justice officer (deputy or jailer) (.0300); certification of justice officers (.0400); standards and accreditation for justice officers schools, training programs, and the instructors (.0500-.0900); certificate and awards programs for sheriffs, deputies, justice officers, jailers, reserve officers, and telecommunicators (.1000-.1700); in-service training (.2000); and firearms in-service training and re-qualification (.2100).

<u>Probationary Certification</u>	12	NCAC	10B .0402
Amend*			
<u>Probationary Certification Requirement</u>	12	NCAC	10B .0403
Amend*			
<u>General Certification</u>	12	NCAC	10B .0404
Amend*			
<u>Time Req/Completion/Basic Law Enforcement Training Course</u>	12	NCAC	10B .0503
Amend*			
<u>Trainee Attendance</u>	12	NCAC	10B .0604
Amend*			
<u>Completion of Detention Officer Certification Course</u>	12	NCAC	10B .0605
Amend*			
<u>Comp Written Exam - Detention Officer Certification Course</u>	12	NCAC	10B .0606
Amend*			
<u>Satisfaction of Minimum Training Requirements</u>	12	NCAC	10B .0607
Amend*			
<u>Administration of Justice Officer Schools</u>	12	NCAC	10B .0702
Amend*			
<u>Responsibilities: Schools and Detention Officer Courses</u>	12	NCAC	10B .0704
Adopt*			
<u>Qualifications to Act as School Directors</u>	12	NCAC	10B .0705
Amend*			
<u>Pilot Course Presentation/Participation</u>	12	NCAC	10B .0714
Adopt*			
<u>Reports/Detention Officer Cert Course Presentation Comple...</u>	12	NCAC	10B .0803
Amend*			
<u>Cert/Instructors/Basic Law Enforcement Training Course</u>	12	NCAC	10B .0901
Amend*			
<u>Cert: Instructors for Detention Officer Certification Course</u>	12	NCAC	10B .0903
Amend*			
<u>Professional Lecturer Certification</u>	12	NCAC	10B .0906
Amend*			
<u>Use of Guest Participants</u>	12	NCAC	10B .0910
Amend*			
<u>Telecommunicator Certification Course</u>	12	NCAC	10B .1302
Amend*			

PRIVATE PROTECTIVE SERVICES BOARD

The rules in Chapter 16 are from the Private Protective Services Board and cover organization and general provisions (.0100); licenses and trainee permits (.0200); security guard patrol and guard dog service (.0300); private investigator: electronic countermeasures (.0400); polygraph (.0500); psychological stress evaluator (PSE) (.0600); unarmed security guard registration (.0700); armed security guard firearm registration permit (.0800); trainer certificate (.0900); recovery fund (.1000); training and supervision for private investigator associates (.1100); continuing education (.1300); armed armored car service guards firearm registration permit (.1400); close personal protection (.1500); digital forensics examiner (.1600); and training and supervision for digital forensics examiner (D.F.E) associates (.1700).

<u>Application for License and Trainee Permits</u> Amend*	14B	NCAC	16	.0201
<u>Company Business License</u> Amend*	14B	NCAC	16	.0205
<u>Trainee Permit Requirements</u> Amend*	14B	NCAC	16	.0403
<u>Training Requirements for Armed Licensees and Registrants</u> Amend*	14B	NCAC	16	.0807
<u>Definitions</u> Amend*	14B	NCAC	16	.1101
<u>Experience Requirements for a Close Personal Protection L...</u> Adopt*	14B	NCAC	16	.1501
<u>Training Requirements for Close Personal Protection License</u> Adopt*	14B	NCAC	16	.1502
<u>Investigations Directly Related to Provision of Services</u> Adopt*	14B	NCAC	16	.1503
<u>Distinguishing Security Services</u> Adopt*	14B	NCAC	16	.1504
<u>Experience Requirements for a Digital Forensics Examiner ...</u> Adopt*	14B	NCAC	16	.1601
<u>Definitions</u> Adopt*	14B	NCAC	16	.1701
<u>Training and Supervision Required in Level One</u> Adopt*	14B	NCAC	16	.1702
<u>Training and Supervision Required in Level Two</u> Adopt*	14B	NCAC	16	.1703
<u>Training and Supervision Required in Level Three</u> Adopt*	14B	NCAC	16	.1704
<u>Educational Degrees and Non-degreed Training</u> Adopt*	14B	NCAC	16	.1705
<u>Consideration of Experience</u> Adopt*	14B	NCAC	16	.1706
<u>Enforcement</u> Adopt*	14B	NCAC	16	.1707
<u>Transferability of Training Hours</u> Adopt*	14B	NCAC	16	.1708
<u>Probationary Employees</u> Adopt*	14B	NCAC	16	.1709

ENVIRONMENTAL MANAGEMENT COMMISSION

The rules in Subchapter 2B pertain to surface water standards and monitoring including procedures for assignment of water quality standards (.0100); the standards used to classify the waters of the state (.0200); stream classifications (.0300); effluent limitations (.0400); monitoring and reporting requirements (.0500); and water quality management plans (.0600).

Watauga River Basin 15A NCAC 02B .0305
Amend*

The rules in Subchapter 2D are air pollution control requirements including definitions and references (.0100); air pollution sources (.0200); air pollution emergencies (.0300); ambient air quality standards (.0400); emission control standards (.0500); monitoring; recordkeeping; reporting (.0600); volatile organic compounds (.0900); motor vehicle emission control standard (.1000); control of toxic air pollutants (.1100); control of emissions from incinerators and combustion units (.1200); nitrogen oxides (.1400); municipal solid waste landfills (.1700); control of odors (.1800); open burning (.1900); transportation conformity (.2000); risk management program (.2100); special orders (.2200); banking emission reduction credits (.2300); and source testing (.2600).

Particulates from Fuel Burning Indirect Heat Exchangers 15A NCAC 02D .0503
Amend*

Particulates from Hot Mix Asphalt Plants 15A NCAC 02D .0506
Amend*

Sources Contributing to an Ambient Violation 15A NCAC 02D .0532
Amend*

Compliance Assurance Monitoring 15A NCAC 02D .0614
Amend*

Can Coating 15A NCAC 02D .0918
Amend*

Bulk Gasoline Plants 15A NCAC 02D .0926
Amend*

Bulk Gasoline Terminals 15A NCAC 02D .0927
Amend*

Gasoline Service Stations Stage 1 15A NCAC 02D .0928
Amend*

Gasoline Truck Tanks and Vapor Collection Systems 15A NCAC 02D .0932
Amend*

Cargo Tank Leak Tester Report 15A NCAC 02D .0960
Repeal*

Offset Lithographic Printing and Letterpress Printing 15A NCAC 02D .0961
Amend*

Miscellaneous Industrial Adhesives 15A NCAC 02D .0964
Amend*

Compliance Schedules 15A NCAC 02D .1403
Amend*

Reporting Requirements 15A NCAC 02D .1708
Amend*

The rules in Subchapter 2Q are from the EMC and relate to applying for and obtaining air quality permits and include general information (.0100); fees (.0200); application requirements (.0300); acid rain program requirements (.0400); establishment of an air quality permitting program (.0500); transportation facility requirements (.0600); toxic air pollutant procedures (.0700); exempt categories (.0800); and permit exemptions (.0900).

Activities Exempted from Permit Requirements 15A NCAC 02Q .0102
Amend*

Modifications 15A NCAC 02Q .0706

Amend*

WILDLIFE RESOURCES COMMISSION

The rules in Subchapter 10B are hunting and trapping rules and cover general hunting and wildlife provisions (.0100), hunting specific animals (.0200), trapping (.0300), tagging furs (.0400), chronic wasting disease management (.0500).

Big Game Harvest Reports 15A NCAC 10B .0113
Amend*

The rules in Subchapter 10F cover motorboats and water safety including boat registration (.0100); safety equipment and accident reports (.0200); and local water safety regulations covering speed limits, no-wake restrictions, restrictions on swimming and other activities, and placement of markers for designated counties or municipalities (.0300).

Application for Certificate of Vessel Number 15A NCAC 10F .0102
Amend*

Certificate of Number 15A NCAC 10F .0104
Amend*

Temporary Certificate of Number 15A NCAC 10F .0109
Amend*

Dare County 15A NCAC 10F .0310
Amend*

Cube Hydro Carolinas Safety Zones and Restricted Zones Areas 15A NCAC 10F .0374
Amend*

LOCAL GOVERNMENT COMMISSION

The rules in Chapter 3 concern the Local Government Commission including general provisions (.0100); approval of debt obligations (.0200); sale and delivery of bonds and notes (.0300); accounting and internal controls (.0400); audit contracts (.0500); school budgeting and accounting (.0600); mutual fund for local government investment (.0700); systems of registration (.0800) other requests for approval (.0900); and evidentiary hearing on refunding bonds (.1000).

General Information 20 NCAC 03 .0701
Repeal*

Definition of Terms 20 NCAC 03 .0702
Repeal*

Minimum Fund Standards 20 NCAC 03 .0703
Repeal*

Requirements for the RFP 20 NCAC 03 .0704
Repeal*

Issuance of the RFP 20 NCAC 03 .0705
Repeal*

Certification and Termination of Manager 20 NCAC 03 .0706
Repeal*

Termination for Cause 20 NCAC 03 .0707
Repeal*

Review of Manager 20 NCAC 03 .0708
Repeal*

Delegation of Authority 20 NCAC 03 .0709
Repeal*

General Information 20 NCAC 03 .0710
Adopt*

Definition of Terms 20 NCAC 03 .0711
Adopt*

<u>Minimum Fund Standards</u> Adopt*	20	NCAC	03	.0712
<u>Certification of a Fund</u> Adopt*	20	NCAC	03	.0713
<u>Review of Fund and Attestation</u> Adopt*	20	NCAC	03	.0714
<u>Termination of Certification</u> Adopt*	20	NCAC	03	.0715

CERTIFIED PUBLIC ACCOUNTANT EXAMINERS, BOARD OF

The rules in Subchapter 8F are the requirements for CPA examination and certificate applicants including general provisions (.0100), fees and refunds (.0200), educational requirements (.0300), experience (.0400), and applications (.0500).

<u>Filing of Examination Applications and Fees</u> Amend*	21	NCAC	08F	.0103
<u>Conditioning Requirements</u> Amend*	21	NCAC	08F	.0105
<u>Work Experience Required of Candidates for CPA Certification</u> Amend*	21	NCAC	08F	.0401
<u>Education Required of Candidates for CPA Certification</u> Amend*	21	NCAC	08F	.0410

The rules in Subchapter 8H concern reciprocity.

<u>Reciprocal Certificates</u> Amend*	21	NCAC	08H	.0101
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The rules in Subchapter 8J concern renewals and registrations.

<u>Retired Status - Change of Status</u> Adopt*	21	NCAC	08J	.0112
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The rules in Subchapter 8M relate to the State Quality Review program including general requirements (.0100), duties of the reviewed firm (.0200), review team qualifications and duties (.0300), and advisory committee (.0400).

<u>Peer Review Requirements</u> Amend*	21	NCAC	08M	.0105
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The rules in Subchapter 8N are professional ethics and conduct rules including scope and applicability (.0100); rules applicable to all CPAs (.0200); rules applicable to CPAs who use the CPA title in offering or rendering products or services to clients (.0300); and rules applicable to CPAs performing attest services (.0400).

<u>Confidentiality</u> Amend*	21	NCAC	08N	.0205
<u>Accounting Principles</u> Amend*	21	NCAC	08N	.0209
<u>Responsibilities in Tax Practice</u> Amend*	21	NCAC	08N	.0211
<u>International Financial Accounting Standards</u> Amend*	21	NCAC	08N	.0215
<u>Consulting Services Standards</u> Amend*	21	NCAC	08N	.0304
<u>Retention of Client Records</u> Amend*	21	NCAC	08N	.0305
<u>CPA Firm Names</u>	21	NCAC	08N	.0307

Amend*				
<u>Valuation Services Standards</u>	21	NCAC	08N	.0308
Amend*				
<u>Personal Financial Planning Services</u>	21	NCAC	08N	.0309
Amend*				
<u>Auditing Standards</u>	21	NCAC	08N	.0403
Amend*				
<u>Accounting and Review Services Standards</u>	21	NCAC	08N	.0404
Amend*				
<u>Governmental Accounting Standards</u>	21	NCAC	08N	.0405
Amend*				
<u>Attestation Standards</u>	21	NCAC	08N	.0406
Amend*				
<u>Government Auditing Standards</u>	21	NCAC	08N	.0409
Amend*				
<u>International Standards on Auditing</u>	21	NCAC	08N	.0410
Amend*				
<u>Audits Subject to the Single Audit Act</u>	21	NCAC	08N	.0411
Adopt*				
<u>Forensic Services</u>	21	NCAC	08N	.0412
Adopt*				

OPTOMETRY, BOARD OF EXAMINERS IN

The rules in Subchapter 42B concern license to practice optometry including license by examination (.0100); responsibility to supply information (.0200); and professional corporations and limited liability companies (.0300).

<u>Application for License Renewal</u>	21	NCAC	42B	.0304
Amend*				

PHARMACY, BOARD OF

The rules in Chapter 46 cover organization of the board (.1200); general definitions (.1300); hospitals and other health facilities (.1400); admission requirements and examinations (.1500); licenses and permits (.1600); drugs dispensed by nurse and physician assistants (.1700); prescriptions (.1800); forms (.1900); administrative provisions (.2000); elections (.2100); continuing education (.2200); prescription information and records (.2300); dispensing in health departments (.2400); miscellaneous provisions (.2500); devices (.2600); nuclear pharmacy (.2700); compounding (.2800); product selection (.2900); disposal of unwanted drugs (.3000); clinical pharmacist practitioner (.3100); impaired pharmacist peer review program (.3200); and registry of pharmacist technicians (.3300).

<u>Limited Service Permits</u>	21	NCAC	46	.1616
Amend*				
<u>Direct-to-Patient Delivery Systems</u>	21	NCAC	46	.1821
Adopt*				

VETERINARY MEDICAL BOARD

The rules in Chapter 66 are from the Veterinary Medical Board including statutory and administrative provisions (.0100); practice of veterinary medicine (.0200); examination and licensing procedures (.0300); rules petitions hearings (.0400); declaratory rulings (.0500); administrative hearings procedures (.0600); administrative hearings decisions related rights (.0700) and judicial review (.0800).

<u>Fees</u>	21	NCAC	66	.0108
Amend*				

RULES REVIEW COMMISSION

<u>Minimum Standards for Continuing Education</u> Amend*	21	NCAC	66	.0206
<u>Definitions</u> Adopt*	21	NCAC	66	.0901
<u>Veterinary Facility Permits</u> Adopt*	21	NCAC	66	.0902
<u>Supervising Veterinarian</u> Adopt*	21	NCAC	66	.0903
<u>Discipline Veterinary Facility Permits</u> Adopt*	21	NCAC	66	.0904
<u>Reinstatement After Revocation of Facility Permit</u> Adopt*	21	NCAC	66	.0905

ADMINISTRATIVE HEARINGS, OFFICE OF

The rules in Chapter 3 are from the Hearings Division and cover procedure (.0100); mediated settlement conferences (.0200); simplified procedures for medicaid applicant and recipient repeats (.0400); and electronic filing (.0500).

<u>Consent Order: Settlement: Stipulation</u> Amend*	26	NCAC	03	.0106
<u>Medicaid Hearing Procedures Rules</u> Amend*	26	NCAC	03	.0401