# NORTH CAROLINA REGISTER

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**PUBLISHED BY**
***The Office of Administrative Hearings***
***Rules Division***
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***Julie B. Eddins, Publications Coordinator***
***Serena Samuels, Publications Assistant***

# Contact List for Rulemaking Questions or Concerns

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

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

| | | |
|---|---|---|
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## Rule Review and Legal Issues

| | | |
|---|---|---|
| Rules Review Commission | | |
| 1711 New Hope Church Road | 984-236-1850 | |
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## Fiscal Notes & Economic Analysis

| | | |
|---|---|---|
| Office of State Budget and Management | | |
| 116 West Jones Street | | |
| Raleigh, North Carolina 27603-8005 | | |
| Contact: Julie Ventaloro, Economic Analyst | osbmruleanalysis@osbm.nc.gov | 984-236-0694 |
| | | |
| Fiscal Research Division | | |
| Legislative Office Building | | |
| 300 N. Salisbury Street, Suites 619 and 400 | | |
| Raleigh, NC 27603-5925 | | |
| Contact: Brian Matteson | brian.matteson@ncleg.gov | 919-733-4910 |
| | | |
| NC Association of County Commissioners | 919-715-2893 | |
| 215 North Dawson Street | | |
| Raleigh, North Carolina 27603 | | |
| contact: Amy Bason | amy.bason@ncacc.org | |
| | | |
| NC League of Municipalities | 919-715-2925 | |
| 424 Fayetteville Street, Suite 1900 | | |
| Raleigh, North Carolina 27601 | | |
| contact: Baxter Wells | bwells@nclm.org | |

## Legislative Process Concerning Rulemaking

| | |
|---|---|
| 545 Legislative Office Building | |
| 300 North Salisbury Street | 919-733-2578 |
| Raleigh, North Carolina 27611 | 919-715-5460 FAX |

Jason Moran-Bates, Staff Attorney
Chris Saunders, Staff Attorney
Aaron McGlothlin, Staff Attorney

## NORTH CAROLINA REGISTER

Publication Schedule for January 2026 – December 2026

| 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/Latest date for public hearing | Deadline to submit to RRC for review at next meeting | RRC Meeting Date | Earliest Eff. Date of Permanent Rule | 270th day from publication in the Register |
| 40:13 | 01/02/26 | 12/11/25 | 01/17/26 | 03/03/26 | 03/20/26 | 04/28/2026 | 05/01/26 | 09/29/26 |
| 40:14 | 01/15/26 | 12/23/25 | 01/30/26 | 03/16/26 | 03/20/26 | 04/28/2026 | 05/01/26 | 10/12/26 |
| 40:15 | 02/02/26 | 01/09/26 | 02/17/26 | 04/06/26 | 04/20/26 | 05/28/2026 | 06/01/26 | 10/30/26 |
| 40:16 | 02/16/26 | 01/26/26 | 03/03/26 | 04/17/26 | 04/20/26 | 05/28/2026 | 06/01/26 | 11/13/26 |
| 40:17 | 03/02/26 | 02/09/26 | 03/17/26 | 05/01/26 | 05/20/26 | 06/25/2026 | 07/01/26 | 11/27/26 |
| 40:18 | 03/16/26 | 02/23/26 | 03/31/26 | 05/15/26 | 05/20/26 | 06/25/2026 | 07/01/26 | 12/11/26 |
| 40:19 | 04/01/26 | 03/11/26 | 04/16/26 | 06/01/26 | 06/20/26 | 07/30/2026 | 08/01/26 | 12/27/26 |
| 40:20 | 04/15/26 | 03/24/26 | 04/30/26 | 06/15/26 | 06/20/26 | 07/30/2026 | 08/01/26 | 01/10/27 |
| 40:21 | 05/01/26 | 04/10/26 | 05/16/26 | 06/30/26 | 07/20/26 | 08/27/2026 | 09/01/26 | 01/26/27 |
| 40:22 | 05/15/26 | 04/24/26 | 05/30/26 | 07/14/26 | 07/20/26 | 08/27/2026 | 09/01/26 | 02/09/27 |
| 40:23 | 06/01/26 | 05/08/26 | 06/16/26 | 07/31/26 | 08/20/26 | 09/29/2026 | 10/01/26 | 02/26/27 |
| 40:24 | 06/15/26 | 05/22/26 | 06/30/26 | 08/14/26 | 08/20/26 | 09/29/2026 | 10/01/26 | 03/12/27 |
| 41:01 | 07/01/26 | 06/10/26 | 07/16/26 | 08/31/26 | 09/20/26 | 10/29/2026 | 11/01/26 | 03/28/27 |
| 41:02 | 07/15/26 | 06/23/26 | 07/30/26 | 09/14/26 | 09/20/26 | 10/29/2026 | 11/01/26 | 04/11/27 |
| 41:03 | 08/03/26 | 07/13/26 | 08/18/26 | 10/02/26 | 10/20/26 | 11/24/2026 | 12/01/26 | 04/30/27 |
| 41:04 | 08/17/26 | 07/27/26 | 09/01/26 | 10/16/26 | 10/20/26 | 11/24/2026 | 12/01/26 | 05/14/27 |
| 41:05 | 09/01/26 | 08/11/26 | 09/16/26 | 11/02/26 | 11/20/26 | 12/17/2026 | 01/01/27 | 05/29/27 |
| 41:06 | 09/15/26 | 08/24/26 | 09/30/26 | 11/16/26 | 11/20/26 | 12/17/2026 | 01/01/27 | 06/12/27 |
| 41:07 | 10/01/26 | 09/10/26 | 10/16/26 | 11/30/26 | 12/20/26 | 01/28/2027* | 02/01/27 | 06/28/27 |
| 41:08 | 10/15/26 | 09/24/26 | 10/30/26 | 12/14/26 | 12/20/26 | 01/28/2027* | 02/01/27 | 07/12/27 |
| 41:09 | 11/02/26 | 10/12/26 | 11/17/26 | 01/04/27 | 01/20/27 | 02/25/2027* | 03/01/27 | 07/30/27 |
| 41:10 | 11/16/26 | 10/23/26 | 12/01/26 | 01/15/27 | 01/20/27 | 02/25/2027* | 03/01/27 | 08/13/27 |
| 41:11 | 12/01/26 | 11/05/26 | 12/16/26 | 02/01/27 | 02/20/27 | 03/25/2027* | 04/01/27 | 08/28/27 |
| 41:12 | 12/15/26 | 11/20/26 | 12/30/26 | 02/15/27 | 02/20/27 | 03/25/2027* | 04/01/27 | 09/11/27 |

*Dates not approved by RRC

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 Human Resources 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 but not later than 60 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.

**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.

North Carolina License and Theft Bureau

PUBLIC NOTICE

This serves as a notice pursuant to G.S. § 20-288 of a license application submission by a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative that has not been previously issued a license by the Division.

Applicant's Name: SIERRA LSV, LLC

Applicant's Address: 317 INDUSTRIAL BLVD

THOMASVILLE, GA 31792

Application Date: 07/17/2026

Names and titles of any individual listed on the application as an owner, partner, member or officer of the applicant:

SCOTT BLANTON –CEO

YIMIN HU – VICE PRESIDENT

CODY BAGGETT - COO

*Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept written comments on any proposed rules for at least 60 days from the publication date, or until the date of any public hearing, whichever is longer. 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 09 – OFFICES OF THE GOVERNOR AND LT. GOVERNOR

***Notice** is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g that the Office of State Budget and Management intends to adopt the rules cited as 09 NCAC 03M .0901, .0902, readopt with substantive changes the rules cited as 09 NCAC 03M .0102, .0201, .0205, .0401, .0703, .0801, .0802, and readopt without substantive changes the rules cited as 09 NCAC 03M .0101, .0202, and .0702.*

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

**Link to agency website pursuant to G.S. 150B-19.1(c):** *https://www.osbm.nc.gov/news/events/public-comment-and-hearing-proposed-amendments-state-grant-rules*

**Proposed Effective Date:** *December 1, 2026*

**Public Hearing:**
**Date:** *September 16, 2026*
**Time:** *2:00 p.m.*
**Location:** *Old Revenue Building, Blue Ridge Training Room #A309 2 South Salisbury St. Raleigh, NC 27601*

**Reason for Proposed Action:** *These rules govern administration of State awards to non-state entities. The amendments align the rules with current agency practice, clarify reporting requirements and noncompliance procedures, establish defined timelines and expectations for agencies and non-State entities, and provide transparent procedures for petitions for rulemaking and declaratory rulings. The changes also provide greater regulatory certainty by specifying the version of 2 CFR Part 200 applicable to non-federal grant funds. Collectively, these revisions should promote consistent administration and oversight of State grant funds, support accountability and stewardship of public resources, and enhance transparency in future rulemaking decisions.*

**Comments may be submitted to:** *Julie Ventaloro, NC Office of State Budget and Management MSC 20320, Raleigh, NC 27699-0320; email grants-OSBM@osbm.nc.gov*

**Comment period ends:** *October 16, 2026*

**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 - STATE BUDGET AND MANAGEMENT

## SUBCHAPTER 03M – UNIFORM ADMINISTRATION OF STATE AWARDS OF GRANTS

## SECTION .0100 - ORGANIZATION AND FUNCTION

**09 NCAC 03M .0101 PURPOSE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**09 NCAC 03M .0102 DEFINITIONS**
In addition to the definitions set forth in G.S. 143C-6-23 and G.S. 143C-1-1, the following definitions shall apply to this Subchapter:

(1) "Agency" means every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority, or other unit of government of the State or of any county, unit, special district, or other political subdivision of state or local government.
(2) "Audit" means an examination of records or financial accounts to verify their accuracy.
(3) "Beneficiary" means an individual receiving the funds or assistance as the end user.
(4) "Compliance Supplement" refers to the North Carolina State Compliance Supplement, maintained by the State and Local Government Finance Division of the North Carolina Department of State Treasurer that has been developed in cooperation with agencies to assist

the local auditor in identifying program compliance requirements and audit procedures for testing those requirements.

(5) "Contract" means a legal instrument including any amendments used to document a relationship between the agency and a recipient or between a recipient and subrecipient.

(6) "Contractor" means an entity subject to the contractor requirements, as well as any entity that would be subject to the contractor requirements but for a specific statute or rule exempting that entity from the contractor requirements.

(7) "Contractor requirements" means Article 3, 3C, 3D, 3E, 3G, or 8 of Chapter 143 of the General Statutes and related rules.

(8) "Fiscal Year" means the annual operating year of the non-State entity.

(9) "Financial Statement" means a report providing financial data relative to a given part of an organization's operations or status.

(10) "Grants" or "Grant funds" means State funds disbursed as a grant, cooperative agreement, non-cash contribution, food commodities, or direct appropriation, to a recipient or subrecipient as defined in this Rule.

(11) "Monitoring plan" means a documented system of educating, reviewing, tracking, and reporting on the use of grant funds. Designed to assure that public funds are spent in compliance with applicable rules and statutes, and that performance expectations are being achieved.

(12) "Non-State Entity" has the meaning in G.S. 143C-1-1(d)(18).

(13) "Program-specific audit" means an audit that includes an examination of financial statements, internal controls, and compliance with the requirements and contract clauses for an individual State award.

(14) "Recipient" means a non-State entity that receives grants directly from a State agency to carry out part of a State program, but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission. For purposes of this Subchapter, "recipient" also includes a non-State entity that would be considered a "subrecipient" pursuant to ~~2 CFR 200.93~~ 2 CFR 200.1 for Federal funds subawarded by a recipient State agency, but does not include a subrecipient as defined in Item (17) of this Rule. ~~2 CFR 200.93~~ The definition of the term "subrecipient" in 2 CFR 200.1 is herein incorporated by reference, including subsequent amendments and editions, and is available in electronic form free of charge at https://www.ecfr.gov.

(15) "Single Audit" means an audit that includes an examination of an organization's financial statements, internal controls, and compliance with the requirements of Federal or State awards.

(16) "State Funds" means any funds appropriated by the North Carolina General Assembly or collected by the State of North Carolina. State funds include federal financial assistance received by the State and transferred or disbursed to non-State entities. Both Federal and State funds maintain their identity as they are disbursed as financial assistance to other organizations.

(17) "Subrecipient" means a non-State entity that receives grants from a recipient to carry out part of a State program; but does not include a beneficiary of such program. This definition of "subrecipient" applies throughout these Rules, except as used in Item (14) of this Rule.

(18) "Suspension of Funding list" means a database maintained and distributed by Office of State Budget and Management in consultation with State agencies designating grantees or subgrantees in a state of non-compliance with grant agreement requirements in accordance with 09 NCAC 03M .0801.

*Authority G.S. 143C-6-22; 143C-6-23.*

**SECTION .0200 - RESPONSIBILITIES OF RECIPIENTS AND SUBRECIPIENTS**

**09 NCAC 03M .0201 ALLOWABLE USES OF GRANTS**

(a) Expenditures of ~~grants~~ grant funds from federal sources by any recipient or subrecipient shall be in accordance with the cost principles ~~outlined~~ established in the Code of Federal Regulations, 2 CFR, ~~Part 200.~~ Part 200, Subpart E, ~~If the grants include federal sources, the recipient or subrecipient shall ensure adherence to the cost principles established in the Code of Federal Regulations, 2 CFR, Part 200. 2 CFR, Part 200~~ which is herein incorporated by reference, including subsequent amendments and editions, and is available in electronic form free of charge at https://www.ecfr.gov.

(b) Expenditures of grant funds from non-federal sources by any recipient or subrecipient shall be in accordance with the cost principles established in 2 CFR Part 200, Subpart E (as published in the January 1, 2025 edition of the Code of Federal Regulations), which is herein incorporated by reference, not including subsequent amendments and editions, and is available in electronic form free of charge at https://www.osbm.nc.gov/federal-cfr-2025-title2/open.

*Authority G.S. 143C-6-22; 143C-6-23.*

**09 NCAC 03M .0202 RECIPIENT AND SUBRECIPIENT RESPONSIBILITIES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**09 NCAC 03M .0205 MINIMUM REPORTING REQUIREMENTS FOR RECIPIENTS AND SUBRECIPIENTS**

(a) For the purposes of this Subchapter, there are two reporting levels established for recipients and subrecipients receiving grants. Reporting levels are based on the allocated funds from all grants disbursed through the State of North Carolina. The reporting levels are:

(1) Level I – A recipient or subrecipient that receives, holds, uses, or expends grants in an amount less than the dollar amount requiring audit as listed in the Code of Federal Regulations 2 CFR 200.501(a) within its fiscal year. The dollar amount requiring audit listed in 2 CFR 200.501(a) is herein incorporated by reference, including subsequent amendments and editions, and can be accessed free of charge at https://www.ecfr.gov/.

(2) Level II - A recipient or subrecipient that receives, holds, uses, or expends grants in an amount equal to or greater than the dollar amount requiring audit as listed in 2 CFR 200.501(a) within its fiscal year. The dollar amount requiring audit listed in 2 CFR 200.501(a) is herein incorporated by reference, including subsequent amendments and editions, and can be accessed free of charge at https://www.ecfr.gov/.

(b) Agencies shall require recipients to meet the following reporting standards on an annual basis:

(1) All recipients and subrecipients shall provide to the distributing agency a certification that grants received or held were used for the purposes for which the grants were awarded.

(2) All recipients and subrecipients shall provide an accounting to the distributing agency of all grants received, held, used, or expended.

(3) All recipients and subrecipients shall report on activities and accomplishments undertaken by the recipient, including reporting on any performance measures established in the contract.

(4) Level II recipients and subrecipients shall have a single or program-specific audit prepared and completed in accordance with Generally Accepted Government Auditing Standards, also known as the Yellow Book, which is herein incorporated by reference, including subsequent amendments and editions, and can be accessed free of charge at https://www.gao.gov/yellowbook.

(c) All reports shall be filed with the disbursing agency in the format and method specified by the agency no later than three months after the end of the recipient's fiscal year, unless the same information is already required through more frequent reporting. Audits shall be provided to the funding agency no later than nine months after the end of the recipient's fiscal year.

(d) Agency-established reporting requirements to meet the standards set forth in Paragraph (b) of this Rule shall be specified in each recipient's contract.

(e) Unless prohibited by law, the costs of audits made in accordance with the provisions of this Rule shall be allowable charges to State and Federal awards. For Federal awards, the ~~The~~ charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with cost principles ~~outlined~~ established in the Code of Federal Regulations, 2 CFR Part 200, Subpart E, which is herein incorporated by reference, including subsequent amendments and editions, and can be accessed free of charge at https://www.ecfr.gov. For State awards, the charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with cost principles established in 2 CFR Part 200, Subpart E (as published in the January 1, 2025 edition of the Code of Federal Regulations), which is herein incorporated by reference, not including subsequent amendments and editions, and is available in electronic form free of charge at https://www.osbm.nc.gov/federal-cfr-2025-title2/open. The cost of any audit not conducted in accordance with this Subchapter shall not be charged to State awards.

(f) Notwithstanding the provisions of this Subchapter, a recipient may satisfy the reporting requirements of Subparagraph (b)(4) of this Rule by submitting a copy of the report required under federal law with respect to the same funds.

*Authority G.S. 143C-6-22; 143C-6-23.*

**SECTION .0400 - RESPONSIBILITIES OF AGENCIES**

**09 NCAC 03M .0401 AGENCY RESPONSIBILITIES**

(a) An agency that receives State funds and disburses those funds as grant funds to a recipient shall:

(1) Notify each recipient ~~recipient, at the time the grant award is made,~~ of the purpose of the award and the reporting requirements established in this Subchapter. Unless a session law or statute specifies a different date:

(A) For a session law or statute that establishes a new grant and names the recipient(s), the agency shall notify each recipient no later than 70 calendar days after the session law or statute becomes law.

(B) For all other grants, the agency shall notify the recipient no later than 30 calendar days after the recipient is selected.

(2) Prior to disbursing any grant funds:

(A) Register each State ~~assistance~~ program that provides grants of State funds to non-State recipients with the Office of State Budget and Management using the NC Grants Management System which can be accessed at https://www.osbm.nc.gov. Information required to register includes program ID and description, program name, and funding year.

(B) Execute a contract with the recipient that complies with the requirements of this Subchapter.

(C) Report each individual grant award of State funds to non-State recipients to the Office of State Budget and Management using the NC Grants Management System which can be accessed at https://www.osbm.nc.gov. Information required to report includes ~~CRIS program ID,~~ award date, completion date, award amount, and program name.

~~(D) Follow the procedures for disbursement of grant funds.~~

(3) Develop compliance supplement reports that describe standards of compliance and audit procedures to give direction to independent auditors. For any grants to units of local government or to public authorities, this ~~This~~ report shall be provided to the State and Local Government Finance Division in the North Carolina Department of State Treasurer for inclusion in the North Carolina State Compliance Supplement.

(4) Develop a monitoring plan for each program the agency oversees that provides grants of State funds to non-State recipients ~~State assistance program the agency oversees~~ and gain approval of the plan by the Office of State Budget and Management. Monitoring plans will be evaluated based on plan elements including programs covered, education and technical assistance, risk assessment framework, monitoring procedures, non-compliance procedures, and closeout of award procedures.

(5) Develop agency monitoring plans, and at minimum, perform the ~~Perform~~ monitoring and oversight functions ~~as~~ specified in ~~agency monitoring plans~~ those plans, to ensure that grant funds are used for authorized purposes in compliance with laws, regulations, and contract provisions, ~~the provisions of contracts,~~ and that performance goals are achieved.

(6) Ensure that grant funds are spent consistent with the purposes for which it was awarded.

(7) Determine that reporting requirements have been met by the recipient and that all reports have been completed and submitted in accordance with the recipient's contract.

(8) Monitor compliance by recipients with all terms of ~~a~~ the recipient's contract. Upon determination of noncompliance, the agency shall take action as specified in Section .0800 of this Subchapter.

(9) Require agency internal auditors to conduct periodic audits of agency grant procedures to ensure compliance with requirements of this Subchapter.

(10) Provide all requested documentation when subject to an audit of agency grant procedures regarding compliance with the requirements of this Subchapter. Audits may be conducted by the Office of State Budget and Management, the Office of the State Auditor, or the agency's internal auditor.

(11) Notify the Office of State Budget and Management when a recipient is not compliant with the requirements set forth in this Subchapter or the terms of their ~~contract such that~~ contract. Upon any notification pursuant to this Subparagraph, the recipient ~~should~~ shall be added by the Office of State Budget and Management to the Suspension of Funding ~~List~~ List, and ~~have~~ the disbursing agency shall suspend the disbursement of funds to the recipient suspended in accordance with G.S. 143C-6-23(f). Agencies shall not disburse grant funds to a recipient on the Suspension of Funding List until that recipient comes back into compliance and is removed from the Suspension of Funding List.

(12) Notify the Office of State Budget and Management when to remove entities from the Suspension of Funding List.

(b) Each recipient shall ensure that subrecipients have complied with the applicable provisions of this Subchapter. Failure to comply with such provisions shall be the basis for an audit exception.

*Authority G.S. 143C-6-22; 143C-6-23.*

**SECTION .0700 - CONTRACTING, MONITORING, AND OVERSIGHT**

**09 NCAC 03M .0702 SUBORDINATION OF OTHER CONTRACTS AGREEMENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**09 NCAC 03M .0703 REQUIRED CONTRACT PROVISIONS**

Prior to receiving grant funds, the recipient shall sign a contract with the agency that shall contain the obligations of both parties. Prior to disbursing any grant funds, each agency shall sign a contract with the recipient requiring compliance with the rules in this Subchapter. The requirements of this Rule shall also be applicable to all recipient-subrecipient relationships. Each contract agreement shall contain:

(1) A specification of the purpose of the award, services to be provided, objectives to be achieved, and expected results;

(2) The source of funds (such as federal or state) must be identified, including the CFDA number and percentages of each source where applicable.

(3) ~~Account~~ Either account coding information sufficient to provide for tracking of the disbursement through the disbursing agency's accounting ~~system.~~ system or a provision requiring the agency to internally maintain that account coding information as part of the agency's grant file described in Item (4) of this Rule.
(4) Agreement to maintain all pertinent records for a period of five years or until all audit exceptions have been resolved, whichever is longer.
(5) Names of all parties to the terms of the contract. For the recipient or subrecipient, each contract shall contain the employer/tax identification number, address, contact information, and the recipient's or subrecipient's fiscal year end date.
(6) Signatures binding all parties to the terms of the contract.
(7) Duration of the contract, including the effective and termination dates.
(8) Amount of the contract and schedule of payment(s).
(9) Particular duties of the recipient.
(10) Required reports and reporting deadlines.
(11) Provisions for termination by mutual consent with 60 days written notice to the other party, or as otherwise provided by law.
(12) A provision that the awarding of grant funds is subject to allocation and appropriation of funds to the agency for the purposes set forth in the contract.
(13) A provision that requires reversion of unexpended grant funds to the agency upon termination of the contract.
(14) A provision that requires compliance with the requirements set forth in this Subchapter, including audit oversight by the Office of the State Auditor, access to the accounting records by both the funding entity and the Office of the State Auditor, and availability of audit work papers in the possession of any auditor of any recipient of State funding.
(15) A clause addressing assignability and subcontracting, including the following:
    (a) The recipient or subrecipient is not relieved of any of the duties and responsibilities of the original contract.
    (b) The subrecipient agrees to abide by the standards contained in this Subchapter and to provide information in its possession that is needed by the recipient to comply with these standards.

*Authority G.S. 143C-6-22; 143C-6-23.*

**SECTION .0800 - SANCTIONS**

**09 NCAC 03M .0801 NONCOMPLIANCE WITH RULES**

(a) An agency shall not disburse any grant funds to an entity that is on the Suspension of Funding ~~list.~~ list which can be accessed at https://www.osbm.nc.gov.

(b) When a ~~non-State entity~~ recipient does not comply with the requirements of this ~~Subchapter,~~ Subchapter or with requirements of the contract, the agency shall take the following measures to ensure that the requirements are met, ~~including:~~ including each of the following:
(1) Communicating the requirements in writing ~~to the non-State entity within 30 business days.~~ to the recipient within 30 business days of when the agency became aware of the noncompliance, and offering the non-State entity the opportunity to come into compliance by a date set by the agency.
(2) ~~Directing the non-State entity to respond in writing upon a determination of noncompliance.~~ If the recipient does not cure the noncompliance by the date set by the agency under Subparagraph (b)(1) of this Rule, issuing a determination of noncompliance and directing the non-State entity to respond in writing within 10 business days.
(3) ~~Suspending payments to the non-State entity until the non-State entity is in compliance.~~ If the recipient does not cure the noncompliance by the deadline established in Subparagraph (b)(2) of this Rule, suspending payments to the recipient until the recipient is in compliance, and notifying the Office of State Budget and Management to have the recipient placed on the Suspension of Funding list pursuant to 09 NCAC 03M .0401(a)(11).

(c) When a recipient does not comply with the requirements of this Subchapter or with requirements of the contract, the agency may also take the following measures to ensure that the requirements are met:
(1) Terminate the contract and take action to retrieve unexpended funds or unauthorized expenditures.
(2) Offset future payments with any amounts spent for purposes other than those described in the signed grant contract.

~~(c)~~(d) When an agency discovers evidence of ~~management deficiencies or~~ apparent criminal activity leading to the misuse of funds, the agency ~~shall~~ shall, in addition to the procedures listed in Paragraph (b) of this Rule, also notify the Office of State Budget and Management within 5 business days and take each of the following actions: ~~the action or actions, such as:~~
(1) Take the actions listed in Paragraph (b) of this Rule on an accelerated time frame.
~~(1)~~(2) Suspend payments within 5 business days until the matter has been fully investigated and corrective action has been taken.
~~(2)~~(3) ~~Terminate~~ Unless the grant recipient provides information that shows there was not criminal activity leading to the misuse of funds,

terminate the contract and retrieve unexpended funds or unauthorized expenditures.

~~(3) Report suspected violations of criminal statutes involving misuse of State property to the State Bureau of Investigation, in accordance with G.S. 143B-920.~~

(e) In addition to all other steps required by this Subchapter, the agency must report any information or evidence of an attempted arson, or arson, damage of, theft from, or theft of, or embezzlement from, or embezzlement of, or misuse of, any state-owned personal property, buildings, or other real property to the State Bureau of Investigation, in accordance with G.S. 143B-1208.6.

~~(d) Upon determination of noncompliance with requirements of the contract that are not indicative of management deficiencies or criminal activity, the agency shall give the recipient or subrecipient 60 days written notice to take corrective action. If the recipient or subrecipient has not taken the corrective action after the 60-day period, the disbursing agency shall notify the Office of State Budget and Management and take the action or actions, such as:~~

~~(1) Suspend payments pending negotiation of a plan of corrective action.~~

~~(2) Terminate the contract and take action to retrieve unexpended funds or unauthorized expenditures.~~

~~(3) Offset future payments with any amounts spent for purposes other than those described in the signed grant contract.~~

~~(e)~~(f) Each disbursing agency shall ensure that recipients and subrecipients have complied with the applicable provisions of this Subchapter.

~~(f)~~(g) Agencies are subject to audit for compliance with the requirements of this Subchapter by the Office of State Budget and Management, the Office of the State Auditor, and agency internal auditors. Any finding of noncompliance by an agency shall be reported to the Office of State Budget and Management to take appropriate action, as set forth in this Rule.

~~(g)~~(h) The Office of State Budget and Management shall notify the agency of the finding and provide 60 days to take corrective action. After the 60-day period, the Office of State Budget and Management shall conduct a follow-up audit to determine if corrective action has been taken. If an awarding agency fails to take appropriate corrective action or is repeatedly found to be out of compliance with the requirements of this Subchapter, the Office of State Budget and Management shall notify the head of the agency and the State Auditor of the finding.

*Authority G.S. 143C-6-22; 143C-6-23.*

**09 NCAC 03M .0802 RECOVERY OF STATE FUNDS**

(a) The disbursing agency shall take administrative ~~action~~ action, using the procedures in 09 NCAC 03M .0801, to recover grant funds in the event a recipient or subrecipient:

(1) Is unable to fulfill the obligations of the contractual agreement;

(2) Is unable to accomplish the purposes of the award as stated in the signed grant contract;

(3) Is noncompliant with the reporting requirements as stated in the signed grant contract; or

(4) Has used grant funds for purposes other than those described in the signed grant contract.

(b) The disbursing agency shall seek the assistance of the Attorney General in the recovery and return of grant funds if legal action is required.

(c) Any apparent violations of a criminal law or malfeasance, misfeasance, or nonfeasance in connection with the use of grant ~~funds~~ funds, as well as any required notification under G.S. 143B-1208.6, shall be reported by the agency to the Office of State Budget and Management, the Attorney General, and the State Bureau of Investigation. The violations may be also reported to the Office of State Auditor and any agency with enforcement authority for the apparent violation (such as the Office of Secretary of State for an apparent violation of the lobbying laws).

*Authority G.S. 143C-6-22; 143C-6-23.*

**SECTION .0900 – PETITIONS AND DECLARATORY RULINGS**

**09 NCAC 03M .0901 PETITIONS FOR RULEMAKING**

(a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Office of State Budget and Management shall submit a petition in writing to Office of State Budget and Management, Mail Service Center 20320, Raleigh, North Carolina 27699-0320.

(b) The petition shall include the following information:

(1) the text of the proposed rule(s) for adoption or amendment;

(2) a statement of the reasons for adoption or amendment of the proposed rule(s), or the repeal of an existing rule(s);

(3) identification of the parties most likely to be affected by the proposed rule or rule amendment;

(4) a statement explaining the expected types of costs and benefits (including cost savings) to result from the proposed rule(s), and a quantification of these costs and benefits, if known;

(5) any data or arguments in support of the petition; and

(6) the name(s) and address(es) of the petitioner(s).

(c) Petitions that do not contain the information required by Paragraph (b) of this Rule shall be returned to the petitioner.

(d) In its review of the petition, the Office of State Budget and Management shall consider whether it has authority to adopt the rule; the effect of the proposed rule on existing rules, programs, and practices; probable costs and cost factors of the proposed rule; and the impact of the rule on the public and regulated entities. If the request is denied, the petitioning party may appeal that decision as stated in G.S. 150B-20(d).

*Authority G.S. 143C-6-22; 143C-6-23; 150B-20.*

**09 NCAC 03M .0902 DECLARATORY RULINGS**

(a) Requests for declaratory rulings shall be submitted in writing to the Office of State Budget and Management, Mail Service Center 20320, Raleigh, North Carolina 27699-0320 and shall include the following information:

(1) name and address of the requestor;
(2) the rule or statute upon which a ruling is desired;
(3) a statement as to whether the request is for a ruling on the validity of the rule or statute, or its potential application to the requestor, or both;
(4) arguments or data that demonstrate that the requestor is a person aggrieved by the rule or statute;
(5) a statement of the consequences of a failure to issue a declaratory ruling in favor of the requestor;
(6) a statement of the facts proposed for adoption by the Office of State Budget and Management; and
(7) a draft of the proposed ruling.

(b) Before deciding the merits of the request, the Office of State Budget and Management may:

(1) request additional written submissions from the requestor;
(2) request written comments from other interested persons; or
(3) hear oral arguments from the requestor or their legal counsel.

(c) Whenever the Office of State Budget and Management believes for good cause that the issuance of a declaratory ruling is undesirable, the Office of State Budget and Management may refuse to issue such ruling. "Good cause" as the term is used in this Rule shall include:

(1) finding that there has been a similar determination in a previous declaratory ruling;
(2) finding that the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court;
(3) finding that no genuine controversy exists as to the application of a rule or statute to the specific factual situation presented;
(4) finding that the factual context put forward as the subject of the declaratory ruling was considered upon the adoption of the rule being questioned, as evidenced by the rulemaking record; or
(5) finding that the requestor is not a person aggrieved, as defined in G.S. 150B-2.

*Authority G.S. 143C-6-22; 143C-6-23; 150B-4.*

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

***Notice*** *is hereby given in accordance with G.S. 150B-21.2 that the Radiation Protection Commission intends to amend the rules cited as 10A NCAC 15 .0501, and .0801-.0808.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** *https://info.ncdhhs.gov/dhsr/ruleactions.html*

**Proposed Effective Date:** *January 1, 2027*

**Public Hearing:**
**Date:** *September 10, 2026*
**Time:** *11:00 a.m.*
**Location:** *DHHS Headquarters Building, 1915 Health Services Way, Conference Rm 2210, Raleigh, NC 27607*

**Reason for Proposed Action:** *The rules in 10A NCAC 15 Sections .0500 and .0800 were readopted after periodic review and became effective October 1, 2025. The purpose of these 9 amendments is to add clarity to these rules using comments from the comment period during the readoption phase. These amendments do not change the intent of the current rules.*

**Comments may be submitted to:** *Shanah Black, 1915 Health Services Way, 2201 Mail Service Center, Raleigh, NC 27607; phone (919) 855-3481; email DHSR.RulesCoordinator@dhhs.nc.gov*

**Comment period ends:** *October 16, 2026*

**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 15 - RADIATION PROTECTION

### SECTION .0500 - INDUSTRIAL RADIOGRAPHY ~~X-RAY MACHINES~~ OPERATIONS

Codifier's Note: 10 NCAC 03G .2600 was transferred to 15A NCAC 11 .0500 effective January 4, 1990. Recodification pursuant to G.S. 143B-279.3.

**10A NCAC 15 .0501 INDUSTRIAL RADIOGRAPHIC ~~OPERATIONS~~ USE OF ELECTRONIC RADIATION MACHINES ~~FOR NON-HUMAN USE~~**

(a) This Section provides additional requirements for industrial radiography.

(b) In addition to the requirements of this Section, all registrants are subject to the provisions in Sections .0100, .0200, .1000, .1100, and .1600 of this Chapter.

~~(a)~~(c) Persons conducting industrial radiographic operations using radiation machines shall comply with the following provisions of 10 CFR 34, which are hereby incorporated by ~~reference~~ reference, including subsequent amendments and editions, except references to and the requirements of 10 CFR 30, 37, 71, 150 and 171 contained therein shall not apply:

(1) 10 CFR 34.1, "Purpose and Scope;"

(2) 10 CFR 34.3, "Definitions;" except that the definition of becquerel, control (drive) cable, control drive mechanism, control tube, exposure head, field station, guide tube (projection sheath), S-tube, source assembly, source changer, and storage container, shall not apply. Prior to using industrial radiography radiation machines, all persons shall be registered in accordance with the rules in Section .0200 of this Chapter. The following terms apply:

(A) "agreement state" shall have the same meaning as "agency" as defined in G.S 104E-5(2);

(B) "license" shall have the same meaning as "registration" as defined in Rule .0103 of this Chapter;

(C) "licensed" shall have the same meaning as "registered" pursuant to the rules in Section .0200 of this Chapter;

(D) "licensee" shall have the same meaning as "registrant" as defined in Rule .0103 of this Chapter;

(E) "radiation source" shall have the same meaning as "radiation machine" in G.S. 104E-5(13);

(F) "radiographic exposure device" shall have the same meaning as "radiation machine" in G.S 104E-5(13); and

(G) "sealed source" shall have the same meaning as "radiation machine" in G.S 104E-5(13).

(3) 10 CFR 34.25, "Radiation survey instruments." The term "radioactive material" used in 10 CFR 34.25 shall have the same meaning as "radiation machine" in G.S. 104E-5(13);

(4) 10 CFR 34.31(a), (b)(1), and (c), "Inspection and maintenance of radiographic exposure devices, transport and storage containers, associated equipment, source changers, and survey instruments;"

(5) 10 CFR 34.33, "Permanent radiographic installations." The term "radioactive source" used in 10 CFR 34.33 shall have the same meaning as "radiation machine" in G.S. 104E-5(13);

(6) 10 CFR 34.35(c), "Labeling, storage, and transportation;"

(7) 10 CFR 34.41, "Conducting industrial radiographic operations;"

(8) 10 CFR 34.42, "Radiation Safety Officer for industrial ~~radiograph;"~~ radiography;"

(9) 10 CFR 34.43, "Training;"

(10) 10 CFR 34.45(a)(1) through (a)(3), (a)(5), (a)(7) through (a)(11), (a)(13), and (b), "Operating and emergency procedure;"

(11) 10 CFR 34.46, "Supervision of radiographers' assistants;"

(12) 10 CFR 34.47, "Personnel monitoring;"

(13) 10 CFR 34.49, "Radiation surveys;"

(14) 10 CFR 34.51, "Surveillance;"

(15) 10 CFR 34.53, "Posting;"

(16) 10 CFR 34.61, "Records of the specific license for industrial radiography;"

(17) 10 CFR 34.65, "Records of radiation survey instrument;"

(18) 10 CFR 34.71, "Utilization logs;"

(19) 10 CFR 34.73, "Records of inspection and maintenance of radiographic exposure devices, transport and storage containers, associated equipment, source changers, and survey instruments;"

(20) 10 CFR 34.75, "Record of alarm system and entrance control checks at permanent radiographic installations;"

(21) 10 CFR 34.79, "Records of training and certification;"

(22) 10 CFR 34.81, "Copies of operating and emergency procedures;"

(23) 10 CFR 34.83, "Records of personnel monitoring procedures;"

(24) 10 CFR 34.85, "Records of radiation surveys;"

(25) 10 CFR 34.87, "Form of records;"

(26) 10 CFR 34.89(a), (b)(1 through 10), "Location of documents and records;" and

(27) Appendix A to 10 CFR 34-Radiographer Certification.

~~(b)~~(d) Copies of these regulations are available free of charge at https://www.nrc.gov/reading-rm/doc-collections/cfr/part034/index.html.

*Authority G.S. 104E-7.*

**SECTION .0800 - RADIATION GENERATING DEVICES**

**10A NCAC 15 .0801 PURPOSE AND SCOPE**

(a) This Section provides additional requirements for the use of ionizing radiation generating devices (RGDs) operating above five thousand electron volts (5 keV), but below one million electron volts ~~(1 MeV).~~ (1 MeV), and X-ray machines for non-human use. The requirements of this Section are in addition to the provisions in Sections .0100, .0200, .1000, .1100, and .1600 of this Chapter.

(b) This Section does not pertain to ~~radiation safety~~ the requirements for industrial radiographic radiation machines ~~for non-human use~~ that are covered in Section .0500 of this Chapter, ~~x-rays~~ X-ray machines used for diagnostic imaging ~~in the healing arts~~ in Section .0600 of this Chapter, and particle accelerators in Section .0900 of this Chapter.

(c) RGDs used for the purpose of elemental analysis, microstructural analysis, quality assurance, quality control, research and development, gauging and measurement, or other nondestructive testing and evaluation in this Section ~~includes:~~ include:

(1) analytical RGDs;
(2) cabinet x-ray systems;
(3) electron beam devices operating below 1MeV;
(4) electron microscopes;
(5) ion implantation equipment, low energy;
(6) gauging ~~devices;~~ devices;
(7) ~~radiographic and radioscopic non-healing arts x-ray equipment; and~~ X-ray machines for non-human use; and
(8) security screening devices and systems for government use only.

*Authority G.S. 104E-7.*

**10A NCAC 15 .0802 DEFINITIONS**

In addition to terms found in Rule .0103 of this Chapter, the following definitions shall apply to this Section:

(1) "Accredited bomb squad" means a law enforcement agency utilizing certified bomb technicians.
(2) "Accessible surface" means the external or outside surface of the enclosure or housing provided by the manufacturer or designer of the RGD. This includes the high-voltage generator, doors, access panels, latches, control knobs, and other permanently mounted hardware, and including the plane across the exterior edge of any opening.
(3) "Analytical RGD equipment" means equipment that uses electronic means to generate ionizing radiation for the purpose of examining the microstructure of materials using direct ~~x-ray~~ X-ray transmission, ~~x-ray~~ X-ray diffraction, ~~x-ray~~ X-ray fluorescence, and ~~x-ray~~ X-ray spectroscopy.
(4) "Analytical RGD system" means a group of local and remote components utilizing ~~x-ray~~ X-rays to determine the elemental composition or to examine the microstructure of materials.
(5) "Certified bomb technician" means a member of an accredited bomb squad who has successfully completed the FBI Hazardous Devices School. Information pertaining to this program can be found at http://www.fbi.gov/about-us/cirg/hazardous-devices.
(6) "Certifiable cabinet ~~x-ray~~ X-ray system" means an existing uncertified RGD that has been modified to meet the certification requirements specified in 21 C.F.R. 1020.40, as incorporated by reference in Rule .0104 of this Chapter.
(7) "Certified cabinet ~~x-ray~~ X-ray system" means an RGD utilized in an enclosed, interlocked cabinet, such that the radiation machine will not operate unless all openings are securely closed. These systems shall be certified in accordance with 21 CFR 1010.2, as incorporated by reference in Rule .0104 of this Chapter, as being manufactured and assembled pursuant to the provisions of 21 C.F.R. 1020.40, as incorporated by reference in Rule .0104 of this Chapter.
(8) "Collimator" means a device or mechanism by which the ~~x-ray~~ X-ray beam is restricted in size.
(9) "Control panel" means the part of the ~~x-ray~~ X-ray control where the switches, knobs, pushbuttons, and other hardware ~~are,~~ are located for manually setting the technique factors.
(10) "Electron Beam Device" means any device using electrons below 1MeV to heat, join, or otherwise irradiate materials.
(11) "Enclosed beam RGD" means an RGD with all possible ~~x-ray~~ X-ray beam paths contained in a chamber, coupled chambers, or other beam-path-confinement devices, to prevent any part of the body from intercepting the beam during normal operations. Normal access to the primary beam path, such as a sample chamber door, shall be interlocked with the high voltage of the ~~x-ray~~ X-ray tube or the shutter for the beam to be considered "enclosed." An open-beam device placed in an interlocked enclosure is considered an "enclosed beam" unless there are provisions for routine bypassing of the interlocks.
(12) "Emergency procedure" means the written pre-planned steps to be taken in the event of actual or suspected radiation exposure of an individual exceeding administrative or regulatory limits found in Rule 10A NCAC 15 .1601(a)(8) and .1601(a)(15). This procedure shall include the names and telephone numbers of individuals to be contacted, as well as directives for processing individual monitoring devices.
(13) "Fail-safe characteristics" means a design feature that causes the radiation beam to terminate, port shutters to close, or otherwise prevents the emergence of the primary beam upon the failure of a safety or warning device. For example, if an "X-ray On" light indicator, shutter indicator, or interlock fails, the radiation beam shall terminate.
(14) "Gauging device" means a mechanism containing a source of ionizing radiation that is

designed and manufactured for the purpose of determining or controlling thickness, density, level, interface location, or qualitative or quantitative composition of materials. It may include components such as radiation shields, useful-beam controls, and other safety features in order to meet the requirements or specifications of the device.

(15) "General-use system" means a security screening system that delivers an effective dose of 25 microrem (0.25 microSv) or less per screening.

(16) "~~Hand-held x-ray~~ Handheld X-ray system" means any device or equipment that is portable and used for similar purposes as analytical RGD equipment.

~~(17) "Individual responsible for radiation protection" means a person who has the knowledge and responsibility to apply appropriate radiation rules, for persons registered with the agency in accordance with Section .0200 of this Chapter, commensurate with the scope of the activities authorized by the registrant~~.

~~(18)~~(17) "Inspection Zone" means the area established for the purpose of controlling access where screening is performed. Areas controlled due to the presence of radiation shall include areas of ingress, egress, gates, portals, and traffic paths. The area outside of the inspection zone shall not exceed the limits of Rule .1601(a)(13) of this Chapter.

~~(19)~~(18) "Interlock" means a feature designed to prevent access to an area of radiation hazard by preventing entry or by automatically removing the hazard.

~~(20)~~(19) "Ion implantation equipment, low-energy" means any enclosed device operating below 1MeV used to accelerate elemental ions and implant them in other materials.

~~(21)~~(20) "Leakage radiation" means radiation emanating from the source assembly housing except for:

(a) the primary beam;

(b) scatter radiation emanating from other components; and

(c) radiation produced when the "beam on" switch or timer is not activated.

~~(22)~~(21) "Limited-use system" means a screening system that is capable of delivering an effective dose greater than 25 microrem (0.25 microSv) per screening, but shall not exceed an effective dose of 1 mrem (10 microSv) per screening,

~~(23)~~(22) "Local components" means part of an RGD ~~x-ray~~ X-ray system and include areas that are struck by x rays, such as radiation source housings, port and shutter assemblies, collimators, sample holders, cameras, goniometers, detectors, and shielding, but do not include power supplies, transformers, amplifiers, readout devices, and control panels.

~~(24)~~(23) "Mobile RGD" means RGD equipment mounted on a permanent base with wheels or casters for moving while completely assembled.

~~(25)~~(24) "Normal operating procedures" means step-by-step instructions necessary to accomplish a task. These procedures shall include sample insertion and manipulation, equipment alignment, routine maintenance by the registrant, and data recording procedures that are related to radiation safety.

~~(26)~~(25) "Open-beam RGD" means a device or system designed in such a way that the primary beam is not completely enclosed during normal operation, when used for analysis, gauging, or imaging, an individual could accidentally place some part of their body in the primary beam or stray radiation path during normal operation.

~~(27)~~(26) "Portable RGD" means RGD equipment designed to be carried by hand.

~~(28)~~(27) "Primary beam" means radiation that passes through an aperture of the source assembly housing by a direct path from the radiation source.

~~(29)~~(28) "Radiation generating device (RGD)" means any system, device, subsystem, or machine component that may generate, by electronic means, ~~x-rays~~ X-rays or particle radiation above 5 keV, but below 1 MeV, and not used for healing parts on humans or animals. RGDs may be used as a:

(a) mobile RGD;

(b) portable RGD; or

(c) stationary RGD.

~~(30)~~(29) "Remote components" means parts of an RGD ~~x-ray~~ X-ray system that are not struck by ~~x-rays~~ X-rays, such as power supplies, transformers, amplifiers, readout devices, and control panels.

~~(31)~~(30) "Safety Device" means a device, ~~interlock~~ interlock, or system that prevents the entry of any portion of an individual's body into the primary ~~x-ray~~ X-ray beam or that will cause the beam to shut off upon entry into its path.

~~(32)~~(31) "Scattered radiation" means radiation, other than leakage radiation, that during passage through matter, has been deviated in direction or has been modified by a decrease in energy.

~~(33)~~(32) "Screening" means the sum of scans necessary for a security screening system to image concealed objects as intended by the system design under normal operating conditions.

~~(34)~~(33) "Security screening device" means a non-human use open-beam device designed for the detection of contraband or weapons concealed in baggage, mail, packages, or other structures. These devices include bomb detection devices used for the sole purpose of detecting explosive devices.

~~(35)~~(34) "Security screening system" means a system specifically designed to detect contraband and weapons concealed on a person and is used for the sole purpose of public safety and security evaluation by law enforcement.

~~(36)~~(35) "Shutter" means an adjustable device, generally made of lead or other high atomic number material, fixed to a source assembly housing to intercept, block, or collimate the primary beam.

~~(37)~~(36) "Source" means the point of origin of the radiation, such as the focal spot of an ~~x-ray~~ X-ray tube.

~~(38)~~(37) "Stationary RGD" means RGD equipment that is installed or placed in a fixed location.

~~(39)~~(38) "Stray radiation" means the sum of leakage and scatter radiation emanating from the source assembly or other components, except for the primary beam, and radiation produced when the ~~beam on~~ beam-on switch or timer is not activated.

~~(40)~~(39) "Warning device" means an audible or visible signal that warns individuals of a potential radiation hazard.

~~(41)~~(40) "X-ray generator" means the part of an ~~x-ray~~ X-ray system that provides the accelerating (high) voltage and current for the ~~x-ray~~ X-ray tube.

~~(42)~~(41) "X-ray source housing" means the portion of an RGD system which contains the ~~x-ray~~ X-ray tube and emitting target. The housing often contains radiation shielding material or inherently provides shielding.

*Authority G.S. 104E-7.*

**10A NCAC 15 .0803 PERSONNEL REQUIREMENTS**

(a) The registrant, as defined in 10A NCAC 15 .0103, shall document the scope of training and instruction required for the RGD in use.

(b) No individual shall be permitted to operate or maintain RGDs or X-ray machines for non-human use, unless the individual has received instruction in the basic principles of radiation protection, training specific to the manufacturer's recommendations for safe operation and unique features of the RGD or X-ray machines for non-human use, ~~in use,~~ and instruction ~~in~~ of the operating and emergency procedures. Instruction and training shall include:

(1) Basic principles of radiation protection:
 (A) radiation fundamentals;
 (B) source and magnitude of common sources of radiation exposure;
 (C) units of radiation dose and measurements;
 (D) potential hazards, biological effects of ionizing radiation, and recognition of symptoms of an acute localized exposure;
 (E) ALARA (As Low As Reasonably Achievable) principles for radiation protection concepts of time, distance, and shielding to minimize radiation exposure;
 (F) declared pregnancy policy;
 (G) occupational, embryo/fetus, and public dose limits; and
 (H) proper use of individual monitoring devices and survey instruments.

(2) Device specific training for each RGD or X-ray machines for non-human use:
 (A) hands-on training for proper use;
 (B) radiation hazards associated with use;
 (C) precautions to take or measures required to minimize radiation exposure;
 (D) procedures to prevent unauthorized use; and
 (E) agency rules regarding use.

(3) Operating and emergency procedure requirements of Rule .0804 in this Section.

(c) Records of instruction and training for each individual operating ~~RGDs,~~ RGDs or X-ray machines for non-human use, documenting that the requirements of this Rule have been met, shall be maintained and available for agency review during inspection.

(d) Persons who will be operating the RGD or X-ray machines for non-human use shall be able to demonstrate an understanding ~~in~~ of safe operating procedures and use of the RGD according to the manufacturer's specifications and to an authorized representative of the Radiation Protection Section.

(e) Each registrant shall provide ring or wrist individual monitoring devices to individuals:

(1) operating open-beam RGDs; and

(2) performing maintenance on an RDG, if the maintenance procedures require the presence of a primary x-ray beam when any local component in the RGD is disassembled or removed.

*Authority G.S. 104E-7.*

**10A NCAC 15 .0804 OPERATING REQUIREMENTS**

(a) RGDs and X-ray machines for non-human use shall only be operated by individuals who have completed the requirements in Rule .0803 of this Section.

(b) No individual shall be permitted to operate an RGD and X-ray machines for non-human use in any manner other than that specified in the operating procedures, unless the individual has obtained written approval from the individual responsible for radiation protection as defined in ~~10A NCAC 15 .0802(17).~~ Rule .0103 of this Chapter.

(c) Normal operating and emergency procedures from the manufacturer or supplier of the RGD and X-ray machines for non-human use shall be available to all operators and support staff for review during the use of an ~~RGD.~~ RGD and X-ray machines for non-human use.

(d) Normal operating and emergency procedures shall include the following:

(1) safe use of the ~~RGD;~~ RGD and X-ray machines for non-human use;
(2) protocols in the event of device malfunction, ~~emergency,~~ emergencies, or incident involving radiation exposure; and
(3) instructions on reporting to the individual responsible for radiation protection of actual or suspected accidental exposure or other radiation safety concerns, such as any unusual occurrence or malfunction that may involve exposure to radiation.

(e) Open beam and portable handheld RGDs and X-ray machines for non-human use:
(1) Registrants shall have operating procedures developed to ensure radiation protective measures are:
(A) provided to meet the requirements of Rule .1601(a)(15) of this Chapter;
(B) taken to avoid exposure to any individual from the transmitted primary x-ray beam in cases where the primary x-ray beam is not intercepted by a detector device during operation; and
(C) available to all individuals operating the ~~RGD. and~~ X-ray machines for non-human use.
(2) Operators shall not do the following while operating an ~~RGD:~~ RGD and X-ray machine for non-human use:
(A) point the primary beam at any ~~individual~~ individual, including him or herself;
(B) allow their hand to approach the primary beam; or
(C) hold a sample. If a sample is small and it is necessary to hold the sample while operating the RGD, the sample shall be placed in a shielded sample enclosure.
(3) Any individual in the room during or in a controlled area during use of an X-ray machine for non-human use, except for Dual Energy X-ray Absorptiometry (DEXA or DXA) machines, shall be protected from scatter radiation by protective apparel or whole-body protective equipment of 0.25 mm lead equivalent or greater material. When protective apparel or whole-body protective equipment is used, and an individual monitoring device(s) is required. At least one such individual monitoring device shall be used as follows:
(A) An individual monitoring device shall be worn at the collar, outside the apparel.
(B) If protective equipment is used in place of protective apparel, the individual radiation monitoring device shall be worn on the torso.
(C) When a fetal monitoring device is used, it shall be worn under the protective apparel.
(D) The dose to the whole body shall be recorded in the reports in accordance with Rule .1601(a)(53) of this Chapter. If more than one device is used, each dose shall be identified with the area where the device was worn on the body.

(f) Operating and emergency procedures shall be available for review by the individual responsible for radiation protection during inspection.

(g) Alignment procedures shall be performed as recommended by the RGD manufacturer.

(h) Special alignment procedures shall only be used when approved by the individual responsible for radiation protection and the manufacturer of the RGD.

(i) Safety Devices
(1) Testing
(A) Safety devices including interlocks, shutters, and warning lights shall be tested once annually for proper operation on all RGDs in use. If any safety device fails, the RGD shall be taken out of service until corrective action is performed or temporary administrative controls are established and approved in writing by the individual responsible for radiation protection.
(B) Testing records shall include the date test was performed, the list of safety devices tested, the survey instrument used, the calibration date, the results of the test, the name of the individual ~~that~~ who performed the test, and any corrective actions for a failed test.
(C) Records of the testing shall be retained by the registrant for agency review during inspection.
(2) Bypassing
(A) No individual shall bypass a safety device unless the person has obtained approval from the individual responsible for radiation protection. Procedures for bypassing a safety device shall be incorporated into the radiation protection program by the individual responsible for radiation protection, as set forth in Rule .1601 of this Chapter, and the operating procedures as set forth in Paragraph (c) of this Rule.
(B) The written approval, as granted by the individual responsible for radiation protection, shall include the start and end date of approval.

(C) When a safety device has been bypassed, a legible sign bearing the words "SAFETY DEVICE NOT WORKING", or words having a similar meaning, shall be placed on the ~~x-ray~~ X-ray source housing and the control panel during the bypassing period.

(j) An individual shall determine that the tube is off, and will remain off until safe conditions have been restored, prior to an individual modifying the following;

(1) ~~x-ray~~ X-ray tube system, resulting in the removal of tube housings, covers, or shielding materials;
(2) shutters;
(3) collimators; or
(4) beam stops.

*Authority G.S. 104E-7(a)(2).*

**10A NCAC 15 .0805 AREA REQUIREMENTS**

(a) Each radiation area, as defined in Rule .1601(a)(3) of this Chapter, containing RGDs and X-ray machines for non-human use shall be:

(1) conspicuously posted with caution signs, in accordance with the requirements of Rule .1601(a)(34) of this Chapter, bearing the words "CAUTION – RADIATION AREA", or words having a similar meaning; and
(2) supervised continuously during operation of the RDG or shall utilize one or more of the following:
(A) door interlocks;
(B) entry monitors; or
(C) engineering controls.

(b) Access to each restricted area where an individual may receive a dose equivalent exceeding 100 mrem in any year, but does not exceed levels of a radiation area, shall be designated as a controlled area. The area shall be controlled by:

(1) visibly separating adjacent uncontrolled areas so doses do not exceed the limits of Rule .1601(a)(15) of this Chapter; and
(2) posting a sign bearing the words "Warning: X-rays in Use", or words having a similar meaning.

(c) The local components of RGDs shall be located and arranged to include sufficient shielding or access control to ensure no radiation levels exist in any area surrounding the local components that result in a dose to an individual ~~in excess of~~ that exceeds the dose limits in Rule .1601(a)(15) of this Chapter.

(d) Surveys shall be performed for each ~~RGD,~~ RGDs and X-ray machines for non-human use as set forth in Rule .1601(a)(23) of this Chapter, to show compliance with Paragraph (c) of this Rule.

(1) Radiation survey instruments shall be:
(A) capable of measuring the radiation energies of the RGD and X-ray machines for non-human use that are surveyed; and
(B) calibrated ~~annually~~ annually, when a frequency is not recommended by the manufacturer.
(2) Equipment surveys shall confirm radiation levels do not exceed the requirements of Rule .0806(c)(7); .0806(d)(3); and .0806(h)(2) of this Section. Surveys shall be performed:
(A) prior to initial use and include testing of warning and safety devices;
(B) prior to ~~use~~ use, following any change in the initial arrangement, including the number or type of local components in the system or x-ray tube source housing;
(C) prior to ~~use~~ use, following any maintenance requiring the disassembly or removal of a local component in the system or ~~x-ray~~ X-ray tube source housing that could affect the radiation exposure to personnel; and
(D) during the performance of calibration, maintenance, or any alignment procedure if the presence of a primary ~~x-ray~~ X-ray beam is required while any local component in the system is disassembled or removed.
(3) A registrant may apply to the agency for approval of procedures differing from those in Subparagraph (d) of this Rule, provided that the registrant demonstrates satisfactory compliance with Paragraph (c) of this Rule.
(4) Records shall be available for agency review during inspection.

(e) ~~RGDs~~ X-ray machines for non-human use in Rule .0806(i) and security screening systems in Rule ~~.0807(2)~~ .0807(b) of this Section, installed after the effective date of this Rule, shall ensure the following provisions are met:

(1) A floor plan with ~~equipment~~ radiation machine arrangement shall be submitted to the agency for review and acknowledgement prior to installation of the ~~system.~~ RGD. The floor plan shall include:
(A) the proposed location of the ~~system;~~ RGD;
(B) direction of the useful beam;
(C) adjacent areas; and
(D) location of the operator.
(2) An area radiation survey shall be performed prior to initial use to show compliance with the dose limits of the rules in Section .1600 of this Chapter. The survey shall include:
(A) a drawing of the room indicating the location of the ~~x-ray~~ X-ray tube and orientation of the useful beam;
(B) radiation levels at the operator location and adjacent areas;
(C) survey instrument used; and

(D) name of the service provider that is registered, in accordance with Rule .0205 of this Chapter, and date the survey was performed.

(3) Modifications to the room, RGD, or adjacent areas that may increase the radiation dose to any individual shall require a new survey.

(4) Records of the floor plan with ~~equipment~~ the RGD arrangement and survey shall be available for review by an authorized representative of the Radiation Protection Section during inspection.

(f) Dual Energy X-ray Absorptiometry (DEXA or DXA) and dental handheld X-ray machines are exempt from Subparagraph (e)(1) of this Rule.

*Authority G.S. 104E-7; 104E-12.*

**10A NCAC 15 .0806 EQUIPMENT REQUIREMENTS**

(a) Certified and certifiable cabinet x-ray systems shall comply with the following provisions of 21 C.F.R. 1020.40, which are hereby incorporated by ~~reference~~ reference including subsequent amendments and editions.

(1) 21 C.F.R. 1020.40(a) Applicability;

(2) 21 C.F.R. 1020.40(b) Definitions;

(3) 21 C.F.R. 1020.40(c) Requirements; and

(4) 21 C.F.R. 1020.40(d) Modifications of a certified system.

(b) The regulations cited in Paragraph (a) of this Rule are available free of charge at https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcfr/CFRSearch.cfm?FR=1020.40.

(c) All RGD's shall meet the following requirements, except certified and certifiable cabinet ~~x-ray~~ X-ray systems in Paragraph (a) of this Rule:

(1) Warning devices shall be labeled so the purpose is easily identified.

(2) Warning lights of a fail-safe design labeled with the words "X-RAY ON", or words having a similar meaning, shall be located:

(A) within sight of any switch that energizes an ~~x-ray~~ X-ray tube;

(B) in a conspicuous location near the ~~x-ray~~ X-ray tube source housing and ~~x-ray~~ X-ray beam; and

(C) visible from all instrument access areas.

(3) Warning lights shall activate when the ~~x-ray~~ X-ray tube is energized.

(4) Each shutter shall be equipped with a "shutter open" warning light or device of a fail-safe design.

(5) A readily visible and legible label bearing the radiation symbol and the words "CAUTION – RADIATION: THIS EQUIPMENT PRODUCES RADIATION WHEN ENERGIZED", or words having a similar meaning, shall be located near any switch that energizes an x-ray tube.

(6) Systems containing an ~~x-ray~~ X-ray tube shall be equipped with a fail-safe interlock that will shut off high voltage to the tube if the ~~x-ray~~ X-ray tube source housing is disassembled or if the tube is removed.

(7) High voltage generator enclosures or any accessible area 5 centimeters from the RGD shall not exceed a dose rate of .25 mrem/hr (.0025 mSv/hr).

(d) All open beam RGDs shall meet the following additional requirements:

(1) Each beam port of the ~~x-ray~~ X-ray tube source housing shall be equipped with a beam shutter interlocked with the ~~x-ray~~ X-ray accessory coupling, or collimator, so that the port will not open unless a collimator or a component coupling is in place.

(2) Shutters at unused ports shall be secured in the closed position to prevent unintended opening.

(3) The ~~x-ray~~ X-ray tube source housing shall be constructed so that when all shutters are closed, the leakage radiation measured at a distance of five centimeters from the housing surface does not exceed 2.5 mrem (25 microSv) in one hour.

(4) A safety device or interlock shall prevent the entry of any portion of an individual's body into the primary ~~x-ray~~ X-ray beam or ~~which~~ that causes the primary beam to shut off upon entry into its path.

(5) A registrant may apply to the agency, as defined in Rule .0106 of this Chapter, for an exemption from the requirement of a safety device in Subparagraph (d)(3) of this Rule. The request shall include:

(A) justification for the use of an open beam system instead of an enclosed beam system;

(B) a description of other safety devices that have been evaluated and the reason why a safety ~~devices~~ device cannot be used; and

(C) a description of the alternative methods that will be employed to minimize the possibility of an accidental exposure, including procedures to ~~assure~~ ensure that operators and others in the area will be informed of the absence of safety devices.

(e) All enclosed beam RGDs shall meet the following additional requirements:

(1) The radiation source, sample or object, detector, and analyzing crystal (if used) shall be enclosed to prevent entry of any portion of the body during normal operation.

(2) All doors and panels shall be equipped with an interlock. The interlock shall be of a fail-safe design.

(f) Bimodal beam RGDs with the ability to override interlocks between enclosed and open beam shall be designed to be engaged with a device or tool and meet the following requirements:

(1) The tool or key shall only be used by designated individuals as outlined in operating procedures.

(2) When the tool or key is in use, it shall be captive in the equipment and removal of the tool or key returns the RGD to enclosed beam mode.

(3) System use requirements must follow the current use mode.

(g) Portable x-ray fluorescence analyzers manufactured to be used in a hand-held configuration without safety devices are exempt from the requirements of Subparagraph (d)(4) of this Rule. The following additional requirements shall be provided on the analyzer:

(1) A power switch with the power logo: I/O.

(2) A label with the words "CAUTION: THIS EQUIPMENT PRODUCES X-RAYS WHEN OPERATED", or words with similar meaning.

(3) Indicators visible to operators when ~~x-ray~~ X-ray are on. The indicator shall be in the form of a light and a warning symbol or text with the words "X-RAY ON", or words with similar meaning.

(4) Warning labels near each beam port that bear a radiation symbol and the words "WARNING HIGH INTENSITY X-RAYS – DO NOT EXPOSE ANY PART OF BODY TO BEAM", or words having a similar meaning.

(h) All gauging devices shall meet the following additional requirements:

(1) The RGD shall be designed to restrict access to the x-ray beam by personnel who are not trained in accordance with Rule .0803 of this Section.

(2) A useful beam control system shall be provided whenever the useful beam is accessible, and the radiation levels exceed one hundred mrem per hour (100 mrem/hr)(1 mSv/hr) at five centimeters from any accessible surface or five mrem per hour (5 mrem/h)(.05 mSv/h) at thirty centimeters (30 cm). The useful beam controls may include a moving shutter, a moving source, or a high voltage power supply.

(3) On-Off indicators shall be marked with symbols or wording clarifying the status of the device.

(4) Each indicating system for automatic beam controls shall consist of at least one "ON" indicating signal, and one "OFF" indicating signal. If lights are used, green indicates the "OFF" and red indicates any other condition of the useful beam control.

(5) Indicators for RGDs high voltage control shall be a yellow or amber warning light with the words "HIGH VOLTAGE ON" and shall be located on the control panel and near the ~~x-ray~~ X-ray tube source housing. The warning light shall illuminate only when power is applied to the RGD.

(6) Interlocks shall be used to prevent accidental exposure to high voltage and ionizing radiation.

(7) The RGD shall be conspicuously marked with a label permanently affixed to the device with the following information:

(A) ANSI device classification;

(B) name of manufacturer;

(C) model; and

(D) serial number.

(8) Radiation safety labels shall provide instructions and precautions for safe operation. If space is limited on the RGD, operating or service manuals may be referenced for the information.

(i) ~~Radiographic and radioscopic non-healing arts x-ray equipment~~ X-ray machines for non-human use operating below energies of 1 ~~MeV designed for non-medical x-ray~~ MeV, shall comply with the following additional requirements:

(1) Written instructions shall be supplied by the manufacturer or supplier at the time of sale or transfer to the first user. When the manufacturer or supplier does not provide services to the RGD, installation instructions shall describe:

(A) radiation safety pertaining to each unit or accessory;

(B) ~~instruction~~ instructions for assembly operations when assembly is not performed by the manufacturer;

(C) ~~interconnections instructions~~ instructions for interconnections of interlocks, warning lights and audible alarms systems;

(D) ~~test~~ instructions for testing to determine if the RGD and accessory components are properly operating; and

(E) if the ~~x-ray~~ X-ray tube assembly is shielded or non-shielded.

(2) Operating instructions shall be supplied by the manufacturer or supplier, at the time of sale or transfer to the first user, in accordance with operating requirements of Rule .0804 of this Section.

(3) The controls shall be:

(A) clearly marked with for the "on-off" position ~~of~~ for the component disconnecting the power; and

(B) equipped with a means to prevent production of ~~x-rays~~ X-rays when in the "off" position, such as a key or password. When a key is used, the RGD shall be manufactured so it may only be removed when the key is in the "off" position.

(4) The "X-ray On" indicator control shall be:

(A) yellow or amber in color;

(B) be of a fail-safe design; and

(C) have two indicators viewable from the control panel indicating when ~~x-rays~~

X-rays are being produced in a period of greater than 0.5 seconds.
(5) The "X-ray Off" indicators shall be:
(A) red in color; and
(B) permanently marked.
(6) Shutters devices that control emission of the primary beam shall activate two visual indicators of contrasting colors from the operator's station. One shall activate when shutters are fully closed and the other shall activate when the shutters are not fully closed.
(7) Selection indicators shall indicate which tube assembly or focal spot has been selected if more than one x-ray tube assembly or focal spot can be operated from the control panel.
(8) Warning Device: A red warning lamp or audible device shall be provided on or near the tube assembly in an open beam, for non-permanent installations.

(j) All RGDs and X-ray machines for non-human use shall be secured to prevent access and operation of the device by any individual not meeting the requirements of Rule .0803 of this Section.

*Authority G.S. 104E-7; 104E-11; 104E-12.*

**10A NCAC 15 .0807 SECURITY SCREENING EQUIPMENT REQUIREMENTS FOR GOVERNMENT USE ONLY**

(a) All security screening ~~devices~~ device RGDs shall meet the following additional requirements:
(1) Security screening device RGDs shall only be utilized by accredited bomb squads, certified bomb technicians, law enforcement agencies, or forensic investigators.
(2) The operator must be present and maintain access control during operation of the RGD. If the RGD is not operated in a restricted area and the RGD is capable of producing a radiation area, the operator shall:
(A) establish a visible barrier;
(B) perform a visual check of the controlled area to ensure all unauthorized individuals are removed prior to activating or initiating the RGD; and
(C) if the operator is unable to maintain visual control of the area during operation of the RGD, the operator is required to implement additional means to control the area so that no one can access the radiation area.
(3) Utilization logs shall be maintained each time the RGD is used and accurately include the following:
(A) date and time of use;
(B) location of use; and
(C) operator of the RGD.
(4) Records of utilization logs shall be available for agency review during inspection.

(b) All security screening systems shall meet the following additional requirements:
(1) Security screening systems shall only be utilized in a correctional institution, detention center, jail, or prison for public safety and security screening purposes.
(2) No individual shall be exposed to the useful beam unless authorized by a law enforcement agency representative.
(3) No individual shall be exposed to the useful beam for demonstration or training purposes.
(4) Screening of staff for training purposes is prohibited.
(5) Policies and procedures shall be established for the screening of minors and pregnant individuals.
(6) An inspection zone shall be:
(A) established around the system where bystanders are prohibited during operation;
(B) visibly marked; and
(C) the ambient dose equivalent outside the inspection zone shall not exceed 2 mrem (20 microSv) in any 1 hour.
(7) The system shall be stationary, and the exposure switch shall be located in a manner requiring the operator to remain behind a protected barrier during the entire exposure while able to view the following:
(A) the individual being scanned;
(B) the inspection zone; and
(C) any access areas.
(8) Equipment surveys shall be conducted to verify compliance with reference effective dose limits, the inspection zone, and manufacturer specified parameters. Surveys shall be performed:
(A) upon installation;
(B) every 12 months; and
(C) after maintenance that may affect the system's shielding or ~~x-ray~~ X-ray beam.
(9) Reference effective dose limits shall be met as follows:
(A) General-use systems reference effective dose shall not exceed 25 microrem (.25 microSv) per screening.
(B) Limited-use systems reference effective dose shall not exceed 1 mrem (10 microSv) per screening.
(C) The reference effective dose received by an individual shall not exceed 25 mrem (250 microSv) in a 12-month period for both general use and limited-use systems.

(10) Compliance ~~to~~ with reference effective dose limits shall be demonstrated by the registrant maintaining records of each individual screened. Records shall show one of the following:
(A) the number of screenings each individual received, for General-use systems, does not exceed 1,000 in a 12-month period; or
(B) the reference effective dose multiplied by the number of screenings, for both General-use and Limited-use systems, does not exceed 25 mrem (250 microSv) in a 12-month period.
(11) Records of each individual scanned at the same facility shall be available for review by an authorized representative of the Radiation Protection Section during inspection.
(12) Each individual being screened shall be informed the system emits radiation and be provided with the following prior to scanning:
(A) the estimated effective dose from one screening;
(B) an example to compare the dose to a commonly known source of radiation; and
(C) confirmation that the screening complies with the reference effective dose limits in Subparagraph (b)(9) of this Rule.

*Authority G.S. 104E-7.*

**10A NCAC 15 .0808 ~~OTHER EQUIPMENT REQUIREMENTS~~ RADIATION GENERATING DEVICES NOT MEETING EQUIPMENT REQUIREMENTS**

(a) RGD's ~~not listed in Rule .0801 of this Section, or~~ that ~~are not able to~~ do not meet the equipment requirements of ~~either Rule .0806 or .0807 of~~ this Section, shall not be sold, installed, or used prior to the agency completing review of information regarding the RGD and determining if use of the RGD is allowed. The user or manufacturer of the RGD shall submit the following information to the agency for review:
(1) ~~equipment form for application;~~ Radiation Generating Device Application form;
(2) ~~manufacturer~~ manufacturer's manual;
(3) description of use;
(4) operator training;
(5) a survey in accordance with Rule.0805(d) of this Section;
(6) an area survey in accordance with Rule.0805(e)(2) of this Section;
(7) the hazard level associated with use of the RGD; and
(8) means to achieve radiation protection equivalent to the rules of this Section.

(b) After receiving the information in Paragraph (a) of this Rule, the agency will respond to the applicant in writing within ~~30~~ 90 days. Upon review, the agency may require additional information if use of the RGD is allowed.

*Authority G.S. 104E-7.*

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***Notice** is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g that the Radiation Protection Commission intends to repeal the rule cited as 10A NCAC 15 .0611, and readopt with substantive changes the rules cited as 10A NCAC 15 .0603, and .0604.*

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

**Link to agency website pursuant to G.S. 150B-19.1(c):** *https://info.ncdhhs.gov/dhsr/ruleactions.html*

**Proposed Effective Date:** *January 1, 2027*

**Public Hearing:**
**Date:** *September 9, 2026*
**Time:** *10:00 a.m.*
**Location:** *DHHS Headquarters, 1915 Health Services Way, Conference Room 2152, Raleigh NC 27607*

**Reason for Proposed Action:** *Pursuant to G.S. 104E, 10A NCAC 15 establishes standards for the use of radioactive materials and radiation machines across North Carolina, while Section .0600 applies specifically to all radiation machine registrants. Following an extensive public comment period, we are republishing three of these rules to address the feedback received and enhance overall clarity.*

**Comments may be submitted to:** *Shanah Black, 1915 Health Services Way, 2201 Mail Service Center, Raleigh, NC 27607; phone (919) 855-3481*

**Comment period ends:** *October 16, 2026*

**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 15 - RADIATION PROTECTION

### SECTION .0600 - X-RAYS IN THE HEALING ARTS

**10A NCAC ~~15 .0604~~ <u>15 .0603</u> ~~GENERAL REQUIREMENTS FOR ALL DIAGNOSTIC SYSTEMS~~ <u>OPERATOR REQUIREMENTS</u>**

~~(a) In addition to other requirements of this Section, all diagnostic x-ray systems shall meet the following requirements:~~

~~(1) The control panel containing the main power switch shall bear the warning statement, legible and accessible to view: "WARNING: This x-ray unit may be dangerous to patient and operator unless safe exposure factors and operation instructions are observed."~~

~~(2) Equivalent wording may be used on battery powered generators; visual means shall be provided on the control panel to indicate whether the battery is in a state of charge adequate for proper operation.~~

~~(3) The leakage radiation from the diagnostic source assembly measured at a distance of one meter in any direction from the source shall not exceed 100 millirem in one hour when the x-ray tube is operated at its leakage technique factors. Compliance shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimensions greater than 20 centimeters.~~

~~(4) The radiation emitted by a component other than the diagnostic source assembly shall not exceed two millirem in one hour at five centimeters from any accessible surface of the component when it is operated in an assembled x-ray system under any conditions for which it was designed. Compliance shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimension greater than 20 centimeters.~~

~~(5) Beam Quality~~

~~(A) Half Value Layer~~

~~(i) The half value layer (HVL) of the useful beam for a given x-ray tube potential shall not be less than the appropriate value shown in the following table. "Specified Dental System" is any dental x-ray system designed for use with intraoral image receptors and manufactured after December 1, 1980. "Other X-Ray Systems" shall be all other x-ray systems subject to this Section.~~

| ~~X-Ray Tube Voltage~~ | ~~(kilovolt peak)~~ | ~~Minimum HVL (millimeters of Aluminum)~~ | ~~Minimum HVL (millimeters of Aluminum)~~ |
|---|---|---|---|
| ~~Designed operating range~~ | ~~Measured Operating Potential~~ | ~~Specified Dental Systems~~ | ~~Other X-ray Systems~~ |
| ~~Below 50~~ | ~~30~~ | ~~1.5~~ | ~~0.3~~ |
| | ~~40~~ | ~~1.5~~ | ~~0.4~~ |
| | ~~49~~ | ~~1.5~~ | ~~0.5~~ |
| ~~50 to 70~~ | ~~50~~ | ~~1.5~~ | ~~1.2~~ |
| | ~~60~~ | ~~1.5~~ | ~~1.2~~ |
| | ~~70~~ | ~~1.5~~ | ~~1.5~~ |
| ~~Above 70~~ | ~~71~~ | ~~2.1~~ | ~~2.1~~ |
| | ~~80~~ | ~~2.3~~ | ~~2.3~~ |
| | ~~90~~ | ~~2.5~~ | ~~2.5~~ |
| | ~~100~~ | ~~2.7~~ | ~~2.7~~ |
| | ~~110~~ | ~~3.0~~ | ~~3.0~~ |
| | ~~120~~ | ~~3.2~~ | ~~3.2~~ |
| | ~~130~~ | ~~3.5~~ | ~~3.5~~ |
| | ~~140~~ | ~~3.8~~ | ~~3.8~~ |

| | | |
|---|---|---|
| ~~150~~ | ~~4.1~~ | ~~4.1~~ |

~~If it is necessary to determine such half value layer at an x-ray tube potential which is not listed in the table, linear interpolation or extrapolation may be made. Positive means shall be provided to ensure that at least the minimum filtration needed to achieve the above beam quality requirements is in the useful beam during each exposure.~~

~~(ii) The requirements of Subpart (a)(5)(A)(i) of this Rule shall be considered to be met if it can be demonstrated that the aluminum equivalent of the total filtration in the primary beam is not less than that shown in the following table:~~

~~Filtration Required versus Operating Voltage~~

| ~~Operating Voltage (kVp)~~ | ~~Minimum total filtration (inherent plus added) (millimeter aluminum equivalent)~~ |
|---|---|
| ~~Below 50~~ | ~~0.5 millimeters~~ |
| ~~50-70~~ | ~~1.5 millimeters~~ |
| ~~Above 70~~ | ~~2.5 millimeters~~ |

~~(iii) Notwithstanding the requirements of Subpart (a)(5)(A)(ii) of this Rule, all intraoral dental systems manufactured after December 1, 1980, shall have a minimum of 1.5 mm aluminum equivalent filtration permanently installed in the useful beam.~~

~~(iv) Beryllium window tubes shall have a minimum of 0.5 mm aluminum equivalent filtration permanently mounted in the useful beam.~~

~~(v) For capacitor energy storage equipment, compliance shall be determined with the maximum quantity of charge per exposure.~~

~~(vi) The required minimum aluminum equivalent filtration shall include the filtration contributed by all materials which are always present between the focal spot of the tube and the patient, such as a tabletop when the tube is mounted under the table and inherent filtration of the tube.~~

~~(B) For new x-ray systems installed after the effective date of these Rules and which have variable kVp and selectable filtration for the useful beam, a device shall link the kVp selector with the filter(s), so that the minimum filtration is always present for the kVp selected.~~

~~(6) Where two or more radiographic tubes are controlled by one exposure switch, the tube or tubes which have been selected and their location shall be clearly indicated on the master control panel prior to initiation of the exposure.~~

~~(7) The tube housing assembly supports shall be adjusted such that the tube housing assembly will remain stable during an exposure unless the tube housing movement is a design function of the x-ray system.~~

~~(8) The location of the focal spot may be indicated on a readily visible area of the x-ray source housing in the plane parallel to the image receptor when the image receptor is perpendicular to the beam axis.~~

~~(9) Technique Indicators~~

~~(A) The technique factors to be used during an exposure shall be indicated before the exposure begins, except when automatic exposure controls are used, in which case the technique factors which are set prior to the exposure shall be indicated.~~

~~(B) Indication of technique factors shall be visible from the operator's position except in the case of spot films made by the fluoroscopist.~~

~~(C) On equipment having fixed technique factors, the recommendation in Part (a)(9)(A) of this Rule may be permanent markings.~~

~~(b) Structural Shielding~~

~~(1) For stationary diagnostic systems, except for intraoral dental systems which shall meet the requirements of Rule .0607(j) of this Section, structural shielding shall be provided to assure compliance with Rules .1604 and .1611 of this Chapter. The following shall be provided:~~

~~(A) All wall, floor, and ceiling areas exposed to the useful beam shall have primary barriers. Primary barriers in walls shall extend to a minimum height of 84 inches above the floor;~~

~~(B) Secondary barriers in the wall, floor and ceiling areas not having a primary barrier or where the primary barrier requirements are lower than the secondary barrier requirements; and~~

~~(C) A window of lead equivalent glass equal to that required by the adjacent barrier or a mirror system shall be provided large enough and so placed~~

~~that the operator can see the patient without having to leave the protected area during exposure.~~

~~(2) When a mobile system is used routinely in one location, the structural shielding in that location shall meet the requirements for stationary diagnostic systems in Subparagraph (b)(1) of this Rule.~~

(a) A radiation machine shall not be permitted for human, non-human, or veterinary use except when used in accordance with the operating requirements of Rules .0605 of this Section.

(b) Operators shall be trained in the operational features and safe use of the radiation machines used.

(c) Individuals who operate a radiation machine shall meet the requirements for the modality of use in Paragraphs (e),(f),(g),(h), or (i) of this Rule no later than 36 months after the effective date of this Rule.

(d) Individuals who operate a radiation machine for research purposes or for end-of-life imaging are exempt from the requirements in Paragraphs (e),(f),(g),(h), or (i) of this Rule.

(e) The uses of Cone Beam CT, Veterinary CT, CT Stimulation, and CT attenuation correction shall be exempt from the requirement in Paragraph (i) of this Rule.

(f) Chiropractic

(1) other than the chiropractor, individuals who operate a radiation machine for chiropractic patient care shall be certified by the North Carolina State Board of Chiropractic Examiners as Certified Chiropractic Assistant – Level 2 in accordance with G.S. 90-143.2 and NCAC 10.0213(3);

(2) be a Registered Technologist (RT) by the American Registry of Radiologic Technologists (ARRT) with an active registration in Radiography (R); or

(3) shall be enrolled in a training program for radiography, and under the personal supervision of an individual who meets the requirements of Subparagraphs (f)(1) or (f)(2) of this Rule.

(g) Dentistry

(1) other than the dentist, individuals who operate dental radiation machines shall be licensed dental hygienists;

(2) shall meet radiography requirements for dental assistants as defined by the NC Board of Dental Examiners; or

(3) shall be enrolled in a training program for radiography, and under the personal supervision of an individual who meets the requirements of Subparagraphs (f)(1) and (f)(2) of this Rule.

(h) Podiatry

(1) other than the podiatrist, all podiatric radiation machine operators shall complete radiography training and pass as examination provided by the NC Foot and Ankle Society;

(2) shall hold an active registration in Radiography (R) with the American Registry of Radiologic Technologists (ARRT); or

(3) shall be enrolled in a training program for radiography, and under the personal supervision of an individual who meets the requirements of Subparagraphs (f)(1) or (f)(2) of this Rule.

(i) Radiography and Fluoroscopy

(1) Radiography

(A) Other than the physician, individuals who operate a radiation machine for plain radiography shall be a Registered Technologist (RT) by the American Registry of Radiologic Technologists (ARRT) with an active registration in Radiography (R); or

(B) shall be enrolled in an accredited radiography educational program and under the personal supervision of an individual who meets the requirements of Part (i)(1)(A) of this Rule.

(2) Fluoroscopy

(A) individuals who operate fluoroscopy radiation machines shall be a physician as defined in Rule .0103(b)(8) of this Chapter or an advanced practitioner provider (APP) as defined in Rule .0602(2) of this Section under the general supervision of a physician who has completed training in accordance with Paragraph (m) of this Rule;

(B) shall be an ARRT-registered RT and hold an active registration in Radiography (R); or

(C) shall be enrolled in an accredited educational program for radiography and under the personal supervision of an individual who meets the requirements of Part (i)(2)(B) of this Rule.

(3) Angiography

(A) individuals who operate fluoroscopy radiation machines designed for angiography shall be a physician as defined in Rule .0103(b)(8) of this ~~Chapter;~~ Chapter who has completed training in accordance with Paragraph (m) of this Rule;

(B) shall be and AART-registered RT and hold an active registration in Radiography (R);

(C) shall be a graduate of post-secondary educational program in interventional cardiac and vascular technology and a Registered Cardiovascular Invasive Specialist (RCIS) by or a Registered

Cardiac Electrophysiology Specialist (RCES) by Cardiovascular Credentialing International (CCI); ~~or~~

(D) shall be enrolled in an accredited educational program and under the personal supervision of an individual who meets the requirements of Part (i)(3)(B) or (i)(3)(C) of this ~~Subparagraph.~~ Rule; or

(E) shall hold an active registration in CIS or CES by CCI who has completed training in accordance with Paragraph (m) of this Rule.

(j) Computed Tomography (CT)

(1) individuals who operate a CT radiation machine for diagnostic imaging shall hold an active Computed Tomography (CT) registration with the ARRT; or

(2) shall be enrolled in an accredited educational program and under the personal supervision of an individual who meets the requirement of Subparagraph (j)(1) of this Rule.

(k) Dual Energy X-Ray Absorptiometry (DEXA or DXA)

(1) Individuals who operate a DEXA or DXA radiation machine for diagnostic measurement of bone density ~~or body composition~~ as ordered by a physician or APP shall be:

(A) an ARRT-registered technologist with an active registration in Bone Densitometry (DB);

(B) a Certified Bone Densitometry Technologist (CBDT) by the International Society for Clinical Densitometry (ISCD); or

(C) enrolled in an accredited educational program and under the personal supervision of an individual who meets the requirements of Part (k)(1)(A) or (k)(1)(B) of this Rule.

(2) ~~All individuals~~ Individuals who operate a DEXA or DXA radiation machine for assessment of body composition as ordered by a physician or APP shall receive training specific to the radiation machine used and training in basic principles of radiation protection prior to using the radiation machine.

(l) Veterinary Imaging

(1) other than the veterinarian, all veterinary radiation machine operators shall be:

(A) under the personal supervision of a veterinarian;

(B) be a veterinary technician; or

(C) under the personal supervision of a veterinary technician.

(2) other than a veterinarian, all veterinary radiation machine operators shall be employed or engaged by a veterinarian or the owner of a veterinary facility registered in accordance with Section .0200 of this Chapter.

(m) For individuals other than ~~radiologists,~~ radiologists and ARRT-registered technologists, instruction and training to operate fluoroscopic and angiographic radiation machines ~~by physicians and APPs~~ shall include:

(1) radiation quantities and units;

(2) biological effects of ionizing radiation and recognition of symptoms of acute localized exposure;

(3) radiation dose management and optimization of image quality; and

(4) equipment features.

(n) Training Records for each operator of a radiation machine shall be maintained and available for agency review during inspection.

*Authority G.S. 104E-7.*

**10A NCAC ~~15 .0603~~ 15 .0604 ~~GENERAL REQUIREMENTS~~ FACILITY RESPONSIBILITIES**

~~(a) Administrative controls~~

~~(1) The registrant shall be responsible for directing the operation of the X-ray machines which he has registered with the agency. He or his agent shall assure that the following provisions are met in the operation of the X-ray machine(s):~~

~~(A) An X-ray machine which does not meet the provisions of these Rules shall not be operated for diagnostic or therapeutic purposes, if so ordered by the agency in accordance with Rules .0109 and .0110 of this Chapter.~~

~~(B) Individuals who will be operating the X-ray equipment shall be instructed in the safe operating procedures and use of the equipment and demonstrate an understanding thereof to the registrant.~~

~~(C) In the vicinity of each diagnostic X-ray system's control panel, a chart shall be provided, which specifies for all usual examinations and associated projections which are performed by that system, a listing of information including patient's anatomical size versus technique factors to be utilized at a given source to image receptor distance. The chart shall also provide:~~

~~(i) type and size of the film or film-screen combination to be used,~~

~~(ii) type and ratio of grid to be used, if any, and focal spot to film distance,~~

~~(iii) type and placement of gonad shielding to be used.~~

~~(D) Radiation protection program and rules shall be established and made available to each individual operating X-ray equipment under his control.~~

~~The operator shall be familiar with these rules.~~

~~(E) Only the professional staff and ancillary personnel required for the medical procedure or for training shall be in the room during the radiographic exposure. Other than the patient being examined:~~

~~(i) All individuals shall be positioned such that no part of the body including the extremities which is not protected by 0.5 mm lead equivalent will be exposed to the primary beam.~~

~~(ii) Professional staff and ancillary personnel shall be protected from the direct scatter radiation by protective aprons or whole body protective barriers of not less than 0.25 mm lead equivalent.~~

~~(iii) Patients who cannot be removed from the room shall be protected from the direct scatter radiation by whole body protective barriers of 0.25 mm lead equivalent or shall be so positioned that the nearest portion of the body is at least six feet from both the tube head and the nearest edge of the image receptor.~~

~~(iv) When a portion of the body of a non- occupationally exposed professional staff or ancillary personnel is potentially subjected to stray radiation which would result in that individual receiving one-fourth of the maximum permissible dose as defined in Rule .1604 of this Chapter, additional protective measures shall be employed.~~

~~(v) Upon written application to the agency, the agency may waive the requirements in Subparts (a)(1)(E)(ii) and (a)(1)(E)(iii) of this Rule if the registrant demonstrates that such waiver is necessary for best management of patients and will not result in violation of the public and occupational dose limits established in the rules in this Chapter.~~

~~(F) Gonad shielding of not less than 0.5 mm lead equivalent shall be used for potentially procreative patients during radiographic procedures in which the gonads are in the direct, or primary beam, except for cases in which this would interfere with the diagnostic procedures.~~

~~(G) Individuals shall not be exposed to the primary beam except for healing arts purposes. Such exposures shall have been authorized by a licensed practitioner of the healing arts. This provision specifically prohibits deliberate exposure of an individual for training, demonstration or other nonhealing arts purposes.~~

~~(H) When a patient or film must be provided with auxiliary support during a radiographic exposure:~~

~~(i) Mechanical holding devices shall be used whenever medical circumstances permit. Written safety procedures, as required in Part (a)(1)(D) of this Rule shall indicate the requirements for selecting a holder;~~

~~(ii) If a human holder is required, radiation protection programs required in Part (a)(1)(D) of this Rule, shall indicate the instructions provided to the holder;~~

~~(iii) The human holder shall be protected as required in Part (a)(1)(E) of this Rule;~~

~~(iv) No individual shall be used routinely to hold patients or film.~~

~~(I) Procedures and auxiliary equipment designed to minimize patient and personnel exposure commensurate with the needed diagnostic information shall be utilized. This includes, but is not limited to, the following requirements:~~

~~(i) The speed of film or screen and film combinations shall be the fastest speed consistent with the diagnostic objective of the examinations.~~

~~(ii) The radiation exposure to the patient shall be the minimum exposure required to produce images of good diagnostic quality.~~

~~(iii) Portable or mobile equipment shall be used only for examinations where it is impractical for medical reasons to transfer the patient to a stationary radiographic installation.~~

~~(J) All persons who are associated with the operation of an X-ray system are subject to the occupational exposure limits as defined in Rules .1604 and .1638 of this Chapter, and personnel monitoring procedures in Rule .1614 of this Chapter. In addition, when protective clothing or equipment is worn on portions of the body and a monitoring device(s) is required, at least one such monitoring device shall be utilized as follows:~~

~~(i) When an apron is worn the monitoring device shall be worn at the collar outside the apron.~~

~~(ii) The dose to the whole body shall be recorded in the reports required in Rule .1640 of this Chapter. If more than one device is used, each dose shall be identified with the area where the device was worn on the body.~~

~~(2) The registrant shall maintain at least the following information for each X-ray machine:~~

~~(A) current registration information and other correspondence with the agency regarding that machine;~~

~~(B) records of surveys and calibrations;~~

~~(C) records of maintenance or modifications which affect the primary beam after the effective date of these Rules, along with the names of persons who performed the service.~~

~~(b) Plans Review. Prior to construction or structural modification, the floor plans and equipment arrangement of all installations utilizing X-rays for diagnostic or therapeutic purposes shall be reviewed by a qualified expert. The registrant shall submit recommendations of the expert to the agency.~~

~~(c) Radiation Survey~~

~~(1) For installations of X-ray equipment after the effective date of this Rule, an area radiation survey shall be performed within 30 days following initial operation of each radiation machine to show compliance with Rule .0604(b) of this Section. This survey shall include:~~

~~(A) a drawing of the room in which a stationary X-ray system is located and radiation levels in adjacent areas; and~~

~~(B) the name of the person approved by the agency performing the survey and the date the survey was performed.~~

~~(2) Any modification to the X-ray room or adjacent areas which could increase the radiation dosage to any individual shall require a new survey.~~

~~(3) Records of this survey shall be maintained in accordance with Subparagraph (a)(2) of this Rule.~~

(a) The registrant shall not allow the operation of a radiation machine for diagnostic imaging not meeting the requirements of Rule .0607(b) of this Section.

(b) Mobile or portable radiation machines shall only be used for radiation exposures where transferring the patient to a stationary radiation machine is impractical for medical reasons. The use of a mobile or portable radiation machine as the primary method for diagnostic imaging at a permanent location, instead of a stationary radiation machine, is prohibited.

(c) If ordered by the agency, radiation machines are subject to impounding by an authorized representative of the agency in accordance with Rule .0107 of this Chapter.

(d) The registrant or their designee shall:

(1) be responsible for directing the operation of the radiation machine(s) registered with the agency;

(2) ensure the provisions of this Section are met during the operation of the radiation machine(s) under their control;

(3) establish radiation protection procedures and make them readily available to individuals who operate the radiation machine(s);

(4) ensure QC is performed if required by the manufacturer or registered service provider, in accordance with the instructions provided; and

(5) establish procedures or provide equipment to operators to control the radiation area during radiographic exposures.

(e) Extraoral cephalometric, cone beam computed tomography (CBCT), and panoramic radiation machines designed for use in dental radiography or for facial diagnostic imaging and chiropractic or podiatry radiation machines shall meet shielding design requirements in Rule .0204(b) of this Chapter, shielding barrier requirements in Rule .0606(a) of this Section, and radiation machine requirements in Rule .0607 of this Section.

(f) Dental intraoral handheld radiation machine additional requirements for maintenance and evaluation:

(1) Maintenance shall be performed by a registered service provider following the manufacturer's specifications.

(2) The machine shall be evaluated by a registered service provider, in accordance with Section .0200 of this Chapter, after the unit is dropped, visibly damaged, or as requested by the agency. Machines with signs of visible damage, or as requested by the agency, shall not be used until being evaluated by a registered service provider.

(g) Cone Beam Computed Tomography (CBCT) radiation machine additional requirements for system performance evaluations:

(1) Maintain documentation of the established standards, tolerances, and testing results.

(2) Implement actions when the QC results are outside of the limits specified in the QC recommendations.

(3) The CBCT radiation machine shall be evaluated by a registered service provider, in accordance with Section .0200 of this Chapter, within 30 days of:

(A) initial installation; and

(B) when there is any change or replacement of components which, in the opinion of the registered service provider, could cause a change in the radiation output or image quality.

(4) The following information shall be readily available to CBCT operators:

(A) instructions on performing routine QC, including the use of the CBCT phantom;

(B) schedule of routine QC appropriate for the system and allowable variations set by the registered service provider, if required, for the indicated parameters; and

(C) results of at least the most recent routine QC completed on the system.

(h) Dental Cone Beam Computed Tomography (CBCT) radiation machines shall not be used:

(A) as the primary or initial imaging modality when a lower dose alternative is adequate for clinical purposes;

(B) for the sole purpose of producing simulated bitewing, panoramic, or cephalometric images; or

(C) for routine or serial orthodontic imaging.

(i) The uses of Cone Beam CT, Veterinary CT, CT simulation, and attenuation correction shall be exempt from Paragraphs (j) and (k) of this Rule.

(j) Computed Tomography (CT) radiation machine shall meet the following additional requirements for system performance evaluations.

(1) Performance evaluations of the CT X-ray system shall be performed by, or under the general supervision of, a CT QE who assumes responsibility for the evaluation.

(2) The performance evaluation of a CT X-ray system shall be performed within 30 days of installation and at least every 14 months.

(3) Performance evaluation standards and tolerances shall meet the manufacturer's specifications or standards and tolerances for the CT X-ray system from the American College of Radiology (ACR) incorporated herein by reference, including subsequent amendments and editions. These standards and tolerances may be found at no charge on the ACR website at https://www.acr.org.

(4) The performance evaluation shall include the following, as applicable to the design of the scanner:

(A) geometric factors and alignment, including alignment light accuracy and table increment accuracy;

(B) image localization from a scanned projection radiograph (localization image);

(C) radiation beam width;

(D) image quality, including high-contrast (spatial) resolution, low-contrast resolution, image uniformity, noise, and artifact evaluation;

(E) CT number accuracy;

(F) image quality for acquisition workstation display devices; and

(G) a review of the results of the routine QC, as set forth in Paragraph (j) of this Rule.

(5) The performance evaluation shall also include the evaluation of radiation output and patient dose indices for the following clinical protocols, if performed:

(A) pediatric head;

(B) pediatric abdomen;

(C) adult head; and

(D) adult abdomen.

(6) Evaluation of radiation output shall be performed with a calibrated dosimetry system. The dosimetry system shall have been calibrated within the preceding two years by persons registered, in accordance with Section .0200 of this Chapter, to provide such services.

(7) The performance evaluation shall be documented and maintained for inspection by the Agency. The documentation shall include the name of the CT QE performing or supervising and any other individuals participating in the evaluation under the general supervision of the CT QE. The documentation shall be retained for 14 months.

(k) Computed Tomography (CT) radiation machines shall meet the following additional requirements for routine quality control (QC)

(1) A routine QC program for the CT radiation imaging system shall be developed by or have written approval by a CT QE and include:

(A) instructions for the routine QC;

(B) intervals for QC testing;

(C) acceptable tolerances for the QC tests;

(D) use of a water equivalent phantom to evaluate each day of clinical use: noise, CT number accuracy, and artifacts; and

(E) routine QC tests that may be performed in place of system performance evaluations after equipment repairs or maintenance. This shall include the process for obtaining approval from the CT QE prior to conducting testing.

(2) The duties in the routine QC program, as described in Parts (i)(1)(A) through (E) of this Rule, shall be conducted by individuals who meet the requirements of Rule .0604(j) of this Section, or individuals approved by the CT QE.

(3) The routine QC shall be documented and maintained for inspection by the Agency. The records shall be retained for 14 months.

(l) Records shall be maintained by the registrant as follows:

(1) For each radiation machine under the registrant's custody and control:

(A) the state notice of registration and other correspondence with the agency regarding the radiation machine;

(B) the shielding design and the corresponding letter of acknowledgment granted by the agency;

(C) the report of installation, receipt of sale, disposal notification, or transfer of ownership;

(D) an area radiation survey; and

(E) maintenance or modifications that affect the primary beam and documentation of service(s) performed, along with the names of those who performed the service.

(2) For each individual operating a radiation machine, the operator license, certification, or training documentation.

(m) Records shall be available for agency review during inspection.

*Authority G.S. 104E-7; 104E-12(a).*

**10A NCAC 15 .0611 COMPUTED TOMOGRAPHY (CT) X-RAY SYSTEMS**

*Authority G.S. 104E-7;104E-11; 104E-12.*

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## TITLE 14B – DEPARTMENT OF PUBLIC SAFETY

***Notice** is hereby given in accordance with G.S. 150B-21.3A(c)(2)g that the Public Safety - State Bureau of Investigation intends to readopt with substantive changes the rules cited as 14B NCAC 18A .0102, .0103, .0402; 18B .0104, .0203, .0301-.0303, .0401, .0403, .0405, .0406, .0409, .0603, and .0701.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** *https://www.ncsbi.gov/Divisions/Legal/Administrative-Rules.aspx*

**Proposed Effective Date:** *December 1, 2026*

**Instructions on How to Demand a Public Hearing**: *(must be requested in writing within 15 days of notice)*: *To demand a public hearing, please do so using the following email address: rulecomment@ncsbi.gov*

**Reason for Proposed Action:** *The Division of Criminal Information Network (DCIN) with the North Carolina State Bureau of Investigation is tasked with accessing North Carolina criminal history data, obtaining criminal records of certain individuals, and obtaining automobile registrations and driver's licenses among other specified tasks. While performing these tasks as well as operating within the scope of any other authority given to them, DCIN must follow the protocols contained in the Federal Bureau of Investigation's Criminal Justice Information Services (CJIS) Security Policy. Because that policy is changed frequently, the purpose of these proposed rules is to conform with some of the provisions of the CJIS Security Policy, as well as to make any other grammatical and technical changes to the rules.*

**Comments may be submitted to:** *William Brewer, 3320 Garner Rd., Raleigh, NC 27610; email rulecomment@ncsbi.gov*

**Comment period ends:** *October 16, 2026*

**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 18 - DIVISION OF CRIMINAL INFORMATION

### SUBCHAPTER 18A – ORGANIZATIONAL FUNCTIONS AND DEFINITIONS

## SECTION .0100 – GENERAL PROVISIONS

**14B NCAC 18A .0102 DEFINITIONS**

As used in this Chapter:

(1) "ACIIS" means Canada's Automated Criminal Intelligence and Information System.

(2) "Administration of criminal justice" means the:

(a) detection of accused persons or criminal offenders;

(b) apprehension of accused persons or criminal offenders;

(c) detention of accused persons or criminal offenders;

(d) pretrial release of accused persons or criminal offenders;

(e) post-trial release of accused persons or criminal offenders;

(f) prosecution of accused persons or criminal offenders;

(g) adjudication of accused persons or criminal offenders;

(h) correctional supervision of accused persons or criminal offenders;

(i) rehabilitation of accused persons or criminal offenders;

(j) collection of criminal history record information;

(k) storage of criminal history record information;

(l) dissemination of criminal history record information;

(m) screening of persons for the purpose of criminal justice employment; or

(n) administration of crime prevention programs to the extent access to criminal history record information is limited to law enforcement agencies for law enforcement programs (e.g. record checks of individuals who participate in Neighborhood Watch or safe house programs) and the result of such checks will not be disseminated outside the law enforcement agency.

(3) "Advanced authentication" means an alternative method of verifying the identity of a computer system user. Examples include software tokens, hardware tokens, and biometric systems. These alternative methods are used in conjunction with traditional methods of verifying identity such as ~~user names~~ usernames and passwords.

(4) "AOC" means the North Carolina Administrative Office of the Courts.

(5) "Authorized recipient" means any person or organization who is authorized to receive state and national criminal justice information by virtue of being:

(a) a member of a law enforcement/criminal justice agency approved pursuant to Rule .0201 of this Subchapter; or

(b) a non-criminal justice agency authorized pursuant to local ordinance or a state or federal law.

(6) "CCH" means computerized criminal history record information. CCH can be obtained through ~~DCIN or through N-DEx.~~ DCIN.

(7) "Certification" means documentation provided by CIIS showing that a person has been trained in the abilities of DCIN ~~devices,~~ devices and has knowledge for accessing those programs that are developed and administered by CIIS for local law enforcement and criminal justice agencies.

(8) "CHRI" means criminal history record information. CHRI is information collected by and maintained in the files of criminal justice agencies concerning individuals, consisting of identifiable descriptions, notations of arrest, detentions, indictments or other formal criminal charges. This includes any disposition, sentencing, correctional supervision, and release information.

(9) "CIIS" means Criminal Information and Identification Section. CIIS is a section of ~~DCI~~ the SBI that manages all CJIS programs within North Carolina, including DCIN.

(10) "CJI" means criminal justice information. CJI is all of the FBI CJIS provided data necessary for law enforcement agencies to perform their mission and enforce laws, including biometric information, identity history person, organization, property, and case or incident history data. In addition, CJI refers to FBI CJIS provided data necessary for civil agencies to perform their mission including data used to make hiring decisions.

(11) "CJIS" means Criminal Justice Information Services. CJIS is the FBI division responsible for the collection, warehousing, and dissemination of relevant criminal justice information to the FBI and law enforcement, criminal justice, civilian, academic, employment, and licensing agencies.

(12) "CJIS Security Policy" means a document published by the FBI CJIS Information Security Officer that provides criminal justice and non-criminal justice agencies with a set of minimum security requirements for the access to FBI CJIS systems to protect and safeguard criminal justice information whether in transit or at rest.

(13) "Class B misdemeanor" ~~includes~~ means either of the following:

(a) any act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of more than six months but not more than two years. ~~Specifically excluded~~ Excluded from this are motor vehicle or traffic offenses designated as being misdemeanors under the laws of jurisdictions other than the State of North Carolina with the following exceptions:

(i) either first or subsequent offenses of driving while impaired if the maximum allowable punishment is for a term of more than six months but not more than two ~~years, and~~ years; and

(ii) driving while license is permanently revoked or permanently suspended.

(b) "Class B Misdemeanor" shall also include acts committed or omitted in North Carolina prior to October 1, 1994 in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of this state for which the maximum punishment allowable for the designated offense included imprisonment for a term of more than six months but not more than two years.

(14) "Convicted" or "conviction" means, for purposes of DCIN user certification, the entry of:

(a) a plea of guilty;

(b) a verdict or finding of guilt by a jury, judge, magistrate, or other adjudicating body, tribunal, or official, either civilian or military; or

(c) a plea of no contest, nolo contendere, or the equivalent.

(15) "Criminal justice agency" means the courts, a government agency, or any subunit thereof which performs the administration of criminal justice pursuant to statute or executive ~~order~~ order, and which allocates more than 50 percent of its annual budget to the administration of criminal justice. State and federal Inspector General Offices are included in this definition.

(16) "Criminal justice board" means a board composed of heads of law enforcement or criminal justice agencies that have management control over a communications center.

(17) "CSA" means CJIS System Agency. The CSA is a state, federal, international, tribal, or territorial criminal justice agency on the CJIS network providing statewide (or equivalent) service to its criminal justice agency users with respect to the CJIS data from various systems managed by the FBI. In North Carolina, the CSA is the SBI.

(18) "CSO" means CJIS System Officer. The CSO an individual located within the CSA responsible for the administration of the CJIS network on behalf of the CSA. In North Carolina, the CSO is employed by the SBI.

~~(19) "DCI" means the Division of Criminal Information. DCI is the agency established by the Attorney General of North Carolina in accordance with Article 3 of Chapter 114 of the North Carolina General Statutes. The North Carolina State Bureau of Investigation's Criminal Information and Identification Section is a part of DCI.~~

~~(20)~~(19) "DCIN" means the Division of Criminal Information Network. DCIN is the computer network used to collect, maintain, correlate, and disseminate information collected by CIIS under Article 3 of Chapter 114 of the North Carolina General Statutes. DCIN also provides access to information collected by other federal, state, and local entities necessary for the administration of criminal justice.

~~(21)~~(20) "DCIN user" means a person who has been certified through the DCIN certification process.

~~(22)~~(21) "Device" means an electronic instrument used by a DCIN user to accomplish message switching, DMV inquiries, functional messages, or DCIN, NCIC, Nlets on-line file transactions.

~~(23)~~(22) "Direct access" means having the authority to:

(a) access systems managed by the FBI CJIS Division, whether by manual or automated means, not requiring the assistance of, or intervention by, any other party; or

(b) query or update national databases maintained by the FBI CJIS Division including national queries and updates automatically or manually generated by the CSA.

~~(24)~~(23) "Disposition" means information on any action that results in termination or indeterminate suspension of the prosecution of a criminal charge.

~~(25)~~(24) "Dissemination" means any transfer of information, whether orally, in writing, or by electronic means.

~~(26)~~(25) "DMV" means the North Carolina Division of Motor Vehicles.

~~(27)~~(26) "DMV information" includes vehicle description and registration information, and information maintained on individuals to include name, address, date of birth, license number, license issuance and expiration, control number issuance, and moving vehicle violation or convictions.

~~(28)~~(27) "DAC" ~~"DOC"~~ means North Carolina Department of Adult Correction.

~~(29)~~(28) "End user interface" means software that is utilized by a certified user to connect to DCIN and perform message or file transactions.

~~(30)~~(29) "Expunge" means to remove criminal history record information from the DCIN and FBI computerized criminal history and identification files pursuant to state statute.

~~(31)~~(30) "FBI" means the Federal Bureau of Investigation.

~~(32)~~(31) "FFL" means federal firearm licensee. ~~A~~ An FFL is any individual, corporation, company, association, firm, partnership, society, or joint stock company that has been licensed by the federal government to engage in the business of importing, manufacturing, or dealing in firearms or ammunition in accordance with 18 USC § 923.

~~(33)~~(32) "III" means Interstate Identification Index. III is the FBI CJIS service that manages automated submission and requests for criminal history record information.

~~(34)~~(33) "Inappropriate message" means any message that is not related to the administration of criminal justice.

~~(35)~~(34) "National Incident Based Reporting System" or "NIBRS" ~~"Incident based reporting" or "I-Base"~~ is a system used to collect criminal offense and arrest information for each criminal offense reported.

~~(36)~~(35) "INTERPOL" means International Criminal Police Organization.

~~(37)~~(36) "N-DEx" means Law Enforcement National Data Exchange. N-DEx is the repository of criminal justice records, available in a secure online environment, managed by the FBI Criminal Justice Information Services (CJIS) Division. N-DEx is available to criminal justice agencies throughout North Carolina, and its use is governed by federal regulations.

~~(38)~~(37) "NCIC" means National Crime Information Center. NCIC is an information system maintained by the FBI that stores criminal justice information which can be queried by federal, state, and local law enforcement and other criminal justice agencies.

~~(39)~~(38) "NFF" means the National Fingerprint File. NFF is an FBI maintained enhancement to the Interstate Identification Index whereby only a single fingerprint card is submitted per state to the FBI for each offender at the national level.

~~(40)~~(39) "Need-to-know" means for purposes of the administration of criminal justice, for purposes of criminal justice agency employment, or for some other purpose permitted by local ordinance, state statute, or federal regulation.

~~(41)~~(40) "NICS" means the National Instant Criminal Background Check System. NICS is the system mandated by the Brady Handgun Violence Protection Act of 1993 that is used by FFLs to instantly determine via telephone or other electronic means whether the transfer of a firearm would be in violation of Section 922(g) or (n) of Title 18, United States Code, or state law, by evaluating the prospective buyer's criminal history. In North Carolina, NICS is used by sheriff's offices throughout the state to assist in determining an individual's eligibility for ~~either a permit to purchase a firearm or~~ a concealed handgun permit. NICS can also be used by North Carolina law enforcement/criminal justice agencies for the purpose of returning firearms.

~~(42)~~(41) "Nlets" means the International Justice and Public Safety Network.

~~(43)~~(42) "Non-criminal justice agency" or "NCJA" means any agency or sub-unit thereof whose charter does not include the responsibility to administer criminal justice, but may need to process criminal justice information. A NCJA may be public or private. An example is ~~a 911 communications center that performs dispatching functions for a criminal justice agency (government),~~ a bank needing access to criminal justice information for hiring purposes (private), or a county school board that uses criminal history record information to assist in employee hiring decisions (public).

~~(44)~~(43) "Non-criminal justice information" means any information or message that does not directly pertain to the necessary operation of a law enforcement or criminal justice agency. This includes accessing any files or sending any DCIN messages of a personal nature. ~~Examples of messages that are non-criminal justice include:~~

~~(a)~~ ~~accessing any DMV file for:~~

~~(i)~~ ~~political purposes;~~

~~(ii)~~ ~~vehicle repossession purposes; and~~

~~(iii)~~ ~~to obtain information on an estranged spouse or romantic interest;~~

~~(b)~~ ~~a message to confirm meal plans;~~

~~(c)~~ ~~a message to have a conversation; and~~

~~(d)~~ ~~a message to send well wishes during a holiday or birthday.~~

~~(45)~~(44) "Official record holder" means the agency that maintains the master documentation and all investigative supplements of a restricted file entry or unrestricted file entry.

~~(46)~~(45) "Ordinance" means a rule or law promulgated by a governmental authority including one adopted and enforced by a municipality or other local authority.

~~(47)~~(46) "ORI" means Originating Agency Identifier, which is a unique alpha numeric identifier assigned by NCIC to each authorized criminal justice and non-criminal justice agency, identifying that agency in all computer transactions.

~~(48)~~(47) "Private contractor" means any non-governmental non-criminal justice agency that has contracted with a government agency to provide services necessary to the administration of criminal justice.

~~(49)~~(48) "Re-certification" means renewal of a user's initial DCIN certification every two years.

~~(50)~~(49) "Restricted files" means those files maintained by NCIC that are protected as criminal history record information (CHRI), which is consistent with Title 28, Part 20 of the United States Code of Federal Regulations (CFR). Restricted files consist of:

(a) Gang Files;
(b) Known or Appropriately Suspected Terrorist (KST) Files;
(c) Supervised Release File;
(d) Immigration Violator Files;
(e) National Sex Offender Registry Files;
(f) Historical Protection Order Files of the NCIC;
(g) Identity Theft Files;
~~(i)~~(h) Protective Interest File; and
~~(j)~~(i) Person With Information (PWI) data within the Missing Person File.

~~(51)~~(50) "Right-to-review" means the right of an individual to inspect his or her own criminal history record information.

~~(52)~~(51) "SAFIS" means Statewide Automated Fingerprint Identification System. SAFIS is a computer-based system for reading, encoding, matching, storing, and retrieving fingerprint minutiae and images.

~~(53)~~(52) "SBI" means the North Carolina State Bureau of Investigation.

~~(54)~~(53) "Secondary dissemination" means the transfer of CCH/CHRI information to anyone legally entitled to receive such information that is outside the initial user agency.

~~(55)~~(54) "SEND message" means messages that may be used by DCIN certified users to exchange official information of an administrative nature between in-state law enforcement/criminal justice agencies and out-of-state agencies by means of Nlets.

~~(56)~~(55) "Servicing agreement" means an agreement between a terminal agency and ~~a non-terminal agency to provide DCIN terminal services.~~ any authorized criminal justice agency to provide DCIN services.

~~(57)~~(56) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession of the United States.

~~(58)~~(57) "Statute" means a law enacted by a state's legislative branch of government.

~~(59)~~(58) "TAC" means Terminal Agency Coordinator. A TAC is an individual who serves as a point of contact at a local agency in matters relating to DCIN or CJIS information systems. A TAC administers CJIS and CIIS system programs within the local agency and oversees the agency's compliance with both CIIS rules and CJIS system policies.

~~(60)~~(59) "Terminal agency" means any agency that has a device under its management and control that is capable of communicating with DCIN.

~~(61)~~(60) "Training module" means a manual containing guidelines for users on the operation of DCIN and providing explanations as to what information may be accessed through DCIN.

~~(62)~~(61) "UCR" means the Uniform Crime Reporting program ~~whose purpose it is to collect a summary of criminal offense and arrest information.~~ which collects, correlates, and maintains information including crimes committed and arrests made.

~~(63)~~(62) "Unrestricted files" means those files that are maintained by NCIC that are not considered "Restricted Files."

~~(64)~~(63) "User agreement" means an agreement between a terminal agency and CIIS whereby the agency agrees to comply with all CIIS and CJIS rules.

~~(65)~~(64) "User identifier" means a unique identifier assigned by an agency's Terminal Agency Coordinator to all certified DCIN users that is used for gaining access to DCIN and for identifying certified users.

*Authority ~~G.S. 114-10; 114-10.1;~~ G.S. 143B-1208.16; 143B-1208.19.*

**14B NCAC 18A .0103 FUNCTION OF DCIN**

Users of DCIN may:

(1) transmit or receive any criminal justice related message to or from any device connected to DCIN;
~~(2)~~ ~~enter into or retrieve information from North Carolina's:~~
~~(a)~~ ~~recovered vehicle file;~~
~~(b)~~ ~~sex offender registry; and~~
~~(c)~~ ~~concealed handgun permit file~~
~~(3)~~(2) enter into or retrieve information from DCIN user certification and class enrollment files;
~~(4)~~(3) enter into or retrieve information from NCIC's restricted and unrestricted files;

~~(5)~~(4) access NCIC's criminal history data;
~~(6)~~(5) obtain, on a need-to-know basis, the criminal record of an individual by inquiring into the state Computerized Criminal History (CCH) file maintained by CIIS, or CCH files maintained by other states and the Federal Bureau of Investigation (FBI) through III;
~~(7)~~(6) communicate with devices in other states through Nlets with the capability to exchange automobile registration information, driver's license information, criminal history record information, corrections information, and other law enforcement related information;
~~(8)~~(7) obtain information on North Carolina automobile registration, driver's license information and driver's history by accessing DMV maintained files;
~~(9)~~(8) obtain registration information on all North Carolina registered boats, and inquire about aircraft registration and aircraft tracking;
~~(10)~~(9) obtain information on those individuals under the custody or supervision of ~~DOC;~~ DAC; and
~~(11)~~(10) access, enter, and modify information contained within the National Instant Criminal Background Check System (NICS).

*Authority ~~G.S. 114-10; 114-10.1;~~ G.S. 143B-1208.16; 143B-1208.19.*

**SECTION .0400 – STANDARDS AND CERITIFICATION AS A DCIN USER**

**14B NCAC 18A .0402 CERTIFICATION AND RECERTIFICATION OF DCIN USERS**

(a) Personnel who are assigned the duty of using a DCIN device shall be certified within 120 days from employment or assignment to user duties. Certification shall be awarded based on achieving a test score of 80 percent or greater in each training module for which the user is seeking certification.

(b) All DCIN users shall be certified by ~~DCI.~~ CIIS. The initial certification of a user shall be awarded upon attending the "DCIN/NCIC General Inquiries" module class, and achieving a passing score on the accompanying test offered through the DCIN end user interface. A student may also take one or more additional module training classes offered by ~~DCI,~~ CIIS which teach the specific functions of DCIN applicable to their job duties. A user may perform only those functions in which they have been trained and certified.

(c) Tests for modules in which a student is seeking initial certification shall be taken within 15 days of the end of the class, and may be open-book. If a student fails the initial certification test they shall have until the 15th day to pass the ~~test, but shall wait at least 24 hours between the failed test and the next attempt.~~ test. A student shall have a maximum of three attempts to pass the test. If the student fails to achieve a passing score after the third attempt the user shall re-take the module training class.

(d) Recertification requires achieving a test score of 80 percent or higher on the test corresponding to the module for which the user is seeking recertification, and may be accomplished by taking the test through the DCIN end user interface. Recertification is required every two years for each module in which the user is certified and may be obtained any time 30 days prior to or ~~90~~ 365 days after expiration.

(e) Tests for modules in which the user is seeking recertification shall be taken within 30 days prior to expiration or within ~~90~~ 365 days after expiration, and may be open-book. If the user fails the recertification test the user shall have up to the ~~90th~~ 365th day after expiration to pass the ~~test, but shall wait at least 24 hours between the failed test and the next attempt.~~ test. A user shall have a maximum of three attempts to pass the test. If the user fails to achieve a passing score after the third attempt the user shall re-take the training module class. If a user fails to recertify in any module after the ~~90th~~ 365th day the user must attend the module training class for the module in which the user seeks recertification and achieve a passing score on the test.

(f) Personnel newly hired or assigned to duties of a terminal user shall receive an ~~indoctrination~~ orientation on the basic functions and terminology of DCIN by their own agency prior to attending an initial certification class. Such personnel may operate a DCIN device during the ~~indoctrination~~ orientation if they are directly supervised by a certified user and are within the 120-day training period.

(g) Any user whose Module 1 certification has expired may recertify up to ~~90~~ 365 days after the user's expiration. The individual shall not use any device connected to DCIN during the time between expiration and passing the recertification test(s). Any user whose Module 1 certification has expired more than ~~90~~ 365 days shall attend and successfully complete the "DCIN/NCIC General Inquiries" class.

(h) When a DCIN certified user leaves the employment of an agency, the TAC shall disable the user account in DCIN and notify ~~DCI~~ CIIS within 24 ~~hours, and disable the user's user identifier.~~ hours. ~~DCI~~ CIIS shall move user's user identifier to an inactive status until such time the user is employed by another agency.

*Authority ~~G.S. 114-10; 114-10.1;~~ G.S. 143B-1208.16; 143B-1208.19.*

**SUBCHAPTER 18B – SECURITY AND PRIVACY**

**SECTION .0100 – SECURITY AT DCIN DEVICE SITES**

**14B NCAC 18B .0104 SECURITY AWARENESS TRAINING**

(a) Security awareness training is required ~~within six months of initial assignment~~ prior to DCIN and CJIS systems access and every ~~two years~~ year thereafter for any personnel who have access to DCIN devices or any network that stores, processes, or transmits criminal justice information.

(b) This Rule also applies to agency personnel who require the use of DCIN criminal justice information but are not actively DCIN-certified and to any individual described in Rule .0103 of this Subchapter who is responsible for the configuration or support of devices or computer networks that store, process, or transmit criminal justice information.

(c) Security awareness training shall be facilitated by CIIS.

(d) Records of security awareness training shall be documented, kept current, and maintained by the criminal justice agency.

*Authority ~~G.S. 114-10; 114-10.1;~~ G.S. 143B-1208.16; 143B-1208.19.*

**SECTION .0200 – RESTRICTED AND RESTRICTED FILES**

**14B NCAC 18B .0203 VALIDATIONS**

(a) Law enforcement and criminal justice agencies shall validate all record ~~entries, with the exception of articles,~~ entries made into the NCIC restricted and unrestricted files.

(b) Validation shall be accomplished by reviewing the original entry and current supporting documents. Stolen vehicle, stolen boat, wanted person, missing person, protection order, and sex offender file entries require consultation with any appropriate complainant, victim, prosecutor, court, motor vehicle registry files or other appropriate source or individual in addition to the review of the original file entry and supporting documents.

(c) Validations shall be conducted through the CIIS automated method.

(d) Any records containing inaccurate data shall be modified and records which are no longer current or cannot be substantiated by a source document shall be removed from the NCIC.

(e) Any agency that does not properly validate its records shall have their records purged for that month by NCIC. An agency shall be notified of the record purge through an NCIC-generated message sent to the agency's main DCIN device. An agency may re-enter the cancelled records once the records have been validated.

*Authority ~~G.S. 114-10; 114-10.1;~~ G.S. 143B-1208.16; 143B-1208.19.*

**SECTION .0300 – SUBMISSION OF DATA FOR CRIMINAL HISTORY RECORDS**

**14B NCAC 18B .0301 ARREST FINGERPRINT CARD**

(a) Fingerprint cards submitted in accordance with G.S. 15A-502 must contain the following information on the arrestee in order to be processed by the SBI or FBI:

(1) ORI number and address of arresting agency;
(2) complete name;
(3) date of birth;
(4) race;
(5) sex;
(6) date of arrest;
(7) criminal charges; and
(8) a set of fingerprint impressions and palm ~~prints if the agency is capable of capturing palm prints.~~ prints.

(b) Any fingerprint cards physically received by the SBI that do not meet these requirements shall be returned to the submitting agency to be corrected and resubmitted. Any fingerprint cards that have been submitted electronically to the SBI that do not meet these standards shall not be accepted. The submitting agency shall receive electronic notification that the prints did not meet minimum standards through the agency's LiveScan device.

(c) The arrest and fingerprint information contained on the arrest fingerprint card shall be added to the North Carolina's CCH files, and electronically forwarded to the FBI's Interstate Identification Index (III) for processing.

(d) Criminal fingerprint cards shall be submitted in the following ways:

(1) electronically through the agency's LiveScan device to North Carolina's Statewide Automated Fingerprint Identification System (SAFIS); or
(2) mail addressed to:

North Carolina State Bureau of Investigation
Criminal Information and Identification Section
3320 Garner Road
Raleigh, North Carolina ~~27626~~ 27610
Attention: AFIS & Technical Search Unit

*Authority G.S. 15A-502; 15A-1383.*

**14B NCAC 18B .0302 FINAL DISPOSITION INFORMATION**

(a) Final disposition information shall be submitted electronically to ~~DCI~~ DCIN by the Administrative Office of the Courts (AOC).

(b) The final disposition information shall be added to North Carolina's CCH files, and shall be electronically transmitted to the FBI's Interstate Identification Index (III).

~~(c) Any final disposition rejected by DCI shall be returned to the Clerk of Court in the county of the arresting agency for correction and resubmission.~~

*Authority G.S. 15A-1381; 15A-1382; 15A-1383; ~~114-10; 114-10.1;~~ 143B-1208.16; 143B-1208.19.*

**14B NCAC 18B .0303 INCARCERATION INFORMATION**

(a) Incarceration information shall be electronically submitted to ~~DCI~~ DCIN by ~~the North Carolina Department of Public Safety (DPS)~~ DAC on all subjects admitted to prison.

(b) The incarceration information shall be added to the North Carolina CCH files, and shall be electronically transmitted to the FBI's Interstate Identification Index (III).

*Authority G.S. 15A-502; 15A-1383; ~~114-10; 114-10.1;~~ 143B-1208.16; 143B-1208.19.*

**SECTION .0400 – USE AND ACCESS REQUIREMENTS FOR CRIMINAL HISTORY RECORD INFORMATION, NICS INFORMATION, AND N-DEX INFORMATION**

**14B NCAC 18B .0401 DISSEMINATION AND LOGGING OF CHRI AND NICS RECORDS**

(a) Criminal history record information (CHRI) obtained from or through DCIN, NCIC, NICS, N-DEx, or Nlets shall not be disseminated to anyone outside of those agencies eligible under 14B NCAC 18A .0201(a) except as provided by Rules .0403, .0405, .0406, and .0409 of this Section. Any agency assigned a limited access ORI shall not obtain CHRI. Any agency requesting CHRI that has not received an ORI pursuant to 14B NCAC 18A

.0201(a) shall be denied access and referred to the North Carolina CSO.
(b) CHRI is available to eligible agency personnel only on a "need-to-know" basis as defined in ~~12 NCAC 04H .0104.~~ 14B NCAC 18A .0102(39).
(c) The use or dissemination of CHRI obtained through ~~DCIN or N-DEx~~ DCIN, NCIC, NICS, N-Dex, or Nlets for unauthorized purposes is a violation of this Rule.
(d) CIIS shall maintain an automated log of CCH/CHRI/National Instant Criminal Background Check System (NICS) inquiries for a period of not less than one year from the date of inquiry. The automated log shall contain the following information as supplied by the user on the inquiry screen and shall be made available on-line to the inquiring ~~agency;~~ agency:

(1) date of inquiry;
(2) name of record subject;
(3) state identification number (SID) or FBI number of the record subject;
(4) message key used to obtain information;
(5) purpose code;
(6) user's initials;
(7) (Attention field) name of person and agency requesting information who is the initial user of the record;
(8) (Attention 2 field) name of person and agency requesting information who is outside of the initial user agency. If there is not a second individual receiving the information, information indicating why the information is requested may be placed in this field; and
(9) if applicable, NICS Transaction Number (NTN) for NICS logs only.

(e) Criminal justice agencies making secondary disseminations of CCH, CHRI, N-DEx, or NICS information obtained through DCIN shall maintain a log of the dissemination in a case. This log must identify the name of the recipient and their agency.
(f) Each criminal justice agency obtaining CHRI through a DCIN device shall conduct an audit of their automated CCH log as provided by DCIN once every month for the previous month. The audit shall take place within 15 business days of the end of the month being reviewed. This audit shall include a review for unauthorized inquiries and disseminations, improper use of agency ORI's, agency names, and purpose codes. These logs must be maintained on file for one year from the date of the inquiry, and may be maintained electronically by the criminal justice agency. Any violation of CIIS rules must be reported by an agency representative to CIIS within 20 business days of the end of the month being reviewed. On those months that do not contain 20 business days, any violations of CIIS rules must be reported by an agency representative to CIIS by the first business day of the following month, at the latest. If an agency does not have a device connected to DCIN that can receive CHRI, this audit is not required.
(g) Each criminal justice agency obtaining information from NICS or N-DEx shall conduct the same monthly audit as those for CHRI logs. The audit shall take place within 15 business days of the end of the month being reviewed. This audit shall include a review for unauthorized inquiries or disseminations and improper use of purpose codes. These logs must be maintained on file for one year from the date of inquiry, and may be maintained electronically by the criminal justice agency. Any violation of CIIS rules must be reported by an agency representative to CIIS within 20 business days of the end of the month being reviewed. On those months that do not contain 20 business days, any violations of CIIS rules must be reported by an agency representative to CIIS by the first business day of the following month, at the latest.
(h) DCIN automated CCH logs, automated NICS logs, and any secondary dissemination logs shall be available for audit or inspection by the CSO or his designee as provided in 14B NCAC 18B .0801.
(i) Out of state agencies requesting a statewide criminal record check shall utilize NCIC.

*Authority ~~G.S. 114-10; 114-10.1;~~ G.S. 143B-1208.16; 143B-1208.19.*

**14B NCAC 18B .0403 USE OF CHRI FOR CRIMINAL JUSTICE EMPLOYMENT**
(a) Agencies must submit an applicant fingerprint card on each individual seeking criminal justice employment, and the card must contain the following information in order to be processed by ~~DCI~~ CIIS and FBI:

(1) complete name;
(2) date of birth;
(3) race;
(4) sex;
(5) position applied for;
(6) hiring agency; and
(7) a set of legible fingerprint impressions.

Any fingerprint cards that do not meet these requirements shall be returned by ~~DCI~~ CIIS to the submitting agency for correction and resubmitted.
~~(b) For sworn and telecommunicator positions the response and the fingerprint card shall be forwarded to the appropriate training and standards agency. For non-sworn positions, the response shall be returned to the submitting agency. DCI shall not maintain the cards or responses.~~
~~(c)~~(b) Agencies may submit the information in Paragraph (a) of this Rule in an electronic method to CIIS for processing. Any fingerprints and associated information not meeting the requirements in Paragraph (a) of this Rule shall not be accepted. An electronic notification shall be sent by ~~DCI~~ CIIS to the submitting agency indicating the submitted information did not meet minimum requirements.

*Authority ~~G.S. 114-10; 114-10.1; 114-16; 114-19;~~ G.S. 114-60; 143B-906; 143B-1208.16; 143B-1208.19.*

**14B NCAC 18B .0405 CCH USE IN LICENSING AND NON-CRIMINAL JUSTICE EMPLOYMENT PURPOSES**
(a) Criminal justice agencies authorized under ~~12 NCAC 04H .0201~~ 14B NCAC 18A .0201 which issue licenses or approve non-criminal justice employment and want to use computerized criminal history information maintained by ~~DCI~~ CIIS for licensing, permit, and non-criminal justice employment purposes shall submit to CIIS a written request listing the types of licenses, permits, and employment for which they desire to use

computerized criminal history information. A copy of the local ordinance or a reference to the North Carolina General Statute giving authority to issue a particular permit or license must be included in the written request.
(b) Authorization to use computerized criminal history information for licensing, permit, or employment purposes may be given only after ~~the DCI and the North Carolina Attorney General's Office have~~ the FBI has evaluated and granted authorization based upon the authority of the North Carolina General Statutes or local ordinance pertaining to the issuance of that particular license or permit for employment.
(c) Once authorization by the FBI has been given, ~~DCI~~ CIIS shall provide the agency an access agreement, which outlines the guidelines for information usage. The access agreement shall also include information on billing mechanisms. ~~DCI~~ CIIS shall bill the agency fourteen dollars ($14.00) for a check of North Carolina computerized criminal history files, and thirty-eight dollars ($38.00) for a search of both the North Carolina computerized criminal history files and a search of the FBI's Interstate Identification Index (III) files. ~~DCI~~ The SBI shall send an invoice to the requesting agency to collect these fees.
(d) The access agreement shall be signed by the requesting agency's head, and returned to ~~DCI.~~ CIIS.
(e) The agency's terminal, if applicable, shall receive the capability to use the purpose code "E" in the purpose field of the North Carolina CCH inquiry screens for employment or licensing once the agency head has signed the access agreement and returned it to ~~DCI.~~ CIIS. Once an agency has received this capability, it shall use the purpose code "E", the proper two character code, and the name of the person receiving the record. A log of all primary and any secondary dissemination must also be kept for one year on all responses received from this type of inquiry.
(f) Criminal justice agencies may also gain access by submission of non-criminal justice applicant fingerprint cards. Approval must be obtained pursuant to the procedure in Paragraph (a) of this Rule. One applicant fingerprint card must be submitted on each individual. The fingerprint card must contain the following information on the applicant in order to be processed by ~~DCI~~ CIIS and the FBI:

(1) complete name;
(2) date of birth;
(3) race;
(4) sex;
(5) reason fingerprinted to include the N.C.G.S. or local ordinance number;
(6) position applied for;
(7) the licensing or employing agency; and
(8) a set of legible fingerprint impressions.

~~DCI~~ CIIS shall return the letter of fulfillment to the submitting agency indicating the existence or absence of a criminal record.
(g) Requests from non-criminal justice agencies or individuals to use criminal history information maintained by ~~DCI~~ CIIS for licensing and employment purposes shall be treated as a fee for service request pursuant to G.S. 114-19.1 or any other applicable statute. The process for approval for non-criminal justice agencies or individuals shall be the same process as in Paragraph (a) of this Rule.
(h) Upon being approved, the requesting agency shall submit its requests to the North Carolina State Bureau of Investigation, Criminal Information and Identification Section, ~~Special Processing Unit,~~ CIIS Applicant Unit, 3320 Garner Road, Raleigh, North Carolina ~~27626.~~ 27610. Each request shall include a fee in the form of a certified cashier's check, money order, or direct billing of ten dollars ($10.00) for a name-only check, fourteen dollars ($14.00) for a state-only ~~fingerprint based~~ fingerprint-based check, or thirty-eight dollars ($38.00) for a state and national ~~fingerprint based~~ fingerprint-based check (if applicable).
(i) Criminal history record information accessible pursuant to this Rule shall be North Carolina criminal history record information, and FBI III information if permitted by statute.

*Authority ~~G.S. 114-10; 114-10.1; 114-19.1;~~ G.S. 143B-930; 143B-1208.16; 143B-1208.19.*

**14B NCAC 18B .0406 RESTRICTIVE USE OF CCH FOR EMPLOYMENT PURPOSES**
(a) Use of computerized criminal history information maintained by the CIIS for licensing permits or non-criminal justice employment purposes shall be authorized only for those criminal justice and non-criminal justice agencies who have complied with Rule .0405 of this Section.
(b) The following requirements and restrictions are applicable to all agencies who have received approval to use computerized criminal history information for licensing, permits, or non-criminal justice employment purposes. Each such agency is responsible for their implementation:

(1) computerized criminal history information obtained shall not be used or disseminated for any other purpose;
(2) computerized criminal history information obtained shall not be released to or reviewed by anyone other than the agencies authorized by CIIS;
(3) the only data in the computerized criminal history files which may be used in an agency's determination of issuing or denying a license, permit or employment are those crimes stipulated in the referenced ordinance or statutory authority as grounds for disqualification. All criminal history arrest information held by CIIS shall be released regardless of disposition status. Each agency is responsible for reviewing each statutory authority and knowing what data may be used and what data shall not be used for grounds in denying or issuing a particular license or permit for employment;
(4) prior to denial of a license, permit, or employment due to data contained in a computerized criminal history ~~record,~~ record based upon a name check only, a fingerprint card of the applicant shall be submitted to CIIS for verification that the record belongs to the applicant;

(5) if the information in the record is used to disqualify an applicant, the official making the determination of suitability for licensing or employment shall provide the applicant the opportunity to correct, complete, or challenge the accuracy of the information contained in the record. The applicant must be afforded a reasonable time to correct, complete or to decline to correct or complete the information. An applicant shall not be presumed to be guilty of any charge/arrest for which there is no final disposition stated on the record or otherwise determined. Applicants wishing to correct, complete or otherwise challenge a record must avail themselves of the procedure set forth in Rule .0404(c) of this Section.

(c) A "no-record" response on a computerized criminal history inquiry based upon a name check only does not necessarily mean that the individual does not have a record. If the requesting agency desires a more complete check on an applicant, a fingerprint card of the applicant shall be submitted to ~~DCI.~~ CIIS.

*Authority ~~G.S. 114-10; 114-10.1; 114-19.1;~~ G.S. 143B-930; 143B-1208.16; 143B-1208.19.*

**14B NCAC 18B .0409 ACCESS TO CHRI BY ATTORNEYS**

(a) An attorney must have entered ~~in to~~ into a proceeding in accordance with G.S. 15A-141 in order to access North Carolina-only CHRI. The attorney may have access to the CHRI of only the defendant he or she is representing. ~~The prosecuting District Attorney must approve the request.~~

(b) If, during a proceeding, an attorney desires CHRI of an individual involved in the proceeding other than the attorney's client, the attorney shall make a motion before the court indicating the desire for the CHRI.

(c) In order to maintain compliance with state and federal requirements an attorney shall disclose the purpose for any request of CHRI.

(d) CIIS shall provide a form to be utilized by any DCIN user when fulfilling a request for CHRI by an attorney. This form shall help ensure compliance with state and federal rules regarding access to and dissemination of CHRI.

(e) The attorney must fill out all applicable fields of the form and return it to the DCIN user to process the request. The attorney shall provide:

(1) the client's name;
(2) docket number for the matter;
(3) prosecutorial district in which the matter is being tried; and
(4) the next date on which the matter is being heard.

(f) The attorney may submit requests for CHRI only within the prosecutorial district of the District Attorney that is prosecuting the defendant(s). If a change of venue has been granted during a proceeding, this Rule still applies, and the attorney must still seek the CHRI from the prosecutorial district within which the proceeding originated.

(g) Records of requests and dissemination to attorneys must be kept by the disseminating agency for a period of one year.

(h) Requests for North Carolina-only CHRI ~~may~~ must be notarized ~~in lieu of approval from the District Attorney.~~ and the agency must receive the original signature(s) on the form.

*Authority G.S. ~~114-10; 114-10.1;~~ 15A-141; 143B-1208.16; 143B-1208.19.*

**SECTION .0600 – STATEWIDE AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM**

**14B NCAC 18B .0603 FINGERPRINTING OF CONVICTED SEX OFFENDERS**

(a) Fingerprints submitted in accordance with G.S. 14-208.7 must contain the following information on the convicted sex offender in order to be processed by the SBI:

(1) ORI number;
(2) complete name;
(3) date of birth;
(4) race;
(5) sex;
(6) sex offender registration number (SRN); and
(8) a set of fingerprint impressions and palm ~~prints if the agency is capable of capturing palm prints.~~ prints.

Submissions shall be made through the registering agency's ~~LiveScan~~ Live Scan device.

(b) Fingerprints submitted to CIIS that do not contain all of the items in Paragraph (a) of this Rule shall not be accepted.

(c) The submitted fingerprint information shall be added to the North Carolina Sex Offender Registry and to SAFIS.

*Authority ~~G.S. 114-10;~~ G.S. 143B-1208.16; 143B-1208.19.*

**SECTION .0700 – DIVISION OF MOTOR VEHICLE INFORMATION**

**14B NCAC 18B .0701 DISSEMINATION OF DIVISION OF MOTOR VEHCILES INFORMATION**

(a) DMV information obtained from or through DCIN shall not be disseminated to anyone outside those agencies eligible under 14B NCAC 18A .0201(a) unless obtained for the following purposes:

(1) in the decision of issuing permits or licenses if statutory authority stipulates the non-issuance or denial of a permit or license to an individual who is a habitual violator of traffic laws or who has committed certain traffic offenses and those licensing purposes have been authorized by ~~CIIS and the Attorney General's Office;~~ CIIS;
(2) by governmental agencies to evaluate prospective or current employees for positions involving the operation of publicly owned vehicles; or
(3) by a defendant's attorney of record in accordance with G.S. 15A-141.

(b) Each agency disseminating driver history information to a non-criminal justice agency for any of the purposes listed in Paragraph (a) of this Rule shall maintain a log of dissemination for one year containing the following information:

(1) date of inquiry for obtaining driver's history;
(2) name of terminal operator;
(3) name of record subject;
(4) driver's license number;
(5) name of individual and agency requesting or receiving information; and
(6) purpose of inquiry.

(c) Driver history information obtained from or through DCIN shall not be released to the individual named in the record. An individual seeking his or her own driver history information shall be instructed to contact DMV.
(d) DMV information obtained for any purpose listed in Paragraph (a) of this Rule shall be used for only that purpose and shall not be redisseminated or released for any other purpose.
(e) Nothing in this Rule shall prevent an attorney from discussing the contents of driver history information with the individual named in the record if the attorney is representing the individual in accordance with G.S. 15A-141.

*Authority ~~G.S. 114-10; 114-10.1;~~ G.S. 143B-1208.16; 143B-1208.19.*

## TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

***Notice** is hereby given in accordance with G.S. 150B-21.3A(c)(2)g that the Environmental Management Commission intends to readopt with substantive changes the rules cited as 15A NCAC 02K .0104, .0105, .0201- .0208, .0214, .0215, .0216, .0219, .0222-.0224, and readopt without substantive changes the rules cited as 15A NCAC 02K .0103, .0209-.0213, .0217, .0220, .0221, .0301, .0302 and .0501-.0504.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** *https://www.deq.nc.gov/about/divisions/water-resources/water-resources-commissions/environmental-management-commission/emc-proposed-rules*

**Proposed Effective Date:** *February 1, 2027*

**Public Hearing:**
**Date:** *September 14, 2026*
**Time:** *5:00 p.m. - 7:30 p.m.*
**Location:** *Kinston-Lenoir Library Auditorium, 510 N. Queen St., Kinston, NC 28501*

**Date:** *September 16, 2026*
**Time:** *5:30 p.m. – 9:00 p.m.*
**Location:** *Catawba County Library – St. Stephens Branch, 3225 Springs Rd NE, Hickory, NC 28601*

**Date:** *September 22, 2026*
**Time:** *5:30 p.m. – 9:00 p.m.*
**Location:** *Ground Floor Hearing Room, DEQ Archdale Building, 512 N. Salisbury Street, Raleigh 27604*

**Reason for Proposed Action:** *G.S. 150B-21.3A requires periodic review and readoption of all the rules used by state agencies on at least a 10-year basis. The N.C. Environmental Management Commission has directed the State Dam Safety Program to implement the administrative process necessary for the review of the rules in Title 15A, Chapter 02 of the North Carolina Administrative Code.*

*The proposed rule changes are designed not only to satisfy the readoption requirement, but also to update references and terminology and to revise requirements in line with current practices and technological advancements. These updates will help ensure the rules remain accurate, relevant, and effective.*

*A notable necessity for change comes from policy that State Dam Safety Program has used since the 1990s to determine what road-volume thresholds and levels of economic-impact should classify a dam as Class A, B, or C. These values are not reflective of current cost projections and traffic-volume due to an increase in inflation and population in the state. The proposed addition of road-volume thresholds and economic-impact tiers provides clearer, more objective and up-to-date criteria for hazard classification to improve consistency and transparency.*

*Another notable necessity for change is the need to expound upon the criteria for submitting an Incremental Damage Analyses (IDA) for dams. Currently, the only reference that an IDA may be used to lessen the spillway design flood of a dam comes from 15A NCAC 02K .0205(e), and does not go into sufficient detail of what analysis is required of an IDA. This is important to clarify because the IDA offers the greatest potential to influence costs since it can prevent unnecessary structural upgrades, such as upsizing spillways, that often represent the most significant capital expense. With the implementation of new, clearer, and more fleshed-out language, this will reinforce the rule's intent to enable risk-based decisions that protect public safety while helping owners avoid undue costs.*

**Comments may be submitted to:** *Jordan Pappas, 1612 Mail Service Center, Raleigh, NC 27699-1612; email DamSafety@deq.nc.gov (Please type "Dam Safety Rules" in the subject line)*

**Comment period ends:** *October 16, 2026*

**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 02 - ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 02K - DAM SAFETY**

**15A NCAC 02K .0103 PURPOSE**
The rules and regulations contained in this Subchapter are intended to carry out the purposes of the Dam Safety Law of 1967, as expressed in G.S. 143-215.24 which authorizes the implementation of a dam inspection and certification program in the interest of public health, safety and welfare.

*Authority G.S. 143-215.31; 143-215.34.*

**15A NCAC 02K .0104 DEFINITIONS**
As used in this Subchapter, the following terms have their stated meaning:

(1) "50-year flood" means the flood magnitude expected to be equaled or exceeded on the average of once in 50 years, also expressed as an exceedance probability of 2.0 percent of being equaled or exceeded in any given year. Present and future land-use conditions shall be considered in determining the runoff characteristics of the drainage area.
(2) "50-year storm" means the rainfall event expected to be equaled or exceeded on the average of once in 50 years, also expressed as an exceedance probability of 2.0 percent of being equaled or exceeded in any given year. Rainfall amounts for the 50-year storm may be accessed using the NOAA Atlas at https://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html at no charge; other methodologies to determine the rainfall amount may be deemed acceptable by the Director.
(3) "100-year flood" means the flood magnitude expected to be equaled or exceeded on the average of once in 100 years, also expressed as an exceedance probability of 1.0 percent of being equaled or exceeded in any given year. Present and future land-use conditions shall be considered in determining the runoff characteristics of the drainage area.
(4) "100-year storm" means the rainfall event expected to be equaled or exceeded on the average of once in 100 years, also expressed as an exceedance probability of 1.0 percent of being equaled or exceeded in any given year. Rainfall amounts for the 100-year storm may be accessed using the NOAA Atlas at https://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html at no charge; other methodologies to determine the rainfall amount may be deemed acceptable by the Director.
(5) "1000-year flood" means the flood magnitude expected to be equaled or exceeded on the average of once in 1000 years, also expressed as an exceedance probability of 0.1 percent of being equaled or exceeded in any given year. Present and future land-use conditions shall be considered in determining the runoff characteristics of the drainage area.
(6) "1000-year storm" means the rainfall event expected to be equaled or exceeded on the average of once in 1000 years, also expressed as an exceedance probability of 0.1 percent of being equaled or exceeded in any given year. Rainfall amounts for the 1000-year storm may be accessed using the NOAA Atlas at https://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html at no charge; other methodologies to determine the rainfall amount may be deemed acceptable by the Director.
~~(1)~~(7) "Applicant" means any person who has notified the ~~department~~ Department that ~~he or she desires~~ they desire to construct, repair, alter, or remove a dam and requests approval by the ~~department.~~ Department.
~~(2)~~(8) "Appurtenance" means an accessory or integral subordinate structure associated with a dam, such as a spillway, conduit, walkway, valve, or control ~~gate, etc.~~ gate.
~~(3)~~(9) "Articulation" means provisions for safe movement at the joint or juncture of sections of conduit.
~~(4)~~(10) "As-built plans" means drawings, photographs, test data, and descriptions that clearly and accurately define the dam and its appurtenances after all construction is completed.
(11) "Auxiliary (or secondary) spillway" means the auxiliary (or secondary) outlet works that augments the principal spillway's discharge capacity to safely pass the entire flow resulting from the required design storm. The auxiliary spillway shall be lined or armored per the velocity of flow. Vegetated open channels may be acceptable if the velocity of flow and/or shear stresses are within acceptable thresholds.
~~(5)~~(12) "Conduit" means a natural or artificial channel or pipe through which water or other fluid is conveyed.
(13) "Construction" means any action, other than by natural causes, that creates a structure capable of impounding water or other liquids, or which increases the impoundment capacity of an existing structure. For the purposes of 15A NCAC 02K .0222, it shall also mean the

reduction of the height or impoundment capacity of a dam when the effect of such reduction will be to exempt the dam from the North Carolina Dam Safety Law of 1967.

~~(6)~~(14) "Critical circle" means the circle with the lowest factor of safety against mass movement in a circular arc analysis of slope stability.

~~(7)~~(15) "Critical failure wedge" means the mass or block having the lowest factor of safety against mass movement in an analysis of slope stability along planar surfaces.

(16) "Dam" means a structure and appurtenant works erected to impound or divert water.

(17) "Dam breach inundation map" means a depiction of areas affected by a dam failure and sudden release of the impoundment and travel times for wave front and flood peaks at critical locations. Any dam breach inundation map submitted to the Department shall be updated within the past ten years or if there have been changes since the last map preparation date that are anticipated to result in different consequences to downstream flood inundation areas.

~~(8)~~(18) "Director" means the Director of the Division of Energy, Mineral, and Land Resources, North Carolina Department of ~~Natural Resources and Community Development.~~ Environmental Quality.

(19) "Emergency Action Plan" is a document that complies with the requirements in 143-215.31(a1)(2)).

~~(9)~~(20) "Equipotential lines" means lines which represent points of equal energy level or head in a flow net.

~~(10)~~(21) "Factor of safety" means the ratio of the forces or moments resisting mass movement to the forces or moments tending to produce mass movement.

~~(11)~~(22) "Flow lines" means lines which represent the direction of flow in a flow net.

~~(12)~~(23) "Flow net" means a graphical representation of flow lines and equipotential lines.

~~(13)~~(24) "Hazard potential" means the probable damage that would occur if the structure failed, in terms of loss of human life and economic loss or environmental damage.

(25) "High-volume roads" means any road with traffic count of 250 Annual Average Daily Traffic (AADT) or more.

(26) "Liquefaction" means a phenomenon whereby a saturated or partially saturated soil loses strength and stiffness in response to an applied stress, usually earthquake shaking or other sudden change in stress condition, causing it to behave like a liquid.

(27) "Low-volume roads" means any road with a traffic count of less than 25 AADT.

~~(14)~~(28) ~~"Maintenance plan"~~ "Operations and Maintenance Plan" means written instructions prepared by the engineer that prescribe the proper servicing and repair of mechanical equipment, appurtenances, spillways, vegetative cover, and other aspects related to the safety of the dam.

(29) "Major economic impact" means any economic loss or impact on services amounting to four hundred thousand dollars ($400,000) or more.

(30) "Medium-volume roads" means any road with a traffic count of 25 AADT to less than 250 AADT.

(31) "Minor economic impact" means any economic loss or impact on services amounting to less than sixty thousand dollars ($60,000).

(32) "Moderate economic impact" means any economic loss or impact on services amounting to sixty thousand dollars ($60,000) to less than four hundred thousand dollars ($400,000).

~~(15)~~(33) "Owner" means ~~the individual or association of individuals owning the property on which the dam exists or is to be constructed, and the persons financially responsible for the construction.~~ the individual, association of individuals, or entity owning the property or any legal interest in the property on which any portion of the dam structure of appurtenant works exists or is to be constructed.

~~(16)~~(34) "Phreatic surface" means ~~the free-water surface of a zone of seepage~~ the uppermost boundary of the saturated zone where pore water pressure is at atmospheric pressure; it is also represented by the uppermost flow line, or seepage line, in a flow net.

(35) "Principal (or primary) spillway" means the principal (or primary) outlet works for conveying a safe flood release during a storm event.

(36) "Probable Maximum Flood" or "PMF" means the theoretically largest flood resulting from the most severe combination of meteorological and hydrological conditions that could conceivably occur in the drainage basin. The PMF is the runoff resulting from the Probable Maximum Precipitation.

(37) "Probable Maximum Precipitation" or "PMP" means the theoretically greatest depth of precipitation for a given duration that is physically possible over a given storm area at a particular geographical location at a certain time of the year. The NC PMP study and Tool published on the NC DEQ Dam Safety website shall be referenced for estimates of rainfall amounts and distributions associated with the PMP and may be accessed at https://www.deq.nc.gov/about/divisions/energy-mineral-and-land-resources/dam-safety-

program-overview/probable-maximum-precipitation-study at no charge.

~~(17)~~(38) "Qualified engineer" means a professional engineer legally qualified to practice in North Carolina pursuant to Chapter 89C of the General Statutes of North Carolina, and having appropriate specialty expertise for the particular dam engineering problem with which ~~he is~~ they are involved.

~~(18)~~(39) "Qualified geologist" means an earth scientist experienced in applied geology with respect to the interaction of lithologies, soils, and geologic structures with dams and impoundments, who can provide professional credentials such as certification by the American Institute of Professional Geologists or registration as a geologist in the United States.

~~(19)~~(40) "Quality control" means that combination of testing, observation, and monitoring provided during construction to confirm that requirements stated or depicted in the plans and specifications are being achieved.

~~(20)~~(41) "Rapid drawdown" means removal of liquid from a reservoir at a rate that is significantly faster than the rate of drainage of the materials composing the portions of the reservoir exposed by the fluid removal.

~~(21)~~(42) "Seepage" means the movement of water in a porous material and the water exiting at the visible surface of the material.

~~(22)~~(43) "Sliding base analysis" means an analysis of the safety of a structure against lateral movement along its foundation.

(44) "Toe" means the point of intersection between the upstream or downstream slope of a dam and the natural ground.

~~(23)~~(45) "Waste treatment and mine refuse dam" means a structure for impounding, restraining, storing, or disposing of liquids, slurries, or materials capable of ~~liquification~~ liquefaction, produced from industrial, commercial, municipal, agricultural, or mining activities.

~~(24) "Construction" means any action, other than by natural causes, that creates a structure capable of impounding water or other liquids, or which increases the impoundment capacity of an existing structure. For the purposes of 15A NCAC 2K .0222, it shall also mean the reduction of the height or impoundment capacity of a dam when the effect of such reduction will be to exempt the dam from the North Carolina Dam Safety Law of 1967.~~

*Authority G.S. 143-215.25; 143-215.31.*

**15A NCAC 02K .0105 CLASSIFICATION OF DAMS**

(a) For the purposes of this Subchapter, dams shall be divided into three hazard potential classes, which shall be known as class A (low hazard), class B (intermediate hazard), and class C (high hazard):

(1) Class A includes dams located where failure may damage ~~uninhabited low value non-residential buildings~~ non-occupied buildings, agricultural land, ~~or low volume roads.~~ low-volume roads, or cause minor economic impacts.

(2) Class B includes dams located where failure may damage ~~highways~~ medium-volume roads or ~~secondary~~ active railroads, cause interruption of use or service of public utilities, cause minor damage to isolated homes, ~~or~~ cause minor damage to commercial and industrial ~~buildings.~~ buildings, or cause moderate economic impacts. Damage to these structures ~~will~~ shall be considered minor only when they are located in back water areas not subjected to the direct path of the breach flood wave; and they will experience no more than 1.5 feet of flood rise due to breaching above the lowest ground elevation adjacent to the outside foundation walls or no more than 1.5 feet of flood rise due to breaching above the lowest floor elevation of the structure, the lower of the two elevations governing. All other damage potential ~~will~~ shall be considered serious.

(3) Class C includes dams located where failure will ~~likely~~ cause potential loss of life or serious damage to or impact to homes, campgrounds, industrial and commercial buildings, ~~important~~ public utilities, ~~primary highways, or major railroads.~~ high-volume roads, active railroads, or cause major economic impacts. Impacts to greenways, trails and parks may be considered when determining hazard classification.

(b) ~~Classifications shall be proposed by the design engineer and are subject to approval by the Director.~~ Any proposed hazard classification shall be submitted to the Department on a Jurisdictional Determination & Hazard Classification request form, subject to approval by the Director, including:

(1) A sunny-day dam breach scenario utilizing the volume retained at the elevation of the highest point on the crest of the dam;

(2) A rainy-day dam breach scenario utilizing the spillway design flood with a dam failure by overtopping;

(3) A description of any potential hazards for loss of life and environmental or structural property damage to existing and/or potential future downstream developments;

(4) A vicinity map of the dam with a brief description of the nearest physical street address;

(5) Name and contact information of the owner;

(6) A general summary of the dam;

(7) Engineering documents to support the proposed hazard classification; and

(8) A general summary of downstream land use and existing and/or future downstream developments.

(c) ~~Probable~~ Planned future development of the area downstream from the dam that would be affected by its failure shall be considered in determining the classification.

(d) Dams ~~will~~ shall be subject to reclassification if the Director determines that the hazard potential has changed. Non-structural provisions of adequately demonstrated effectiveness and reliability such as flood plain ~~zoning , and early warning systems~~ zoning may be considered by the Director in making this determination.

(e) When dams are spaced so that the failure of an upper dam would likely fail a lower dam, the consequence of the lower dam's failure shall be a determining factor for the upper dam's hazard classification.

(f) In assigning a hazard classification where a bridge or roadway is the only damageable property below a dam, consideration shall be given to the possibility of loss of human life, indirect economic impact through loss of service, and direct cost of damage to the bridge or roadway.

(g) In the absence of a complete Jurisdictional Determination & Hazard Classification form submission, the Department shall have the discretion to make a hazard classification determination based on the information in its records. If the applicant determines the dam is High hazard, the sunny-day and rainy-day breach analyses are not required for Jurisdictional Determination & Hazard Classification purposes.

(h) Utilization of Incremental Damage Analysis (IDA) for hazard classification or reclassification:

(1) In accordance with established procedures as referenced in 15A NCAC 02K .0205(e), an IDA may be conducted to evaluate the potential increase in risk due to dam failure. This analysis shall include examining various flood scenarios and their downstream impacts by completing a comparative assessment of the downstream inundation attributable solely to the safe passage of the storm event in isolation, for example, a non-breach scenario, contrasted with the cumulative impacts by the confluence of the storm event and a hypothetical dam breach scenario.

(2) The IDA shall evaluate and quantify the incremental consequences of dam failure, including:

(A) The probable number of lives lost or at risk;

(B) The estimated cost of property damage, environmental impacts, business interruption, and loss of services;

(C) The degree of impact on ecosystems, including endangered species and habitats;

(D) The effects on historical, cultural, and recreational sites or facilities; and

(E) The potential damage to downstream roads, bridges, railroads, utilities, and other critical infrastructure.

(3) The quantifiers used to determine the incremental consequences of dam failure shall be expressed in measurable terms, such as the probable number of loss of life, depth of inundation, flow velocity, and potential economic loss, to facilitate a clear assessment of the incremental impacts.

(4) Based on the results of the IDA, the hazard classification of a dam may be adjusted to reflect the potential risks associated with the dam's failure.

(5) The methodology for conducting the IDA shall be consistent with currently recognized and supported engineering practices and shall be subject to approval by the Director.

(6) The IDA shall be documented in a report and submitted to the Department as part of the classification process.

(7) Dams classified based on the results of an IDA shall be subject to hazard reclassification if a subsequent analysis indicates changes in the potential hazard classification or if there are significant changes in downstream conditions.

(8) The Department may require an IDA for any dam where downstream development or changes in land use increase the potential hazard in the event of dam failure.

*Authority G.S. 143-215.31; 143-215.34.*

**SECTION .0200 - OBTAINING APPROVAL FOR DAM CONSTRUCTION: REPAIR:OR REMOVAL**

**15A NCAC 02K .0201 APPLICATIONS**

~~(a) Any person(s) who proposes to construct, repair, alter or remove a dam must file with the Director a statement concerning the location of the dam, including the name of the stream and county, height, purpose, and impoundment capacity, 10 days before start of construction. If the Director determines that the proposed dam is exempt from the law, the applicant will be notified and he may then proceed with the construction.~~

(a) Any person(s) who proposes to construct a dam, where the jurisdictional status of the dam is uncertain, shall file with the Director a Jurisdictional Determination & Hazard Classification request at least 10 business days before the proposed start of construction.

(1) If the Director determines that the proposed dam is exempt from the Dam Safety Law of 1967, the applicant will be notified within 10 business days of receipt of the request described in Paragraph (a) of this Rule.

(2) If the Director determines that the proposed dam is not exempt from the Dam Safety Law of 1967, the applicant will be notified within 10 business days of receipt of the request described in Paragraph (a) of this Rule and construction

of the dam shall not commence until a full and complete application has been filed and approved. This application shall be filed at least 90 business days before the proposed start of construction.

~~(b) If the Director determines that the proposed dam is not exempt from the Dam Safety Law of 1967, the applicant will be so notified within 10 days of receipt of the statement described in (a) of this Rule and construction may not commence until a full and complete application has been filed and approved. This application must be filed at least 60 days before the proposed start of construction:~~

~~(1)~~ ~~When an application to construct a dam has been completed pursuant to Subsection (a) of this Rule, the department shall refer copies of the completed application papers to the Department of Human Resources, the Wildlife Resources Commission, the Department of Transportation, and such other state and local agencies as it deems appropriate for review and comment.~~

~~(2)~~ ~~Before commencing the repair, alteration, or removal of a dam, application shall be made for written approval by the department, except as otherwise provided by this Subchapter or in accordance with G.S. 143-215.27(b). The application shall state the name and address of the applicant; shall adequately detail the changes it proposes to effect; and shall be accompanied by maps, plans, and specifications setting forth such details and dimensions as the department requires. The department may waive such requirements in accordance with G.S. 143-215.27(a). The application shall give such other information concerning the dam and reservoir required by the department concerning the safety of any change as it may require, and shall state the proposed time of commencement and completion of the work. When an application has been completed, it may be referred by the department for agency review and report as provided by G.S. 143-215.26(b) in the case of original construction.~~

(b) Any person(s) who proposes to repair, modify or remove a dam may file to the Director a Jurisdictional Determination & Hazard Classification request form to determine the dam's current hazard classification pursuant to 15A NCAC 02K .0105(b).

(1) If the Director determines that the dam is exempt from the Dam Safety Law of 1967, the applicant will be notified within 10 business days of receipt of the request described in Paragraph (b) of this Rule.

(2) If the Director determines that the dam is not exempt from the Dam Safety Law of 1967, the applicant will be notified within 10 business days of receipt of the request described in Paragraph (b) of this Rule and repair, modification or removal of the dam may not commence until a full and complete application has been filed and approved. This application shall be filed at least 90 business days before the proposed start of repair, modification or removal.

~~(c) The application for any dam shall include a preliminary report. (Filing of the preliminary report prior to filing the final design report, early in the site investigation and design schedule, is encouraged to assure the state's concurrence with the hazard classification, site investigation, and design concept. This is especially encouraged for class C dams.) The preliminary report shall be filed with the application and shall include the following information:~~

~~(1)~~ ~~a general description of the dam and appurtenances and a proposed classification as set forth in Rule .0105 of this Subchapter; The description shall include a statement of the purpose for which the dam is to be used;~~

~~(2)~~ ~~a description of properties located below the dam including number of homes, buildings, roads, utilities, and other property that, as determined by the engineer, would be endangered should failure of the dam occur;~~

~~(3)~~ ~~maps showing the location of the proposed structure that include the county, location of state roads, access to site, and outline of the reservoir; aerial photographs or USGS maps may be used;~~

~~(4)~~ ~~preliminary drawings or sketches that include cross-sections, plans and profiles of the dam, proposed pool levels, and types of all spillways;~~

~~(5)~~ ~~preliminary design criteria and basis for selection including a description of the size, ground cover conditions, and extent of development of the watershed, drainage area, spillway design storm, geology and geotechnical engineering, assumptions for the foundation and embankment materials, and type of materials to be used in the principal spillways(s).~~

(c) When an application to construct, repair, modify, or remove a jurisdictional dam has been completed, the Department shall refer copies of the completed application papers to the Division of Water Resources, the Wildlife Resources Commission, the Department of Transportation, and such other state and local agencies as it deems appropriate for review and comment.

(d) Before commencing the construction, repair, modification or removal of a jurisdictional dam, an application shall be made for written approval by the Department, except as otherwise provided by this Subchapter or in accordance with G.S. 143-215.27(b). The application shall state the name and address of the applicant; shall detail all the changes it proposes to effect; and shall be accompanied by maps, plans, and specifications setting forth such details and dimensions as the Department requires. The Department may waive such requirements in accordance with G.S. 143-215.27(a). The application shall provide information concerning the dam and reservoir required by the Department concerning the safety of any change as it may require, and shall state the proposed time of commencement and completion of the work. When an application has been completed, it may be referred by the Department for agency review and report as provided by G.S. 143-215.26(b) in the case of original construction.

~~(d)~~(e) ~~The Final Design Report.~~ A "Certificate of Approval" ~~to construct~~ for construction, repair, modification or removal ~~will~~ shall not be issued until the ~~final~~ design report is received and approved. ~~The preliminary report as described in (c) of this Rule and the final design report may be submitted as one document.~~ The ~~final~~ design report ~~shall~~ shall, when pertinent to the scope of work being proposed, include:

(1) a report of the investigation of the foundation soils or bedrock and the borrow materials, including the location of borrow areas, that are to be used to construct the dam;

(2) criteria to indicate that the dam will be stable during construction and filling and under all conditions of reservoir operations;

(3) computations indicating that the dam is safe against overtopping during occurrence of the inflow design flood and wave action; Wave action need not be considered when the required design flood is ~~based on~~ the full ~~probably maximum precipitation (pmp);~~ Probable Maximum Precipitation (PMP);

(4) criteria, design data or references to indicate that seepage flow through the embankment, foundation, and abutments will be controlled so that no internal erosion will take place and so there will be no sloughing in the area where the seepage emerges;

(5) calculations and assumptions relative to design of the spillway(s);

(6) provision to protect the upstream slope, crest, and downstream slope of earth embankments and abutments from erosion due to wind and rain;

(7) other design data, assumptions, and analysis data pertinent to individual dams and site conditions;

(8) a proposed construction schedule;

(9) a proposed filling schedule for the reservoir;

(10) ~~a maintenance and operation plan;~~ an Operations and Maintenance Plan;

(11) the estimated design life of the dam and the reservoir;

(12) provision for maintaining minimum stream flow ~~requirements.~~ requirements;

(13) cross-sectional, plan and profile views of the dam, proposed pool levels, and types of all spillways;

(14) calculations and assumptions relative to structural stability as referenced in Rule .0208 of this Section;

(15) an opinion of the estimated remaining service life of the dam;

(16) the estimated design life of the scope of work being proposed;

(17) an assessment by the qualified engineer of upstream roads and occupied buildings that would be impacted by the maximum impoundment capacity of the dam, within the scope of work being proposed by the qualified engineer; and

(18) written authorization for the Department to launch and recover an unmanned aircraft system from the dam location to inspect the dam and its appurtenances via video or photographic imaging with an unmanned aircraft system for regulatory compliance, complaint, public safety or emergency purposes only.

~~(e)~~(f) ~~The Plans and Specifications. Five sets of plans and specifications must be submitted.~~ The plans shall be a detailed engineering design that consists of drawings and specifications and ~~that~~ include the ~~following as a minimum:~~ following:

(1) Sheet one shall show the name of the project; name and contact information of the owner; name and contact information of the qualified engineer; State ID of the dam; latitude/longitude of the project; hazard classification of the dam; designated access to the project; and location with respect to highways, roads, streams, and any dam(s) that would affect or be affected by the ~~proposed~~ structure;

(2) Maps shall be included showing the drainage area and outline of the reservoir and the ownership of properties covered by the reservoir or flood pool;

(3) Geologic investigation, cross-section, profiles, logs of borings, location of borrow areas, drawings of principal and ~~emergency~~ auxiliary spillways, and other additional sheets shall be included and drawn in sufficient detail to clearly indicate the extent and complexity of the work to be performed; The degree of detail required shall be determined by the applicable provisions of Rules .0204 through .0212 of this Section;

(4) The technical provisions, as may be required, to describe the method of construction and quality control for the project;

(5) Special provisions, as may be required, to describe technical provision needed to ensure that the dam is installed according to the approved plans and specifications; and

(6) General provisions that specify the rights, duties, and responsibilities of the applicant, applicant's engineer and builder and the prescribed order of work.

~~(f)~~(g) The Director, within ~~60~~ 90 business days following receipt of a completed application, shall notify the ~~applicant, by mail,~~ applicant that the application is either ~~approved~~ approved, in need of revisions before approval can be granted, or disapproved. An approved application shall conform to the requirements of Rule .0202 of this Section.

*Authority G.S. 143-215-2; 143-215.26; 143-215.31.*

**15A NCAC 02K .0202 CERTIFICATE OF APPROVAL**
(a) Approval of construction, repair, ~~alteration,~~ modification, or removal of a dam ~~will~~ shall be contained in a certificate called a "Certificate of Approval" to be issued by the Director. A Certificate of Approval is a letter from the Director constituting approval subject to written general stipulations and specific written stipulations deemed necessary by the Director on a case by case basis.
(b) No construction shall be performed until the certificate is issued. The Certificate of Approval period shall be valid for the construction schedule specified in the approved ~~final~~ design report. Construction ~~must~~ shall commence within one year after the certificate is issued. Upon written application and for good cause shown, the Director may extend the time for commencing construction.
(c) Notice by registered, certified, or electronic mail shall be given to the Director at least 10 days before construction is commenced. ~~When repairs are necessary to safeguard life and property, they may be started immediately; but the department shall be notified forthwith of the proposed repairs and of the work under way, and they shall be made to conform to its orders.~~ When necessary to safeguard life and property, repairs or emergency response measures may be started prior to providing notice to the Department, but the Department shall be notified within 10 days of construction commencing, and any such repairs or emergency response measures shall be made to conform to subsequent orders from the Department. As-built information pertaining to the emergency repair(s) or response measures shall be submitted to the Department by the party responsible for conducting the work on behalf of the dam owner. Applicable modifications to the work required by the Department to satisfy dam safety regulatory requirements shall be the responsibility of the dam owner and the responsible party that completed the work.
~~(d) If construction does not commence within one year after the certificate of approval is issued, the certificate shall expire and a new application shall be submitted. Upon written application and for good cause shown, the Director may extend the time for commencing construction.~~
~~(e)~~(d) Certificates of Approval are revocable in the event that the terms of the certificate, including the written stipulations and those terms stated in G.S. 143-215.23, are violated or in the event that conditions develop during construction that are hazardous to life and property. If the certificate is revoked due to development of hazardous conditions, the Director ~~will~~ may issue an order requiring the owner or owners of the dam to make at ~~his or~~ their expense maintenance, alterations, or removal as deemed necessary within a time limited by the order; provided, any dam covered by a certificate issued under this Rule is considered to be within the definition of dams in G.S. 143-215.25 and Rule .0104 of this Subchapter.
~~(f)~~(e) Certificates of Approval are revocable in the event that the approved construction schedule is deviated from without prior written approval of a substitute construction schedule submitted in writing. Such approval of a substitute construction schedule shall be in the form of an Addendum to the Certificate of Approval to be issued by the Director.
(f) Pursuant to Paragraph (a) of this Rule, the owner of any dam that meets the exemption standard set forth in G.S. 143-215.25A shall comply with the notification process set forth in G.S. 143-215.26(a).

*Authority G.S. 143-215.26; 143-215.27; 143-215.31.*

**15A NCAC 02K .0203 PROFESSIONAL ENGINEER REQUIREMENTS**
(a) The design, preparation of the plans and specifications, inspection of the construction of or on the dam, and certification that the dam was constructed, repaired, altered, or removed according to the plans approved by the Director and that the dam or its remains are safe shall be done by a ~~legally~~ qualified engineer and shall bear ~~his~~ their professional seal unless exempted under the provisions of G.S. 89C-25.
(b) For the purposes of G.S. 143-215.25A(a)(8), the Department shall be satisfied that a qualified engineer has experience in dam design when all of the following are demonstrated to the Department:
(1) The qualified engineer has had five or more Certificates of Approval issued for projects they bared their professional signature and seal by the Department when submitting construction or breach applications for Class C dams;
(2) The qualified engineer has submitted and received approval of dam breach inundation zone analyses by the Department for a minimum of five Class B or Class C jurisdictional dams; and
(3) The qualified engineer has not had disciplinary action against them by any Professional Engineer licensing board nationwide within the last six years involving work on or to a dam.

*Authority G.S. 143-215.29; 143-215.31.*

**15A NCAC 02K .0204 INVESTIGATIONS**
(a) General. The applicant shall be required to complete all investigations prior to submission of the final plans and application. The scope and the degree of precision that ~~will~~ shall be required for a specific project will depend on the conditions of the site and the hazard created by the proposed structure.
(b) Foundations and Abutments. The foundation and abutments investigation shall consist of borings, test pits, and other subsurface exploration necessary to assess the soil, rock, and groundwater conditions. Geologic profiles and a geologic report prepared by a qualified engineer or qualified geologist ~~may~~ shall be required for ~~class~~ Class B dams and ~~shall be required for class~~ Class C dams. This requirement may be waived for existing dams subject to approval by the Department.
(c) Construction Materials. Specifications for construction materials shall establish minimum acceptance criteria so that design properties are achieved. If the use of on site borrow materials is specified, exploration, testing, and calculations should be performed to indicate that there are sufficient quantities of material available that meet the design criteria.
(d) Surveys. Surveys shall be made ~~with sufficient accuracy to locate~~ to accurately locate the proposed construction and to define the volume of the storage in the reservoir. The downstream area shall be investigated in order to delineate the area of potential

damage in case of failure. Locations of centerlines, and other horizontal and vertical control points, shall be shown on a map of the site.

(e) Hydrologic Investigation. The drainage area shall be determined. Both present and ~~projected~~ planned future land use shall be considered in determining the runoff characteristics of the drainage area. The most severe of these two conditions shall be used in the design. All hydrologic assumptions and design calculations shall be included in the design report.

*Authority G.S. 143-215.26; 143-215.27; 143-215.31.*

**15A NCAC 02K .0205 SPILLWAY DESIGN**

(a) All dams shall have a principal and, as deemed necessary, an auxiliary spillway system with capacity to pass ~~a~~ the flow resulting from a design storm as indicated in Paragraph (e) of this Rule for a hazard classification appropriate for the dam, unless the applicant provides calculations, designs, and plans to show that the design flow can be stored, passed through, or passed over the dam without failure occurring. The principal and auxiliary spillway system shall be lined, armored, or otherwise protected from erosion and the velocity of flow. Vegetated open channels may be acceptable if the velocity of flow and/or shear stresses are within acceptable thresholds.

(b) A vegetated earth or unlined ~~emergency~~ auxiliary spillway ~~will~~ shall be approved when computations indicate that it will pass the design storm without jeopardizing the safety of the structure. The risk of recurring storms, excessive erosion, and inadequate vegetative cover will be considered acceptable in such a spillway when its average frequency of use is predicted to be no more frequent than once in 25 years for existing ~~class B and for class A~~ Class B and for Class A dams except for small ~~class~~ Class A dams designed in accordance with all design criteria established by the ~~U.S.D.A, Soil Conservation Service~~ U.S.D.A. Natural Resources Conservation Service, and as contained in Engineering Standard 378 of the ~~U.S.D.A., Soil Conservation Service~~ U.S.D.A. Natural Resources Conservation Service; once in 50 years for new ~~class~~ Class B, small and medium new ~~class~~ Class C, and existing ~~class~~ Class C dams; and once in 100 years for large and very large new ~~class~~ Class C dams. The dam sizes referred to ~~in this Subsection are defined in (e) of this Rule.~~ are in Paragraph (e) of this Rule.

(c) Lined Spillways and Channels. The design report shall include design data criteria for open channel, drop, ogee, and chute spillways and other spillway types that include crest structures, walls, channel lining, and miscellaneous details. All masonry or concrete structures shall have joints that are relatively water-tight and shall be placed on foundations capable of sustaining applied loads without undue deformation. Provisions ~~must~~ shall be made for handling leakage from the channel or underseepage from the foundation ~~which might~~ that may cause saturation of underlying materials or uplift against the undersurfaces or loss of materials.

(d) Within 15 days following passage of the design storm peak, the spillway system shall be capable of removing from the reservoir at least 80 percent of the water temporarily detained in the reservoir above the elevation of the primary spillway.

(e) It is recognized that the relationships between valley slope and width, total reservoir storage, drainage area, other hydrologic factors, and specific cultural features have a critical bearing on determining the safe spillway design flood. Rational selection of a safe spillway design flood for specific site conditions based on quantitative analysis is acceptable. The spillway ~~should~~ shall be sized so that the increased downstream damage resulting from overtopping failure of the dam would not be significant as compared with the damage caused by the flood in the absence of dam overtopping failure. A design storm more frequent than ~~in 100 years~~ the 100-year storm for the critical duration will not be acceptable for any ~~class~~ Class C dam. In lieu of quantitative analysis, the following tables shall be used as criteria for spillway design storms and permissible velocities for vegetated earth spillways:

| CRITERIA FOR SPILLWAY DESIGN STORM SIZE CLASSIFICATION | | |
|---|---|---|
| Size | Total Storage (Ac-Ft)[1] | Height (ft)[1] |
| Small | less than 750 | less than 35 |
| Medium | equal to or greater than 750 and less than 7,500 | equal to or greater than 35 and less than 50 |
| Large | equal to or greater than 7,500 and less than 50,000 | equal to or greater than 50 and less than 100 |
| Very Large | equal to or greater than 50,000 | equal to or greater than 100 |

[1] The factor determining the largest size shall govern

| MINIUMUM SPILLWAY DESIGN STORMS AND DURATIONS | | | |
|---|---|---|---|
| Hazard | Size | Spillway Design ~~Flood (SDF)~~ Storm (SDS) | Storm Duration |
| Low (Class A) | Small<br>Medium<br>Large<br>Very Large | 50 year<br>100 year<br>1/3 PMP<br>1/2 PMP | A range of durations from 1 to 72 hours shall be considered. The critical storm duration shall be selected for the design storm[2]. |
| Intermediate (Class B) | Small<br>Medium | 100 year<br>1/3 PMP | |

| | | | |
|---|---|---|---|
| | Large<br>Very Large | 1/2 PMP<br>3/4 PMP | |
| High (Class C) | Small<br>Medium<br>Large<br>Very Large | 1/3 PMP<br>1/2 PMP<br>3/4 PMP<br>PMP | |

[2] The selected range of storm durations evaluated is typically based on the response time, including the time of concentration and lag time, of the contributing watershed or sub basins. The design storm duration shall reflect the maximum loading condition on the spillway and dam based on consideration of the maximum reservoir level, duration of flow impacting the spillway system, and tailwater/backwater conditions downstream of the dam. The NC PMP Study and Tool published on the NC DEQ Dam Safety website shall be referenced.

| PERMISSIBLE VELOCITIES FOR UNLINED VEGETATED EARTH SPILLWAYS | | | | |
|---|---|---|---|---|
| | Permissible velocity~~[1]~~[3] feet per second | | | |
| | Erosion resistant soils | | Easily erodible soils | |
| | Slope of exit channel<br>Percent | | Slope of exit channel<br>Percent | |
| Vegetation | 0 to 5.00 | ~~5 thru 10~~ Greater than 5.00 | 0 to 5 .00 | ~~5 thru 10~~ Greater than 5.00 |
| Bermuda Grass<br>Bahia grass | 8 | 7 | 6 | 5 |
| Tall fescue<br>Kentucky bluegrass<br>Reed canary | 7 | 6 | 5 | 4 |
| Sod forming<br>grass mixture | 5 | 4 | 4 | 3 |
| ~~Lespedeza sericea~~<br>~~Weeping lovegrass~~<br>Alfalfa<br>Crabgrass | 3.5 | Do not use | 2.5 | Do not use |
| Lespedeza sericea<br>Weeping lovegrass | Do not use | Do not use | Do not use | Do not use |

~~[2]~~[3] Increase values 10 percent when the anticipated average use of the spillway is not more frequent than once in 50 years or 25 percent when the anticipated average use is not more frequent than once in 100 years.

*Authority G.S. 143-215.26; 143-215.27; 143-215.31.*

**15A NCAC 02K .0206 CONDUITS**

(a) A low-level conduit or conduits shall be provided to fully drain each reservoir. The conduit design shall include the computation of the minimum time required to fully drain the reservoir. For existing dams where providing for full drainage of the reservoir is impractical, the Director may approve a design with provisions for draining less than the full reservoir volume when the qualified engineer provides sufficient justification.

(b) All pipe conduits shall convey water at the design velocity without damage to the interior surface.

(c) Protection shall be provided to prohibit unsafe seepage along conduits through the dam, abutments, and foundation. The specific design for seepage protection along conduits shall be shown in the drawings and specifications.

(d) Adequate allowances shall be incorporated in the design to compensate for differential settlement and possible elongation of the pipe conduit.

(e) Trash ~~racks~~ guards shall be installed at the intake of conduits to prevent clogging the conduit. Design of trash guards shall be in accordance with current best engineering practices.

(f) Pipe Conduit Spillway Materials

(1) Pipe conduits shall be designed to support the total external loads in addition to the total internal hydraulic pressure without leakage.

(2) Reinforced or Prestressed Concrete Pipe Conduits

(A) All conduits are to be designed and constructed to remain watertight under maximum anticipated hydraulic pressure and maximum probable joint opening, including the effects of joint rotation and extensibility.

(B) Provisions for safe movement of the barrel are to be provided at each joint in the barrel and at the junction of the barrel and riser or inlet. ~~Cradles are to be articulated if constructed on a yielding foundation.~~ Concrete cradles shall be properly designed including articulation and provided under the pipe conduit for good compaction around the pipe.

(C) The qualified engineer shall submit the final design details of the proposed pipe to be used for all ~~class A dams where the height of the dam exceeds 35 feet and all class B and C dams.~~ dams.

(3) ~~Corrugated Metal Pipe Conduits~~ Corrugated metal pipe shall not be used in any new dam design or construction on an existing dam. For existing dams with corrugated metal pipes, abandoning in place, replacing with acceptable material, or sliplining the pipe shall be completed unless an analysis by a qualified engineer on the condition of the corrugated metal pipe proves it currently does, and will continue to perform, in a satisfactory manner.

~~(A)~~ ~~Corrugated metal pipe shall not be used in Class A dams over 35 feet high or in class B and C dams, except for special cases when the design engineer can adequately demonstrate satisfactory performance.~~

~~(B)~~ ~~Corrugated metal pipe may be used in class A dams which are less than 35 feet high.~~

~~(C)~~ ~~Corrugated metal conduits shall have watertight connecting bands designed and installed to remain watertight under maximum anticipated hydrostatic head and joint rotation.~~

~~(D)~~ ~~Flange type couplings shall not be used for corrugated metal pipe or corrugated steel pipe where the diameter exceeds 12 inches unless the applicant produces computations to verify that the flanges and the pipe conduit are of such design to safely support the total external loads in addition to the total internal hydraulic pressure without leakage.~~

(g) Dissipating Devices. All gates, valves, conduits and concrete channel outlets shall be provided with a dissipator designed and constructed to control erosion and prevent damage to the embankment or the downstream outlet or channel.

(h) In the case of repair to an existing dam, the engineer may determine that the conduit should not be repaired or replaced and shall submit reasoning to support this determination in the application for the Certificate of ~~Approval to repair.~~ Approval. The Director shall approve, disapprove, or approve in part this determination.

*Authority G.S. 143-215.26; 143-215.27; 143-215.31.*

**15A NCAC 02K .0207 SEEPAGE CONTROL**

(a) All dams shall be designed and constructed to prevent the development of instability due to excessive seepage forces, uplift forces, or loss of materials in the embankment, abutments, spillway areas, or foundation. Seepage analysis for design shall identify areas having high internal uplift or exit gradients.

(b) The design ~~may~~ shall include an embankment internal drainage system, a zoned embankment, a foundation cut-off, an upstream blanket, a downstream diaphragm filter surrounding a pipe, a sufficiently wide homogeneous section, or other methods to protect against instability from excessive seepage forces or high hydraulic gradients. Anti-seep collars shall not be used in any new dam design or construction on an existing dam.

(c) For ~~class~~ Class C dams, a flow net analysis shall be made to determine the location of the phreatic surface, flow lines, and equipotential lines within the embankment and its foundation. This analysis may be based on graphical construction, electrical or liquid analogs, soil prototype methods, or other accepted methods. The flow net and stability analysis shall use the maximum operating pool level with not less than five feet of clear water at the surface. Possible fluctuations in tail water elevation shall be included in the analysis. The flow net and seepage analysis shall be documented in the ~~final~~ design report, as required by ~~.0201(d)(4) of this Section.~~ Rule .0201(e)(4) of this Section.

(d) Piezometers for confirming the location of the phreatic surface assumed for seepage and slope stability analyses should be considered by the ~~design~~ qualified engineer for ~~class~~ Class A and ~~class~~ Class B dams and shall be required for ~~class~~ Class C dams. Where piezometers are required, their design, depths, and locations shall be provided as required in Rule ~~.0201(d)~~ .0201(e) and Rule .0212(b) of this Section.

*Authority G.S. 143-215.26; 143-215.27; 143-215.31.*

**15A NCAC 02K .0208 STRUCTURAL STABILITY AND SLOPE PROTECTION**

(a) Design and construction of dams to assure structural stability shall be consistent with modern engineering practice. The scope and degree of precision that will be required for a specific project will depend on the conditions of the site and the damage potential of the proposed structure. Consideration in design for structural stability shall ~~include, but are not necessarily limited to, the following:~~ include the following:

(1) the hazard potential of the dam under present downstream conditions and under conditions which would likely develop during the life of the reservoir;

(2) foundation bearing capacity, compressibility, and permeability; the extent and reliability of the site investigation; and the predictability of the site and foundation conditions;

(3) the reliability of construction materials, such as borrow soils, in terms of sufficient volume to complete construction without unanticipated interruption and in terms of predictability of physical properties such as strength, permeability, and compressibility;

(4) durability of construction materials;
(5) construction conditions at the site;
(6) the degree of quality control to be exercised during construction;
(7) pore pressure build-up during construction;
(8) the rate of filling the reservoir and the rate of possible reservoir drawdown;
(9) tailwater conditions and the impact of tailwater drawdown;
(10) possible effects of landslides and subsurface solution activity on the structural stability of the dam and spillway structures; and
(11) the extent of piezometers and other devices ~~which~~ that will be used to monitor the completed dam and the degree of access for inspections.

(b) Slope stability analyses ~~should be considered by the design engineer for all embankment dams and may be required~~ shall be provided for ~~class~~ Class B and ~~class~~ Class C ~~dams.~~ dams unless the proposed scope of work on an existing dam has no impact on the stability of the dam. Where slope stability analyses are required, documentation in the ~~final~~ design report shall include the design cross section(s) showing the soil parameters assumed for analysis, the location of the phreatic surface assumed for analysis, stability computations, and the location and computed safety factor(s) for the most critical circle(s) or failure wedge(s). A minimum factor of safety of ~~1.5~~ 1.50 for slope stability for normal loading conditions, and ~~1.25~~ 1.30 for quick drawdown conditions and for construction conditions, shall be required unless the ~~design~~ qualified engineer provides a thoroughly documented basis for using other safety factors. When applicable, the calculated seismic factor of safety shall equal or exceed 1.00. For dams constructed of or founded upon soils that have susceptibility to liquefaction, the calculated liquefaction factor of safety shall equal or exceed 1.20. Post-liquefaction stability analyses shall include characterization of the site conditions, identification of the minimum liquefaction-inducing forces based on soil characterization, determination of seismic effect on liquefied layers of the embankment, and calculation of factors of safety against liquefaction for each liquefied layer of the embankment.

(c) Foundation bearing capacity and sliding base analyses should be considered for all dams and may be required for ~~class~~ Class B and C dams. Where bearing capacity or sliding base analyses are required, documentation of assumptions, computations, and safety factors shall be included in the ~~final~~ design report. A minimum factor of safety against bearing capacity and sliding wedge failure of ~~2.0~~ 2.00 shall be required unless the ~~design~~ qualified engineer provides a thoroughly documented basis for using other safety factors.

(d) Resistance of appurtenant structures against flotation uplift shall be provided for all dams. If the structures are anchored by dead weight alone, the buoyant weight shall be used for analysis and the minimum factor of safety shall be 1.15. If the structures are anchored to soil or rock, the minimum factor of safety for that portion of the resistance provided by soil or rock anchorage shall be ~~2.0~~ 2.00 unless the ~~design~~ qualified engineer provides a thoroughly documented basis for using a lower safety factor.

(e) For concrete, masonry, or other similar dams of relatively narrow cross section, resistance against overturning under maximum design loading conditions shall be considered; overturning stability computations shall be required for ~~class~~ Class B and ~~class~~ Class C dams. Where overturning analyses are required, the computations shall be included in the ~~final~~ design report. The minimum safety factor against overturning under maximum design loading conditions shall be ~~1.5~~ 1.50 unless the ~~design~~ qualified engineer provides a thoroughly documented basis for using a lower safety factor.

(f) The ~~anticipated reservoir and tailwater drawdown conditions~~ anticipated maximum reservoir level to lowest tailwater level shall be considered in all stability computations and shall be included in the design documents provided in the ~~final~~ design report.

(g) The slopes ~~must~~ shall be protected against erosion by wave action, and the crest and downstream slope ~~must~~ shall be protected against erosion due to wind and rain. Riprap and other erosion protection shall be provided ~~over the full range in stage between the lowest drawdown elevation and at least two feet above full normal pool.~~ on the upstream slope to address anticipated erosive operating levels in the reservoir, including wave action, and extend at least two (2) feet below the lowest uncontrolled spillway elevation. Exceptions for slowly rising reservoirs, such as waste storage facilities, may be approved in writing by the Director.

*Authority G.S. 143-215.26; 143-215.27; 143-215.31.*

**15A NCAC 02K .0209 DESIGN LIFE OF A DAM AND RESERVOIR**

(a) The selection of materials and equipment to be used in a dam and all of its appurtenant features shall either be based on sufficient quality and durability to satisfactorily function throughout the design life or shall provide for safe and economical replacement within the design life span.

(b) The design life of a dam and reservoir is the period of time the dam and reservoir can be expected to perform effectively as planned. The design life of a dam shall be determined by the following:

(1) the time required to fill the reservoir with sediment from the contributing watershed,
(2) the durability of appurtenances and materials used to construct the dam,
(3) the time required to permanently fill a waste treatment or storage facility with waste,
(4) the time required to perform the specific function for which the dam was designed.

*Authority G.S. 143-215.27; 143-215.31.*

**15A NCAC 02K .0210 SEDIMENT CONTROL**

Sediment control related to earth moving activities involved in construction or repair of dams shall be provided in accordance with the North Carolina Sediment Pollution Control Act of 1973 (G.S. 113A-50 through 113A-66). Devices for sediment control during drainage of a reservoir shall be provided; exceptions for emergency drainage of a reservoir may be approved by the Director.

*Authority G.S. 143-215.31, -113A-54; Eff. June 15, 1980.*

**15A NCAC 02K .0211 WASTE TREATMENT AND MINE REFUSE DAMS**

(a) Waste treatment and mine refuse dams and reservoirs shall conform to all requirements of this Subchapter. In addition to the requirements of Rule .0105 of this Subchapter, a waste treatment or mine refuse dam may be classified A, B, or C on the basis of potential environmental damage.

(b) Mine refuse dams that are designed to be constructed in stages shall include an emergency spillway system that is capable of safely passing the required storm frequency below the top of the dam for each stage of construction. The refuse facility shall not be used until each stage of construction is completed and approved by the Director.

*Authority G.S. 143-215.31.*

**15A NCAC 02K .0212 ADDITIONAL DESIGN REQUIREMENTS**

(a) All elements of the dam and reservoir shall conform to generally accepted engineering standards. The safety factors, design standards, and design references that are used shall be included with the ~~final~~ design report and the plans and specifications as set forth in Rule .0201 of this Section.

(b) Monitoring or inspection devices may be required by the Director for use by inspectors or owners in the inspection during construction and filling and after completion of construction if the Director determines that these measures are needed to carry out the purposes of the Dam Safety Law of 1967. The Director shall also require that monitoring or inspection devices be observed and the information recorded and made available to the Department.

(c) The plans, construction schedule, and construction specification shall also contain the elements necessary to achieve the conditions specified in G.S. 143-215.31(b).

*Authority G.S. 143-215.26; 143-215.27; 143-215.31.*

**15A NCAC 02K .0213 CONSTRUCTION SCHEDULE**

The applicant shall submit a construction schedule that includes:

(1) Techniques and work force to be used to ~~insure that~~ ensure the dam is constructed according to the plans and specifications;

(2) A construction schedule that includes the estimated time to complete the construction activities;

(3) Techniques to be used to divert the stream flow to prevent interference with construction and hazard to life, health, or property;

(4) The extent and method of quality control shall be subject to approval of the Director.

*Authority G.S. 143-215.26; 143-215.27; 143-215.31.*

**15A NCAC 02K .0214 ~~PROPOSED CHANGES IN DESIGN~~ PROPOSED CHANGES TO APPROVED DESIGNS**

The owner shall notify the ~~director~~ Director of any proposed changes in design, plans, and specifications to approved designs that will affect the stability or flow capacity of the dam. Approval ~~must~~ shall be obtained from the Director prior to installation. This approval shall be in the form of a written addendum to the existing Certificate of Approval.

*Authority G.S. 143-215.26; 143-215.27; 143-215.31.*

**15A NCAC 02K .0215 AS-BUILT ~~PLANS~~ SUBMITTALS**

~~Two complete sets of as-built plans shall be submitted to the Director within 30 days of completion of the project.~~ (a) As-Built submittals including supporting documents and the engineer's certification stating that the work has been completed in accordance with the approved plans, specifications and other requirements shall be submitted to the Director within 30 days of completion of the project.

(b) Prior to approval of the As-Built submittal, all owners of Class C and Class B hazard dams shall submit an Emergency Action Plan or have an Emergency Action Plan that was approved less than one year from the date of the Certificate of Approval; the Emergency Action Plan shall be submitted prior to the As-Built submittal.

(c) Prior to approval of the As-Built submittal, all owners of Class C hazard dams shall submit or have a currently approved Operations and Maintenance Plan; the Operations and Maintenance Plan shall be submitted prior to the As-Built submittal.

*Authority G.S. 143-215.30; 143-215.31.*

**15A NCAC 02K .0216 ENGINEER'S CERTIFICATION**

The engineer who has inspected the construction of or on the dam shall submit written certification bearing ~~his~~ their professional seal, unless exempted under the provisions of G.S. 89C-25, that the dam and all appurtenances have been built, repaired, altered, or removed in conformance with the plans, specifications, and drawings approved by the Director ~~and that the dam is safe~~. As-built plans shall also be submitted for dams repaired, altered, or removed on an emergency basis and expedited pursuant to G.S. 143-215.27(b).

*Authority G.S. 143-215.30; 143-215.31.*

**15A NCAC 02K .0217 AUTHORITY FOR INSPECTION**

Authorized personnel of the ~~department~~ Department may make ~~inspection~~ inspections during construction as deemed necessary to ensure that the structure is being built in conformance with the Certificate of Approval issued. Said inspections do not relieve the ~~engineer in charge~~ qualified engineer from the responsibility of providing adequate inspection of the work.

*Authority G.S. 143-215.29; 143-215.30; 143-215.31.*

**15A NCAC 02K .0219 ACCEPTABLE DESIGN: PROCEDURES AND TECHNICAL REFERENCES**

The following represent acceptable design procedures and references:

(1) the design procedures, manuals, and criteria used by the United States Army Corps of Engineers;

(2) the procedures, manuals, and criteria used by the ~~United States Soil Conservation;~~ United States Department of Agriculture Natural Resources Conservation Service;
(3) the procedures, manuals, and criteria used by the United States Department of Interior, Bureau of Reclamation;
(4) the procedures, manuals, and criteria used by the Federal Emergency Management Agency;
(5) the procedures, manuals, and criteria used by the Federal Energy Regulatory Commission; and
~~(4)~~(6) other procedures that are approved by the Director.

*Authority G.S. 143-215.31; 143-215.34.*

**15A NCAC 02K .0220 GRANTING OF FINAL APPROVAL**

(a) Unless the Director has reason to believe that the dam, as completed, is unsafe or not in compliance with any applicable requirement, regulation, or law, the Director, upon completion of construction and upon receipt of the engineer's certification pursuant to Rule .0215 of this Section, shall grant final approval of the work in accordance with the certificate, subject to such terms as ~~he/she deems~~ they deem necessary for the protection of life and property.

(b) Pending issuance of final approval, a new dam or the addition to an existing dam shall not be used except on written consent of the Director and subject to conditions ~~he/she~~ they may impose relating to safety of life and property and the satisfaction of minimum stream flow requirements.

*Authority G.S. 143-215.3; 143-215.30.*

**15A NCAC 02K .0221 DELEGATION OF AUTHORITY**

The Director has the authority to:
(1) issue approval, disapproval, or approval subject to conditions for proposed construction, repair, alteration or removal of dams;
(2) require progress reports, issue notices of non-compliance and orders to comply, order a halt in construction in the event of non-compliance;
(3) receive notices of completion, specify details of description, grant final approval;
(4) assess civil penalties; and
(5) perform other related functions.

*Authority G.S. 143-215.3; 143-215.3(a)(4); 143-215.28; 143-215.29; 143-215.30; 143-215.36(b).*

**15A NCAC 02K .0222 APPLICATION PROCESSING FEES**

(a) A nonrefundable minimum application processing and compliance fee, in the amount stated in ~~Paragraph(d)(1) of this Rule~~ G.S. 143-215.28A, shall be paid when an application for construction to or removal of a dam is filed in accordance with 15A NCAC ~~2K~~ 02K .0201. Each application for construction to or removal of a dam shall be deemed incomplete and shall not be reviewed until the minimum application processing fee is paid.

(b) A nonrefundable additional application processing and compliance fee, in the amount stated in ~~Paragraph(d)(2) of this Rule~~ G.S. 143-215.28A, shall be paid when the as-built plans are submitted to the Director in accordance with 15A NCAC ~~2K~~ 02K .0215. Final approval to impound, pursuant to 15A NCAC ~~2K~~ 02K .0220, shall not be granted until the owner's certification and the accompanying documentation are filed in accordance with Paragraph ~~(e)~~(d) of this Rule, and the additional processing fee is paid.

(c) The application processing and compliance fee ~~for the construction or removal of a dam~~ shall be based on the actual cost of construction to or removal of the applicable dam.
(1) The actual cost of construction or removal of a dam shall include all labor and materials costs associated with the construction or removal of the dam and appurtenances.
(2) The actual cost of construction or removal of a dam shall not include the costs associated with acquisition of land or right of way, design, quality control, electrical generating machinery, or constructing a roadway across the dam.

~~(d) Schedule of Fees:~~
~~(1) The minimum application processing fee shall be two hundred dollars ($200.00).~~
~~(2) The additional application processing fee shall be the following percentages of the cost of construction or removal:~~
~~(A) 2 percent of the actual costs between ten thousand and one dollars ($10,001) and one hundred thousand dollars ($100,000);~~
~~(B) 1.5 percent of the actual costs between one hundred thousand and one dollars ($100,001) and five hundred thousand dollars ($500,000);~~
~~(C) 1.0 percent of the actual costs between five hundred thousand and one dollars ($500,001) and one million dollars ($1,000,000);~~
~~(D) 0.5 percent of the actual costs over one million dollars ($1,000,000).~~

~~In no case, however, shall the additional application fee be more than fifty thousand dollars ($50,000).~~

~~(e)~~(d) ~~Immediately upon~~ Within 30 days of completion of construction or removal of a dam, the owner shall file with the Director a certification, on a form prescribed by the Department, and accompanying documentation, ~~which~~ that shows the actual cost incurred by the owner for construction or removal of the applicable dam.
(1) The owner's certification and accompanying documentation shall be filed with the as-built plans and the engineer's certification in accordance with 15A NCAC ~~2K~~ 02K .0215 and 15A NCAC ~~2K~~ 02K .0216, respectively.
(2) If the Director finds that the owner's certification and accompanying documentation

contain inaccurate cost information, the Director shall either withhold final impoundment approval, or revoke final impoundment approval, until the owner provides the accurate documentation and that documentation has been verified by the Department.

(e) Within 30 days of completion of construction or removal of a dam, the owner shall file with the Director a certification form, subject to approval by the Director, including:

(1) Name and contact information of the owner;
(2) Name and contact information of the qualified engineer;
(3) The actual cost of construction or removal of a dam;
(4) The actual cost of the nonrefundable additional application processing and compliance fee, in the amount stated in G.S. 143-215.28A;
(5) Contractual documentation for the project which includes lump sum bid price or unit bid quantities with prices and all change order item costs; and
(6) An affidavit by the owner certifying the information provided is true and correct to the best of their knowledge that has been notarized and sealed by a Notary Public of the county in which the dam is located.

(f) Payment of the dam application processing fee shall be ~~by check or money order~~ made payable to the ~~"N.C. Department of Environment, Health, and Natural Resources."~~ " North Carolina Department of Environmental Quality" by acceptable payment method. The payment should refer to the applicable dam.

~~(g) In order to comply with the limit on fees set forth in G.S. 143-215.28A, the Director shall, in the first half of each state fiscal year, project revenues for the fiscal year from fees collected pursuant to this Rule. If this projection shows that the statutory limit will be exceeded, the Director shall order a pro rata reduction in the fee schedule for the remainder of the fiscal year to avoid revenue collection in excess of the statutory limits.~~

*Authority G.S. 143-215.28A.*

**15A NCAC 02K .0223 DAM HEIGHT AND STORAGE DETERMINATION**

(a) For the purpose of determining size classification, the height of a dam shall be measured from the highest point on the crest of the dam to the lowest point on the ~~downstream toe.~~ downstream toe, or the adjacent stream or receiving channel invert, whichever is lower.

(b) The total storage capacity of a dam shall be that volume which would be impounded at the elevation of the highest point on the crest of the dam.

*Authority G.S. 143-215.31.*

**15A NCAC 02K .0224 ADDITIONAL REQUIREMENTS FOR DAMS THAT IMPOUND COAL COMBUSTION RESIDUALS**

(a) For the purposes of this Rule:

(1) "CCR" means Coal Combustion Residuals.
(2) "CCR unit" means any CCR landfill, CCR surface impoundment, or lateral expansion of a CCR unit, or a combination of more than one of these ~~units, based on the context of the paragraph(s) in which it is used.~~ units. This term includes both new and existing units, unless otherwise specified in this Subchapter or the Dam Safety Law of 1967. For the purpose of this Rule, the term only applies to CCR dams and surface impoundments.
~~(3) "Dam" means a structure and appurtenant works erected to impound or divert water.~~
~~(4)~~(3) "Design flood" means the flood hydrograph that is used during an engineering assessment of the CCR unit.
~~(5) "Liquefaction" means a phenomenon whereby a saturated or partially saturated soil loses strength and stiffness in response to an applied stress, usually earthquake shaking or other sudden change in stress condition, causing it to behave like a liquid.~~
~~(6) "Probable Maximum Flood" or "PMF" means the theoretically largest flood resulting from the most severe combination of meteorological and hydrological conditions that could conceivably occur in the drainage basin. The PMF is the runoff resulting from the Probable Maximum Precipitation.~~
~~(7) "Probable Maximum Precipitation" or "PMP" means the theoretically greatest depth of precipitation for a given duration that is physically possible over a given storm area at a particular geographical location at a certain time of the year. Estimates of rainfall amounts and distributions associated with the PMP can be found at the following locations: http://www.nws.noaa.gov/oh/hdsc/PMP_documents/HMR51.pdf and http://www.nws.noaa.gov/oh/hdsc/PMP_documents/HMR52.pdf~~
~~(8) "Toe" means the point of intersection between the upstream or downstream face of a dam and the natural ground.~~
~~(9) "100-year flood" means a flood that has a 1-percent chance of recurring in any given year. Rainfall amounts for the 100-year flood can be found at: https://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html.~~
~~(10) "1000-year flood" means a flood that has a 0.1-percent chance of recurring in any given year. Rainfall amounts for the 1000-year flood can be found at: https://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html.~~

(b) This Rule shall apply to a CCR unit that meets one or more of the following:

(1) has a dam height of 25 feet or more above the downstream toe of the structure and has a storage volume of 50 acre-feet or more, unless the unit is exempt by G.S. 143-215.25A;
(2) contains residuals to an elevation of five feet or more above the downstream toe of the structure and that has a storage volume of 20 acre-feet or more;
(3) contains residuals to an elevation of greater than or equal to 20 feet above the downstream toe of the structure; or
(4) has been classified as high hazard (Class C) according to Rule .0105 of this Subchapter.

(c) Inspections and Structural Stability Assessments of CCR units shall be completed as follows:

(1) At intervals not exceeding seven days, a qualified engineer, or a person under ~~his or her~~ their responsible charge, shall inspect the discharge of all outlets of hydraulic structures that pass underneath the base of the CCR unit for discoloration of discharge or changes in flow.
(2) A qualified engineer, or a person under ~~his or her~~ their responsible charge, shall conduct monitoring of all instrumentation supporting the operation of the CCR unit no less than once per month according to the standards listed under 40 CFR 257.83(a), which is hereby incorporated by reference, including subsequent amendments and ~~additions. A copy of this document may be obtained at no cost at https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr257_main_02.tpl.~~ additions, and can be found at no cost, here: https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr257_main_02.tpl.
(3) During the annual inspections of all CCR units, a qualified engineer, or a person under ~~his or her~~ their responsible charge, shall conduct a visual inspection of hydraulic structures underlying the base of the CCR unit in order to maintain structural integrity by being kept free of deterioration, deformation, distortion, bedding deficiencies, sedimentation, and debris.
(4) A qualified engineer, or a person under ~~his or her~~ their responsible charge, shall conduct structural stability assessments and shall document whether the design, construction, operation, and maintenance of the CCR unit is consistent with ~~the provisions of 40 CFR 257.73(d) and 257.74(d), which is hereby incorporated by reference, including subsequent amendments and additions, the NC Dam Safety Law of 1967, and the rules of this Subchapter.~~ the NC Dam Safety Law of 1967, the rules of this Subchapter, and the provisions of 40 CFR 257.73(d) and 257.74(d), which is hereby incorporated by reference, including subsequent amendments and additions, and can be found at no cost, here: https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr257_main_02.tpl. The structural stability assessment shall be completed by a qualified engineer once every five years and submitted to the Department for review for consistency with this Subchapter and the Dam Safety Law of 1967.

(d) All CCR dams described in Paragraph (b) of this Rule shall have a spillway system with capacity to pass a flow resulting from a design flood as specified in the Minimum Spillway Design Flood for CCR Units table ~~provided in this Paragraph,~~ in Paragraph (e) of this Rule, unless the applicant provides calculations, designs, and plans, prepared in accordance with generally-accepted engineering standards, to show that the design flood can be stored, passed through, or passed over the CCR unit without failure occurring. The requirements in ~~the table below~~ Paragraph (e) of this Rule shall apply in place of the Minimum Spillway Design Storm table under Rule .0205(e) of this Section.

(e) The Minimum Spillway Design Flood for CCR Units shall be as follows:

| **Minimum Spillway Design Flood for CCR Units** | | | |
|---|---|---|---|
| **Hazard**[1] | **Size**[2] | **Spillway Design Storm**[3] | **Storm Duration**[4] |
| ~~Low (Class A)~~ | ~~Small~~ | ~~100 year~~ | A range of durations from 1 to 72 hours shall be considered. The critical storm duration shall be selected for the design storm. |
| | ~~Medium~~ | ~~100 year~~ | |
| | ~~Large~~ | ~~1/3 PMF~~ | |
| | ~~Very Large~~ | ~~½ PMF~~ | |
| ~~Intermediate (Class B)~~ | ~~Small~~ | ~~1000 year~~ | |
| | ~~Medium~~ | ~~1/3 PMF or 1000 year, whichever is larger~~ | |
| | ~~Large~~ | ~~½ PMF~~ | |
| | ~~Very Large~~ | ~~¾ PMF~~ | |
| High (Class C) | Small | ~~PMF~~ PMP | |

| | | | |
|---|---|---|---|
| | Medium | ~~PMF~~ PMP | |
| | Large | ~~PMF~~ PMP | |
| | Very Large | ~~PMF~~ PMP | |

[1] The "Hazard" categories in this table for CCR units are based on 15A NCAC 02K .0105 Classification of Dams and are the same "Hazard" categories shown in the "Minimum Spillway Design Storms" table for non-CCR dams contained in Rule .0205(e) of this Section.
[2] The "Size" categories are the same as described in the "Criteria for Spillway Design Storm Size Classification" table found in Rule .0205(e) of this Section.
[3] The "Spillway Design Flood" specifications were derived from the combination of the more-stringent criterion from the spillway design-flood elements of the federal CCR regulations and the existing spillway design elements of Rule .0205(e) of this Section.
[4] The selected range of storm durations evaluated is typically based on the response time, including the time of concentration and lag time, of the contributing watershed or sub basins. The design storm duration shall reflect the maximum loading condition on the spillway and dam based on consideration of the maximum reservoir level, duration of flow impacting the spillway system, and tailwater/backwater conditions downstream of the dam. The NC PMP Study and Tool published on the NC DEQ Dam Safety website shall be referenced.

~~(e)~~(f) Structural stability assessments shall be evaluated as follows:

(1) For purposes of this Rule, the "critical cross sections" utilized for the required structural stability assessments are the cross sections anticipated by the ~~design~~ qualified engineer to be the most susceptible to structural failure.

(2) CCR surface impoundments shall be assessed under seismic loading conditions for a seismic loading event with a 2 percent probability of exceedance in 50 years, equivalent to a return period of approximately 2,500 years, based on the USGS Seismic Hazard Maps for seismic events with this return period for the region where the CCR unit is located. This document is hereby incorporated by reference, including subsequent amendments and editions. A copy may be obtained at no cost at ~~https://earthquake.usgs.gov/hazards/hazmaps.~~ https://www.usgs.gov/programs/earthquake-hazards/hazards.

(3) CCR units constructed of or founded upon soils that are susceptible to liquefaction, as identified by a liquefaction potential analysis, shall meet liquefaction factors of safety as required in ~~Part (5)(E) of this Subparagraph.~~ Part (5)(E) of this Paragraph. The liquefaction potential analysis shall include:
   (A) soil classifications of the embankment and foundation soils;
   (B) fines content;
   (C) plasticity index;
   (D) water content;
   (E) saturation;
   (F) maximum current, past, and anticipated phreatic surface levels within the embankment, foundation, and abutments;
   (G) location beneath or above the natural ground surface; and
   (H) penetration resistance through cone penetration testing (CPT).

(4) Stability assessments shall be required for CCR units with downstream slopes that may be inundated by the pool of an adjacent water body. These assessments shall include conditions for maximum pool loading, minimum pool loading, and rapid drawdown of the adjacent waterbody.

(5) The safety factor assessments shall be supported by the following engineering calculations:
   (A) The calculated static factor of safety for the end-of-construction loading condition shall equal or exceed 1.30. The assessment of this loading condition is only required for the initial safety factor assessment and is not required for subsequent assessments;
   (B) the calculated static factor of safety for the long-term, maximum storage pool loading condition shall equal or exceed 1.50;
   (C) the calculated static factor of safety under the maximum surcharge pool loading condition shall equal or exceed 1.40;
   (D) the calculated seismic factor of safety shall equal or exceed 1.00; and
   (E) for dams constructed of or founded upon soils that have susceptibility to liquefaction, the calculated liquefaction factor of safety shall equal or exceed 1.20. Post-liquefaction stability analyses shall include characterization of the site conditions, identification of the minimum liquefaction-inducing forces based on soil characterization, determination of seismic effect on

liquefied layers of the embankment, and calculation of factors of safety against liquefaction for each liquefied layer of the embankment.

~~(f)~~(g) CCR units and surrounding areas that are constructed of earthen material shall be designed, constructed, operated, and maintained so that the vegetation meets the conditions outlined in the FEMA 534 guidance document entitled, "Technical Manual for Dam Owners: Impacts of Plants on Earthen Dams" issued on September 2005. This document is hereby incorporated by reference, including subsequent amendments and editions. A copy may be obtained at no cost at ~~https://www.fema.gov/media-library/assets/documents/1027.~~ https://damtoolbox.org/wiki/Technical_Manual_for_Dam_Owners:_Impacts_of_Plants_on_Earthen_Dams_(FEMA_P-534). However, alternative forms of slope protection may be approved by the Director, upon request by a qualified engineer through a plan submittal showing that the proposed alternative slope protection will provide equal or better protection from erosion than would be achieved with vegetation as specified in FEMA 534.

*Authority G.S. 143-215.25A; 143-215.26; 143-215.27; 143-215.31; 143-215.32; 143-215.34.*

**SECTION .0300 - INSPECTIONS: DAM SAFETY ORDERS**

**15A NCAC 02K .0301 INSPECTION BY THE DEPARTMENT**

(a) Schedule of Inspections
(1) All ~~class~~ Class A and B dams shall be inspected at least once every five years.
(2) Class C dams shall be inspected at least once every two years.

(b) At any time an inspection indicates that a dam may not perform satisfactorily or that the hazard classification has changed, the Director may require a detailed investigation at the ~~owners~~ owner's expense to determine the required remedial action, if any.

*Authority G.S. 143-215.31; 143-215.32.*

**15A NCAC 02K .0302 DAM SAFETY ORDERS**

(a) The Director may issue an order directing the owner(s) of a dam to make, in not less than 90 days from issuance of the order and at the owner(s) expense, any maintenance, alteration, repairs, reconstruction, or change in construction upon a finding that the dam:
(1) is not sufficiently strong,
(2) is not maintained in good repair or operating condition,
(3) is dangerous to life or property, or
(4) does not satisfy minimum stream-flow requirements.

(b) The Director may issue an order directing the owner(s) of any dam to take such measures as may be essential, including lowering the level of the impounded water, drainage of the impoundment, and destruction of the dam or reservoir in whole or in part, ~~immediately or~~ within a time limited by the order if the condition of the dam is found to have become so dangerous to the safety of life or property, in the ~~opinion~~ discretion of the Director, as not to safely permit sufficient time for issuance of an order in the manner provided by ~~Subdivision~~ Paragraph (a) of this Rule.

(c) The Director may, if at any time the condition of any dam becomes so dangerous to the safety of life or property, in the ~~opinion~~ discretion of the Director, as not to permit sufficient time for issuance of an order in the manner provided by ~~Subdivision~~ Paragraphs (a) or (b) of this Rule, ~~immediately~~ take such measures as may be essential to provide emergency protection to life and property including the lowering of the level of a reservoir by releasing water impounded or the destruction in whole or in part of the dam or reservoir. Costs of such measures may be recovered from the owner(s) of the dam by appropriate legal action by the Environmental Management Commission.

(d) Orders issued by the Director may be conditioned so as to require the dam owner, if they are required or given the option to remove the dam, to undertake the removal in such a manner as to minimize the amount of sediment transported from the impoundment downstream.

(e) Dam safety orders issued by the Director in no way relieve the owner(s) of the dam from duties and obligations imposed by regulations in Section .0200 of this Subchapter, nor do they relieve the owner(s) of the dam from any liabilities or other legal obligations.

*Authority G.S. 143-215.32; 143-215.34.*

**SECTION .0500 - MINIMUM STREAM FLOWS TO MAINTAIN AQUATIC HABITAT**

**15A NCAC 02K .0501 DEFINITIONS**

(a) Aquatic habitat shall be divided into three classes - "poor," "moderate," and "good."
(1) Streams with poor aquatic habitat are those which have a "poor" fish assemblage rating, and which are rated "poor" for at least two of the following three characteristics:
(A) Substrate;
(B) Cover; and
(C) Macro-invertebrate organisms.
(2) Streams with moderate aquatic habitat are those which exhibit physical conditions and biota which are intermediate between the poor and good categories.
(3) Streams with good aquatic habitat are those which receive at least two "good" ratings when the substrate, cover, and macro-invertebrate organism characteristics are evaluated. The fish assemblage also ~~must~~ shall receive a "good" rating.

(b) Cover means objects within or overhanging the stream channel which provide shelter for aquatic organisms. "Good" cover occurs when cover is widespread and diverse. "Poor" cover occurs when the amount of cover is small or non-existent.

(c) Substrate means the predominant particle size of the material which makes up the stream bed. "Good" substrate is composed of at least 50 percent silt free substrate with gravel or cobble. "Poor" substrate is composed of at least 80 percent silt, sand, or smooth bedrock.

(d) The macro-invertebrate organisms of the affected reach are rated as "good" if the affected reach is rated good or excellent in the Division of ~~Environmental Management's (DEM)~~ Water Resources biological monitoring database, or by a site-specific survey according to Standard Operating Procedures for Biological Monitoring, 1995, Division of ~~Environmental Management~~ Water Resources as defined in 15A NCAC ~~2B~~ 02B .0103(b). Macro-invertebrates are rated "poor" if the reach is rated fair or poor in ~~DEM's~~ Division of Water Resources biological monitoring database, or by a site-specific survey according to Standard Operating Procedures for Biological Monitoring, 1995, Division of ~~Environmental Management~~ Water Resources as defined in 15A NCAC ~~2B~~ 02B .0103(b).

(e) The fish assemblage rating shall be based on the North Carolina Index of Biotic Integrity (IBI). Existing ratings from the ~~DEM~~ Division of Water Resources biological monitoring database shall be used where available. If no rating exists, then a site-specific survey shall be conducted according to Standard Operating Procedures for Biological Monitoring, 1995, Division of ~~Environmental Management~~ Water Resources as defined in 15A NCAC ~~2B~~ 02B .0103(b). The fish assemblage shall be rated as "good" if the IBI rating is good, good-excellent, or excellent. The fish assemblage shall be rated as "poor" if the IBI rating is poor or lower.

(f) The affected reach of stream means that section of a stream downstream of a dam which experiences significant changes in hydrology. The exact delineation of the affected reach shall be site-specific and depend on factors ~~including, but not limited to:~~ including:

(1) volume of storage in the impoundment;
(2) upstream and downstream hydrologic characteristics of the stream;
(3) withdrawals from the impoundment; and
(4) downstream point source discharges to the stream.

For the purpose of evaluating aquatic habitat, the affected reach of a stream does not include any portion which is in the backwater of a downstream dam when the level of that downstream impoundment is at normal pool.

(g) "Special case" streams are those which exhibit at least one of the following characteristics:

(1) supplemental classification as an Outstanding Resource Water as defined in ~~15A NCAC 2B .0101(e)(4)~~ 15A NCAC 02B .0225(a) and .0216;
(2) populations of aquatic species listed as threatened or endangered by the U.S. Fish and Wildlife Service, or species which are listed as threatened or endangered by the N.C. Wildlife Resources Commission;
(3) self-sustaining populations of wild trout; or
(4) exceptional non-game or fishery resources as determined by the Wildlife Resources Commission.

(h) The use of the regression equations in Rule .0502 of this Section shall depend on the geographic region of the ~~state~~ State in which the stream is located. The geographic region shall be determined from the North Carolina Atlas, edited by Clay, Orr, and Stuart, published by the University of North Carolina Press, 1975.

(i) A continuous stream gage record means a continuous record of daily flows from a stream gage which:

(1) has at least 15 years of continuous daily records;
(2) has no significant hydrological effects caused by upstream regulation, withdrawals, or discharges;
(3) is no less than one-half and no more than one and one-half times the drainage area of the site in question; and
(4) has low flow and average flow yields ~~which~~ that are comparable to the site in question.

(j) A site-specific instream flow study conducted by the applicant or ~~his~~ their consultants, which is subject to approval by the Department, means a study performed according to the following conditions:

(1) A plan of study shall be developed in consultation with the Department and submitted to the Department for review and approval prior to commencement of the study.
(2) The plan of study shall identify the aquatic habitat parameters to be evaluated by the study. The selection of these parameters shall depend on factors including, but not limited to:
    (A) the aquatic species being evaluated;
    (B) the habitat quality of the affected reach; and
    (C) existing or potential water shortages or water use conflicts.
(3) The Department shall have the option of participating in the collection of all field data, and shall be notified prior to collection of any set of data.
(4) The results of the study shall accurately determine the parameters identified during study design.
(5) The Department may review the field data and results of these studies to determine the stream flow needed to maintain aquatic habitat.

*Authority G.S. 143-215.24; 143-215.25; 143-215.31; 143-215.32; 143-215.33; 143-215.36.*

**15A NCAC 02K .0502 REQUIRED MINIMUM FLOW FOR DAMS (NOT SMALL HYDRO PROJECTS)**

(a) A dam operated by a small power producer, as defined in G.S. 62-3(27a), that diverts water from 4,000 feet or less of the natural stream bed, shall be exempt from this Rule.

(b) A dam ~~proposed for~~ located on a small stream with a mean annual daily flow less than or equal to 3.0 cubic feet per second (cfs) shall be subject to the following review process in determining the required minimum flow:

(1) If the mean annual daily flow is less than or equal to 3.0 cfs and the 7-day, 10-year low flow (7Q10) is less than or equal to 0.2 cfs; and if there are no existing point source discharges of

wastewater to the affected stream reach; then no minimum release will be required.

(2) If the mean annual daily flow is less than or equal to 3.0 cfs and the 7Q10 is less than or equal to 0.2 cfs; and one or more existing point source discharges of wastewater enter the affected stream reach; then the minimum release shall be equal to the 7Q10.

(3) If the mean annual daily flow is less than or equal to 3.0 cfs and the 7Q10 is greater than 0.2 cfs, then the minimum release shall be equal to the 7Q10.

(c) ~~If the mean annual daily flow is greater than 3.0 cfs, then~~ For dams located on a stream with a mean annual daily flow of greater than 3.0 cfs, the following procedures shall be used to determine the minimum stream flow requirement:

(1) The minimum flow for a dam on a stream with poor aquatic habitat shall be the 7Q10 flow determined by using currently accepted U.S. Geological Survey procedures.

(2) The minimum flow for a dam on a stream with moderate aquatic habitat in the piedmont, as defined in Rule .0501(h) of this Section, shall be determined using regression equations provided in this Subparagraph.

(A) All flows used in regression equations shall be measured in cubic feet per second, all drainage areas shall be measured in square miles, and all logarithmic expressions shall refer to base 10 logarithms.

(B) The regression equation used to determine the minimum flow for a stream in the piedmont which exhibits moderate aquatic habitat, and for which no continuous stream gage record, as defined in Rule .0501(i) of this Section, exists, shall be as follows:

LRF = (3.204 x M) - (2.618 x D)
LRF = LOG of regression flow
M = LOG of mean annual daily flow
D = LOG of drainage area

The regression flow (RF) is calculated by raising 10 to the power of the LRF.
If the drainage area is greater than 95 square miles, the required minimum flow is 1.4 x RF. Otherwise the required minimum flow is equal to RF.

(C) The regression equation used to determine the minimum flow for a stream in the piedmont which exhibits moderate aquatic habitat, and for which a continuous stream gage record, as defined in Rule .0501(i) of this Section, does exist, shall be as follows:

LRF = (0.812 x M) + (8.111 x E92) - (4.806 x E85) - (3.275 x E95)
LRF = LOG of regression flow
M = LOG of mean annual daily flow
E85 = LOG of 85% annual exceedance flow
E92 = LOG of 92.5% annual exceedance flow
E95 = LOG of 95% annual exceedance flow

The regression flow (RF) is calculated by raising 10 to the power of the LRF. The required minimum flow is 1.1 x RF.

(3) The minimum flow for a dam on a stream with moderate aquatic habitat, located in a geographical region for which regression formulas are not provided, shall be determined by a site-specific instream flow study, as defined in Rule .0501(j) of this Section, conducted by the applicant or ~~his~~ their consultants and subject to the approval of the Department.

(4) The minimum flow for a dam on a special case stream, or on a stream with good aquatic habitat, shall be determined by a site-specific instream flow study, as defined in ~~Rule .0501(j).~~ Rule .0501(j) of this Section. This study shall be conducted by the applicant or ~~his~~ their consultants, and shall be subject to approval by the Department.

(5) If the applicant or owner disputes the minimum flow determined by the procedures described in Subparagraphs (c)(1) or (c)(2) of this Rule for streams with poor or moderate aquatic habitat, ~~he~~ they may undertake a site-specific field study, as defined in Rule .0501(j) of this Section, subject to the review and approval of the Department. The final minimum release required ~~will~~ shall not exceed the amount determined by the procedures described in this Rule.

(6) The minimum release schedule for a water supply reservoir shall include provisions for reductions in the minimum flow which coincide with reductions in the usable water supply storage remaining in the impoundment and with reductions in the amount of water withdrawn from the reservoir.

(A) This system of tiered releases shall apply to new water supply reservoirs and any existing water supply reservoirs for which the minimum release is revised.

(B) The exact percentage of storage which triggers reductions in minimum flow will depend on several site-specific factors, ~~including, but not limited to:~~ including:

(i) size of the reservoir;

(ii) rate of the water supply demand;
(iii) hydrologic characteristics of the impounded stream; and
(iv) the impoundment levels which result in local efforts to reduce water usage through conservation measures.

(C) At least three levels of minimum releases shall be included in the release schedule for a water supply reservoir.

(D) When usable water supply storage has been reduced to a level which triggers the first reduction in minimum flow, then the average daily water withdrawal shall be reduced by at least 10 percent from the average daily withdrawal for the 60 day period ~~immediately prior to~~ preceding the first reduction in the minimum flow. The water supply operator shall accomplish this reduction in withdrawal within two weeks of the reduction in the minimum release.

(E) When usable water supply storage has been reduced to a level which triggers the second reduction in minimum flow, then the average daily water withdrawal shall be reduced by at least 20 percent from the average daily withdrawal for the 60 day period ~~immediately prior to~~ preceding the first reduction in the minimum flow. The water supply operator shall accomplish this further reduction in withdrawal within two weeks of the second reduction in the minimum release.

(F) The water system operator shall document reduction in water withdrawals by submitting reports of daily water withdrawals to the Department. These shall be submitted every two weeks for as long as the minimum release is reduced below the amount normally required.

(G) An example is shown in the table below. (Note that the percentages of water supply storage which trigger the changes in minimum release are site-specific for this example and may vary according to the factors described in Part (B) of ~~this Paragraph.)~~ this Subparagraph.)

| LEVEL | REMAINING USABLE WATER SUPPLY STORAGE | MINIMUM RELEASE | WATER USE REDUCTION |
|---|---|---|---|
| 1 | between 70% and 100% | A | - - - - |
| 2 | between 40% and 70% | B | 10% |
| 3 | below 40% | C | 20% |

A = normal minimum release determined by a field study, regression equation, or use of the 7Q10
B = intermediate reduction in minimum release
C = low minimum release equal to no more than the 7Q10

(7) An existing dam which was built subject to review under the National or the State Environmental Policy Acts, and for which a minimum release has been established, ~~will~~ shall not have its minimum release changed under this Rule. However, the Department may review and adjust the minimum flow released by any other existing dam if there is evidence of any of the following conditions downstream of that dam:
(A) water quality standards not being maintained;
(B) water quality classifications which are being only partially supported or not being supported; or
(C) aquatic habitat not being maintained.

(8) If the minimum release required from an existing water supply reservoir is reviewed by the Department, any increase in minimum flow ~~will~~ shall be determined on a case-by-case basis in consideration of the following factors, ~~including, but not limited to:~~ including:
(A) availability of water to meet existing demands;
(B) rate of growth in water demand;
(C) planned development of alternative sources of water supply;
(D) structural difficulties;
(E) capital costs; and
(F) anticipated improvements in water quality and aquatic habitat in the affected reach resulting from the proposed change in minimum flow.

The change in minimum release shall be set no higher than an amount which would reduce the water supply safe yield, as determined by standard accepted engineering practices, by more than 10 percent.

(9) If a new minimum release requirement from an existing water supply reservoir is being delayed until a new source of water supply is developed, then this delay shall not exceed a period of five years from the written notification that a new minimum release will be required. This period may be extended by approval of the Environmental Management Commission in consideration of the following factors:
(A) delays in developing a new water supply source;
(B) changes in water quality and aquatic habitat in the affected reach; or
(C) availability of water to meet existing demands.

*Authority G.S. 143-215.24; 143-215.25; 143-215.31; 143-215.32; 143-215.33; 143-215.36.*

**15A NCAC 02K .0503 REQUIRED MINIMUM FLOW FOR SMALL HYDROELECTRIC PROJECTS**

(a) This Rule shall apply only to a dam operated by a small power producer, as defined in G.S. 62-3(27a), that diverts water from 4,000 feet or less of the natural stream bed. The length of the bypassed reach shall be measured from the toe of the dam to the point where the diverted water re-enters the natural channel, following the centerline of the natural channel.

(b) The minimum release for a hydroelectric project subject to this Rule shall be determined according to the procedures described in Subparagraphs (1)-(5) of this Paragraph. If at any time the inflow just upstream of the dam is less than the minimum flow required in the bypassed reach, then the minimum flow may be reduced to a level equal to this inflow.

(1) If the aquatic habitat in the bypassed reach is rated poor, then the minimum release to the bypassed reach shall be determined as follows:
(A) If the 7Q10 is less than or equal to 10 percent of the mean annual daily flow, then the minimum release to the bypassed reach shall be the 7Q10 flow.
(B) If the 7Q10 is greater than 10 percent of the mean annual daily flow, and there are no existing point source discharges of wastewater to the bypassed reach, then the minimum release to the bypassed reach shall be 0.8 times the 7Q10.
(C) If the 7Q10 is greater than 10 percent of the mean annual daily flow, and one or more existing point source discharges of wastewater enter the bypassed reach, then the minimum release to the bypassed reach shall be the 7Q10 flow.

(2) If the bypassed reach does not have an aquatic habitat rating of "poor," is not on a special case stream, and is located in the piedmont region, as defined in Rule .0501(h) of this Section, then the minimum release to the bypassed reach shall be determined as follows:
(A) If the 7Q10 is less than or equal to six percent of the mean annual daily flow, then the minimum release to the bypassed reach shall be 3.0 times the 7Q10 flow.
(B) If the 7Q10 is greater than six percent of the mean annual daily flow, and less than or equal to 10 percent of the mean annual daily flow, then the minimum release to the bypassed reach shall be 2.2 times the 7Q10 flow.
(C) If the 7Q10 is greater than 10 percent of the mean annual daily flow, then the minimum release to the bypassed reach shall be 1.2 times the 7Q10 flow.

(3) The minimum flow determined by the procedures described in Subparagraphs (1) and (2) of this Paragraph may be adjusted downward by the Department if that adjustment would not result in significant loss of aquatic habitat. This adjustment may be based on factors including:
(A) the type of aquatic habitat present in the bypassed reach;
(B) the length of the bypassed reach.

(4) If the applicant or owner disputes the minimum flow determined by the procedures described in Subparagraphs (1) and (2) of this Paragraph, ~~he~~ <u>they</u> may undertake a site-specific field study, as defined in Rule .0501(j) of this Section, subject to the review and approval of the Department. The final minimum release required will not exceed the amount determined by the procedures described in this Section.

(5) The minimum flow for a dam on a special case stream, or on a stream located in the mountain region, as defined in Rule .0501(h) of this Section, which does not exhibit poor aquatic habitat; shall be determined by a site-specific instream flow study, as defined in Rule .0501(j) of this Section. This study shall be conducted by the applicant or ~~his~~ <u>their</u> consultants, and shall be subject to approval by the Department.

(c) A dam operated by a small power producer, as defined in G.S. 62-3(27a), which was operating to produce power as of October 13, 1994, and which is not under the jurisdiction of the Federal Energy Regulatory Commission, shall not be required by this Rule to increase its minimum flow above the amount required on October 13, 1994.

*Authority G.S. 143-215.24; 143-215.25; 143-215.31; 143-215.32; 143-215.33; 143-215.36.*

**15A NCAC 02K .0504 MONITORING OF MINIMUM FLOW REQUIREMENTS**

(a) An owner of a dam with a minimum flow requirement greater than 1.0 cfs shall install, calibrate, and maintain one or more stream staff gages following procedures described in U.S. Geological Survey Water Supply Paper 2175, "Measurement and Computation of Streamflow." This document may be accessed at https://www. https://pubs.usgs.gov/publication/wsp2175 at no charge. Plans for such gages shall be submitted to the Department for approval prior to installation. Staff gages shall be calibrated to indicate the water surface elevations which correspond to the required flows. Calibration shall be verified at least every two years. All initial calibration and re-calibration measurements, including field data, shall be provided to the Department within 30 days of completion.

(b) If the minimum release from a dam is less than or equal to 1.0 cfs, then an accurately calibrated release mechanism such as a gate or pipe opening shall be acceptable in lieu of a staff gage. Plans for making the required release shall be submitted to the Department for review and approval prior to construction, repair, or modification of the dam.

(c) An owner of a dam who does not comply with a minimum flow requirement may be required to install automated gaging which continuously monitors flow. Records from this type of gage shall be provided to the Department upon request, for the time period being investigated.

(d) Minimum release requirements may be modified or suspended for a term determined by the Department for reasons including pre-scheduled maintenance or construction involving the dam. The Department ~~must~~ shall approve a written request for such a change in the minimum flow requirement prior to any change in the minimum release.

(e) Reduction or cessation of the minimum flow as a result of emergency conditions or equipment failure shall not constitute a violation of the minimum flow requirement, so long as the event is reported to the Department within 48 hours. The Department may set forth a schedule for correcting the problem and restoring the required minimum flow. If the schedule is not met, and the problem continues to cause violation of the minimum flow requirement, then this violation may be subject to enforcement action.

*Authority G.S. 143-215.24; 143-215.25; 143-215.31; 143-215.32; 143-215.33; 143-215.36.*

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## TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

## CHAPTER 56 - ENGINEERS AND SURVEYORS

***Notice*** *is hereby given in accordance with G.S. 150B-21.2 that the Board of Examiners for Engineers and Surveyors intends to repeal the rule cited as 21 NCAC 56 .0608.*

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

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

**Proposed Effective Date:** *January 1, 2027*

**Public Hearing:**
**Date:** *September 16, 2026*
**Time:** *9:00 a.m.*
**Location:** *Board Office, 4601 Six Forks Rd, Ste 310, Raleigh, NC 27609*

**Reason for Proposed Action:** *The Board seeks to repeal 21 NCAC 56 .0608 because the education and experience requirements in subsection (a)(5) of the Rule will be in conflict with G.S. 89C-13(b)(1) effective on October 1, 2026 pursuant to Section 38A.1.(f) of SL 2026-41. Additionally, the application requirements to be certified as a surveyor intern are already located in 21 NCAC 56 .0602. Therefore, the rule is unnecessary.*

**Comments may be submitted to:** *S. Wesley Tripp III, 4601 Six Forks Rd, Ste 310, Raleigh, NC 27609; phone (919) 791-2000; email wtripp@ncbels.org*

**Comment period ends:** *October 16, 2026*

**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**

### SECTION .0600 - PROFESSIONAL LAND SURVEYOR

**21 NCAC 56 .0608 SURVEYOR INTERN**

*Authority G.S. 89C-2; 89C-10; 89C-13; 89C-14; 89C-15.*

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## CHAPTER 66 - VETERINARY MEDICAL BOARD

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Veterinary Medical Board intends to amend the rules cited as 21 NCAC 66 .0101, .0102, .0105, .0106, .0108, .0202, .0203, .0206, .0209, .0211, .0401-.0406, and .0501.*

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

**Proposed Effective Date:** *January 1, 2027*

**Public Hearing:**
**Date:** *October 7, 2026*
**Time:** *9:00 a.m.*
**Location:** *NC Veterinary Medical Board, 1611 Jones Franklin Rd., Suite 106, Raleigh, NC 27606*

**Reason for Proposed Action:** *21 NCAC 66 .0101- updated language*
*21 NCAC 66 .0102- updated language and authority citation*
*21 NCAC 66 .0105- updated language*
*21 NCAC 66 .0106- updated language, remove requirement to report all employment changes (still required during renewal)*
*21 NCAC 66 .0108- Add boarding kennel permit fee found in G.S. 90-186(6)(p)*
*21 NCAC 66 .0202- updated language and authority citation*
*21 NCAC 66 .0203- updated language and authority citation*
*21 NCAC 66 .0206- add one hour of opioid training and CE waiver for active-duty military*
*21 NCAC 66 .0209- updated due to change in who can own a veterinary facility and setting required fields of application*
*21 NCAC 66 .0211- updated language*
*21 NCAC 66 .0401- .0406- updated language and authority citation*
*21 NCAC 66 .0501- updated language and authority citation*

**Comments may be submitted to:** *Melissa Bowman, 1611 Jones Franklin Rd., Suite 106, Raleigh, NC 27606; phone (919) 854-5601; email mbowman@ncvmb.org*

**Comment period ends:** *October 16, 2026*

**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 66 – VETERINARY MEDICAL BOARD

### SECTION .0100 - STATUTORY AND ADMINISTRATIVE PROVISIONS

**21 NCAC 66 .0101 AUTHORITY: NAME AND LOCATION OF BOARD**
The ~~"North Carolina Veterinary Practice Act," Article 11, Chapter 90, of the General Statutes of North Carolina, establishes and authorizes the "North Carolina Veterinary Medical Board," hereafter referred to as the "Board."~~ The North Carolina Veterinary Medical Board, hereafter referred to as the "Board," is established and authorized by the North Carolina Veterinary Practice Act, as outlined in Article 11, Chapter 90 of the General Statutes of North Carolina. Unless otherwise directed, all communications shall be ~~addressed to the Board at Office of the Executive Director, 1611 Jones Franklin Road, Suite 106, Raleigh, North Carolina 27606.~~ mailed to the following address:
North Carolina Veterinary Medical Board
Office of the Executive Director
1611 Jones Franklin Road, Suite 106
Raleigh, NC 27606.

*Authority G.S. 90-182; 90-185(6).*

**21 NCAC 66 .0102 DEFINITIONS**
The definitions ~~as found~~ set forth in G.S. 90-181 are hereby incorporated by reference into ~~in~~ this ~~Chapter by reference~~ Chapter, in accordance with ~~G.S. 150B-14(c).~~ G.S. 150B-21.6, and includes subsequent amendments and editions. A copy of the material may be accessed at https://www.ncleg.gov/Laws/GeneralStatutes at no charge.

*Authority G.S. 90-185(6); ~~150B-14;~~ 150B-21.6.*

**21 NCAC 66 .0105 APPLICABILITY OF BOARD RULES**
Rules adopted by the Board under the provisions of Article 11 of Chapter 90 and G.S. 150B shall be legally binding upon ~~every individual~~ all persons holding a ~~license from~~ license, registration, certificate, or permit issued by the Board, and upon all professional corporations authorized to offer or to perform veterinary services in this State. All ~~licensees~~ persons holding a license, registration, certificate, or permit issued by ~~of~~ the Board ~~are charged with having knowledge of the existence of the Board rules and shall be deemed to be familiar with their several provisions and to understand them.~~ shall familiarize themselves

with the provisions of these rules and shall comply with the requirements set forth in the rules.

*Authority G.S. 90-185(6).*

**21 NCAC 66 .0106 CURRENT INFORMATION REQUIRED BY THE BOARD**

(a) ~~Each licensee and registrant shall notify the Board of his or her current mailing address and the name, address, and phone number of the current place of employment within 60 days of any change.~~ Licensees, registrants, certificate holders, or permittees and applicants for licensure, registration, certification, or permits, shall notify the Board in writing within 60 days of any changes to their:

(1) physical or mailing address;
(2) email address; or
(3) phone number.

(b) ~~All changes in legal name shall be reported within 60 days, in writing, to the Board office accompanied by photocopies of the licensee's or registrant's legal documentation creating the change and a social security card showing the new legal name.~~ If a licensee, registrant, certificate holder, permittee, or applicant has a legal name change, the change shall be reported to the Board in writing within 60 days of the change. The written notice of a name change shall include:

(1) photocopies of the legal documentation creating the change: or
(2) a social security card displaying the new legal name.

~~(c) All changes of professional association, or dissolution of a professional relationship, shall be reported within 60 days to the Executive Director together with the new status and addresses of the individuals or firm.~~

*Authority G.S. 90-185(6).*

**21 NCAC 66 .0108 FEES**

The following fees established by the Board shall be paid in advance to the Board:

(1) Veterinary License
    (a) Issuance or Renewal $170.00
    (b) North Carolina License Examination $250.00
    (c) Late Renewal Fee $50.00
    (d) Reinstatement $100.00
(2) Veterinary Technician Registration
    (a) Issuance or Renewal $50.00
    (b) North Carolina Veterinary Technician Examination $50.00
    (c) Late Renewal Fee $50.00
    (d) Reinstatement $100.00
(3) Professional Corporation Certificate of Registration
    (a) Issuance or Renewal $160.00
    (b) Late Renewal Fee $50.00
    (c) Reinstatement $100.00
(4) Limited Veterinary License
    (a) Issuance or Renewal $170.00
    (b) Late Renewal Fee $50.00
    (c) Reinstatement $100.00
(5) Veterinary Faculty Certificate
    (a) Issuance or Renewal $170.00
    (b) Late Renewal Fee $50.00
    (c) Reinstatement $100.00
(6) Zoo Veterinary Certificate
    (a) Issuance or Renewal $170.00
    (b) Late Renewal Fee $50.00
    (c) Reinstatement $100.00
(7) Temporary Permit: Issuance $150.00
(8) Veterinary Student Intern Registration: Issuance $25.00
(9) Veterinary Facility Permit: Issuance or Renewal $150.00
(10) Boarding Kennel Permit: Issuance or Renewal $75.00
~~(10)~~(11) Copies of Board publications, rosters, or other materials available for distribution from the Board shall be free or at a minimal cost unless otherwise specifically provided by law. As used herein, "minimal cost" shall mean the actual cost of reproducing the public record or public information.

*Authority 90-185(6); 90-186(6); 90-187(b); 90-187.5; 132-6.2.*

**SECTION .0200 - PRACTICE OF VETERINARY MEDICINE**

**21 NCAC 66 .0202 NAME OF PRACTICE**

(a) The ~~adoption or use of a~~ name ~~for the~~ of a facility where the practice of veterinary medicine is conducted ~~entity authorized by law through which the licensed veterinarian practices and delivers veterinary services~~ shall have prior Board approval in order to avoid duplication or confusion of names and to prevent ~~use of names which might be misleading.~~ misleading names. ~~No proper names of persons other than licensees may be included in the name. If the veterinary medical practice uses the name or names of the veterinarians owning or operating the facility in the name of the practice, the name shall conform to the requirements of G.S. 90-181.1(c), and Board approval shall be obtained prior to the use of that name. The use of the word "facility" is not required in the name of those facilities offering the services described in G.S. 90-181.1(b)(2) and (b)(3) unless required by the context for clarification.~~ The naming requirements set forth in G.S. 90-181.1 shall apply at all times.

(b) If an entity includes the proper name of a person in the name of the veterinary practice, only names of licensed veterinarians shall be included in the practice name. If the practice name includes the veterinarian's name, the name shall also conform to the requirements of G.S. 90-181.1(c).

~~(b)~~(c) ~~A facility where the practice of veterinary medicine is conducted shall use in its name one of the descriptive terms as set forth in G.S. 90-181.1(b), or descriptive terms that are substantially equivalent, in a manner so as to accurately inform the public of the levels of service offered at the facility.~~ The use of the word "facility" is not required in the name of those facilities offering the services described in G.S. 90-181.1(b)(2) and (b)(3) unless needed for clarity.

*Authority G.S. 55B-5; 90-181.1; 90-185(6).*

**21 NCAC 66 .0203 LICENSE REQUIRED TO PRACTICE; FACULTY CERTIFICATE; ZOO VETERINARY CERTIFICATE**

~~(a) Upon written application, the Board may issue a veterinary faculty certificate to a faculty member in the College of Veterinary Medicine at North Carolina State University which certifies that the holder thereof is exempt from the requirements of licensing under G.S. 90-187.10(3). To be a faculty member in the College of Veterinary Medicine, the faculty member shall be a graduate of a "recognized school of veterinary medicine" as defined by the American Veterinary Medical Association and a member of the faculty or staff of the College of Veterinary Medicine. The faculty member's certificate shall indicate that the holder is exempt from the requirements for licensing provided that the practice of veterinary medicine is confined to the faculty member's duties in the hospital or field service unit of the College of Veterinary Medicine. Such exemption certificate shall automatically expire when the holder's relationship is terminated with the school and university.~~

~~(b) Upon written application, the Board may issue a zoo veterinary certificate in lieu of the license that otherwise would be required by G.S. 90-187.10 to a veterinarian not licensed by the Board who is employed by the North Carolina State Zoo. The requirements for and criteria governing the zoo veterinary certificate shall be the same as for the faculty certificate, to the extent applicable and practical. In determining whether to issue a zoo veterinary certificate, the board shall, in addition, consider the applicant=s zoo employment history, the applicant=s job description and duties with the N.C. State Zoo, and the reasons the applicant seeks exemption from the licensure requirements for veterinarians.~~

~~(c) The request for either the faculty certificate or zoo veterinary certificate shall be in writing upon application form furnished by the Board. All fees for issuance, renewal, re-instatement, as well as criteria for continuing education and discipline shall be as set forth in Article 11, G.S. 90 and the rules of the Board. The zoo veterinary certificates shall be annually renewed each calendar year, and the faculty certificates also shall be for the duration of one year, but the Board may determine a beginning date other than January 1 if necessary to conform to academic appointments or the academic calendar of the College of Veterinary Medicine.~~

~~(d) The Board may consider a written application for a faculty certificate by a person who is a graduate of a "recognized school of veterinary medicine" as defined in Paragraph (a) of this Rule and who is a member of the faculty or staff of a college or university in this State other than the College of Veterinary Medicine of North Carolina State University, provided that the application sets forth the qualifications of the faculty member; the reasons that the faculty member seeks to be exempt from the requirements for licensing as a veterinarian in North Carolina, and the duties of the faculty member at the college or university where he or she is employed. A faculty certificate shall be issued under this Paragraph if the applicant shows to the satisfaction of the Board that his or her duties as a faculty member involve the practice of veterinary medicine at the college or university and that there are valid reasons that the applicant should be exempt from the licensure requirements for veterinarians. If a faculty certificate is issued under this Paragraph, all other application requirements, fee requirements, and expiration conditions apply it as to those issued to faculty members at the College of Veterinary Medicine at North Carolina State University.~~

(a) The Board may issue two types of special certificates which are exempt from the licensing requirements of Article 11, Chapter 90 of the General Statutes of North Carolina and the rules of this Chapter as allowed by G.S. 90-187.14:

(1) veterinary faculty certificates; and

(2) zoo veterinary certificates.

(b) The Board may grant a veterinary faculty certificate to eligible members of the College of Veterinary Medicine at North Carolina State University. To qualify, the applicant shall:

(1) be a graduate of a school of veterinary medicine; and

(2) be a faculty or staff member at the College of Veterinary Medicine at North Carolina State University.

(c) The veterinary faculty certificate exempts the holder from the standard licensing requirements set forth in this Chapter, provided their practice is limited to their duties with the college's hospital or field service unit. The certificate expires automatically upon termination of employment from the College of Veterinary Medicine.

(d) The Board may consider faculty certificate applications from veterinary faculty at other colleges or universities in North Carolina if the applicant is a graduate of a school of veterinary medicine. In addition, the Board shall consider the following:

(1) the applicant's job duties at the college or university; and

(2) the reason the applicant requests exemption from the licensure requirements of Article 11, Chapter 90 of the General Statutes of North Carolina and the rules of this Chapter.

If a faculty certificate is issued under this Paragraph, the requirements and conditions of Paragraphs (c) and (f) of this Rule shall apply.

(e) For veterinarians employed by the North Carolina State Zoo, the Board may issue a zoo veterinary certificate in lieu of a standard license. The Board shall consider the following factors to determine if the certificate shall be issued:

(1) the applicant's zoo employment history;

(2) job description and duties at the North Carolina State Zoo; and

(3) the reasons for seeking exemption from standard licensure.

(f) Applicants for a veterinary faculty certificate or zoo veterinary certificate shall:

(1) submit an online application using the Board's license management system portal; and

(2) be subject to the fees, renewal processes, reinstatement, continuing education, and discipline requirements as set forth in Article 11, Chapter 90 of the General Statutes of North Carolina and the rules of this Chapter.

(g) The online application for veterinary faculty or zoo veterinary certificates is available on the Board's website, www.ncvmb.org, and requires the applicant to provide, submit, and attest to the following:

(1) name, address, telephone number, and email address;
(2) social security number, date of birth, place of birth, and military status;
(3) name of the school of veterinary medicine where the applicant graduated with a degree of veterinary medicine, and the date of graduation;
(4) job title at the college of veterinary medicine where the applicant is employed or at the North Carolina State Zoo;
(5) a copy of the applicant's social security card;
(6) a degree conferred transcript; and
(7) questions about whether the applicant has had previous discipline from any veterinary licensing board or controlled substance authority; criminal charges or convictions; substance abuse; and employee misclassification.

(h) The veterinary faculty certificate shall be valid for one year and the start date is dependent on the academic calendar of the College of Veterinary Medicine. Zoo veterinary certificates shall be renewed annually each calendar year.

*Authority G.S. 90-185(6); 90-187.10; 90-187.14.*

**21 NCAC 66 .0206 MINIMUM STANDARDS FOR CONTINUING EDUCATION**

Compliance with continuing education standards for veterinary professionals licensed or registered by the Board is mandatory for license, certificate, or registration renewal. Veterinarian refers to persons ~~Each person~~ holding a veterinary license, limited license, a faculty certificate, or a zoo veterinary ~~certificate~~ certificate. ~~(collectively referred to herein as "veterinarian") or a veterinary technician registration issued by the Board shall comply with the standards in this Rule. The standards shall be a condition precedent to the renewal of a license, certificate, or registration respectively.~~ The standards are as follows:

(1) A veterinarian shall earn 20 continuing education credit hours for the calendar year license renewal period. A maximum of 10 hours may be obtained pursuant to courses described in Item (3) of this Rule.
(2) A registered veterinary technician shall earn 12 continuing education credit hours for the two-calendar year registration renewal period. A maximum of six hours may be obtained pursuant to ~~course~~ courses described in Item (3) of this Rule.
(3) One continuing education hour may be earned for each hour of independent self-study courses, prerecorded webinars, audio conferences, and non-interactive on-line presentations by approved continuing education credit ~~providers.~~ providers, as designated in Item (9) of this Rule.
(4) One continuing education credit hour may be earned for each hour of in-person attendance or live interactive attendance at courses presented by approved continuing education credit ~~providers.~~ providers, as designated in Item (9) of this Rule.
(5) A live interactive presentation shall:
    (a) include instant or synchronous two-way communication;
    (b) provide access to both technical personnel and professional faculty, as well as interactivity among participants for the exchange of questions and answers via instant messaging or a moderated ~~teleconference,~~ teleconference; and
    (c) document the level of participation by keeping a record of the participant's activity in asking or answering questions during the presentation and the score of any examination administered at the end or the presentation.
(6) One hour of the total required hours of continuing education each renewal period for veterinarians and registered veterinary technicians, shall be on the topic of the abuse of controlled substances.
~~(6)~~(7) A veterinarian or registered veterinary technician may request and be granted an extension of time, not to exceed six months, to satisfy the continuing education ~~requirement~~ requirement, if the veterinarian or registered veterinary technician provides evidence of a circumstance that prevents the veterinarian or registered veterinary technician from being able to obtain continuing education. The Board shall consider ~~any~~ evidence submitted of a circumstance preventing the veterinarian or registered veterinary technician from being able to obtain continuing education on a case-by-case basis.
~~(7)~~(8) If the Board finds that the circumstance that was the basis for non-compliance with the continuing education requirement justified the non-compliance, the Board may exempt that individual from completing the unearned portion of the continuing education for that renewal period.
~~(8)~~(9) Continuing education credits hours may be earned from courses, programs, or materials presented or approved by the following providers:
    (a) the American Veterinary Medical Association (AVMA);
    (b) the American Animal Hospital Association (AAHA);
    (c) the North Carolina Veterinary Medical Association (NCVMA);
    (d) the United Stated Department of Agriculture-Animal and Plant Health Inspection Service;

(e) the American Association of Veterinary State Boards' (AAVSB) Registry of Approved Continuing Education (RACE); and

(f) academies, schools, or colleges of veterinary medicine.

These providers are designated herein as "approved continuing education credit providers." The Board shall consider additional courses, presentations, or materials eligible for approval for continuing education credit hours, provided that the individual seeking the credit furnishes the Board with information to establish that the content of the course, presentation, or material are sufficiently educational for veterinarians or registered veterinary technicians. Board approval for continuing education credits for such additional courses, presentations, or materials shall be obtained prior to attendance or participation; however, the Board shall waive the requirement of prior approval if illness, injury, or natural disaster prevented the individual from obtaining the prior approval.

~~(9)~~(10) Each veterinarian and registered veterinary technician shall keep ~~a file containing the three most recent renewal periods of the content of courses submitted to the Board for continuing education credit hours.~~ a record of the continuing education courses and credit hours completed and submitted to the Board for the three most recent renewal periods.

~~(10)~~(11) A veterinarian licensed in the year of graduation from a veterinary medical college is not required to earn continuing education credit hours to be eligible for license renewal for the next renewal period.

~~(11)~~(12) A veterinary technician registered in the year of graduation from a veterinary medical technology program is not required to earn continuing education credit hours to be eligible for registration renewal for the next renewal period.

~~(12)~~(13) A veterinarian or veterinary technician serving in the armed forces of the United ~~States~~ States, and to whom an extension of time to file a tax return is granted pursuant to ~~G.S. 105-249.2~~ G.S. 105-249.2, is granted the same extension of time to comply with the continuing education requirement of this Rule. A veterinarian or veterinary technician serving active duty in the armed forces of the United States for 50 percent or more of their renewal period, shall have the continuing education requirement waived for that renewal period pursuant to G.S. 93B-15.

*Authority G.S. 90-185(6); 90-186(1); 93B-15.*

**21 NCAC 66 .0209 PROFESSIONAL CORPORATIONS AND PROFESSIONAL LIMITED LIABILITY COMPANIES**

~~(a) Veterinary medical services may be provided through a limited liability company that complies with this Rule, Article 11, G.S. 90, the rules of the Board, and statutes governing limited liability companies, including G.S. 57D-2-01.~~

~~(b) The name of a limited liability company organized to practice veterinary medicine shall not include any adjectives or other words not in accordance with Article 11, G.S. 90 and the rules of the Board.~~

~~(c) The corporate name of a professional limited liability company registered under these Rules shall contain the wording "professional limited liability company," "professional ltd. liability co.," "professional limited liability co.," or "professional ltd. liability company," or an abbreviation of one of the foregoing: "P.L.L.C." or "PLLC."~~

~~(d) Domestic professional limited liability companies shall be formed and all limited liability companies shall be operated in accordance with the requirements set out in G.S. 57D.~~

~~(e)~~(a) Before filing ~~the articles of organization~~ Articles of Incorporation for a domestic professional corporation, Articles of Organization for a domestic professional limited liability ~~company~~ company, or an application for Certificate of Authority for a professional corporation or professional limited liability company with the North Carolina Secretary of State for entities organized to practice veterinary ~~medicine with the Secretary of State,~~ medicine, the incorporators, organizing ~~members~~ members, officers, or company officials shall submit the following to the Board:

(1) A registration fee as set by Rule .0108 of this Chapter; and

~~(2)~~ ~~A certificate certified by all organizing members:~~

~~(A)~~ ~~setting forth the names and addresses of each person who will be employed by the professional limited liability company to practice veterinary medicine;~~

~~(B)~~ ~~stating that all such persons are duly licensed to practice veterinary medicine in North Carolina; and~~

~~(C)~~ ~~representing that the company will be conducted in compliance with the North Carolina Limited Liability Company Act (G.S. 57D), this Chapter, Article 11, G.S. 90 and the rules of the Board~~.

(2) A copy of the proposed articles to be filed or an application for Certificate of Authority including a Certificate of Existence or Good Standing from the home state of the entity.

~~(f) A certification that each of the organizing members is licensed to practice veterinary medicine in North Carolina shall be returned by the Board to the organizer of the professional limited liability company for filing with the Secretary of State.~~

(b) After reviewing the proposed articles or applications and certificates for compliance with the requirements set forth in Chapters 55B and 57D of the General Statutes of North Carolina, the Board shall issue a Letter of Certification for filing with the North Carolina Secretary of State if the review finds compliance with these statutes.

~~(g)~~(c) ~~A Certificate of Registration~~ Registration of ~~for~~ a professional corporation or professional limited liability company shall be renewed ~~annually.~~ annually with the Board. The ~~Certificate of Registration~~ registration shall expire on the last day of December following its issuance by the Board and shall become invalid on that date unless renewed. Upon submission of ~~written application signed by its manager on~~ a renewal application form prescribed by the Board and ~~accompanied by~~ the prescribed fee as set by Rule .0108 of this Chapter, the Board shall renew the ~~Certificate of Registration~~ registration providing that the professional corporation or professional limited liability company has complied with Article 11, G.S. 90, the rules of the ~~Board~~ Board, and applicable General Statutes of North Carolina. The renewal form shall require the applicant to set forth:

(1) the legal name of the entity; ~~name, address and telephone number of the company;~~

(2) the mailing address of the principal office of the entity;

(3) the phone number and email address of the entity; and

(4) the names of all shareholders or members.

~~(2) the legal names of all members;~~

~~(3) the legal names of all officers; and~~

~~(4) the veterinary practice facilities operated by the company.~~

~~(h) If the Board determines that the reports filed in Paragraph (e) or (g) of this Rule, are unclear or incomplete the Board may request in writing such supplemental reports as it deems appropriate from any professional limited liability companies registered with the Board pursuant to G.S. 57D, Article 11, G.S. 90, and these Rules. The professional corporation or professional limited liability company shall file such reports with the Board's office within 30 days from the date it receives the request.~~

~~(i)~~(d) Professional corporations or professional limited liability companies registered with the Board that amend their Articles of Incorporation or Articles of Organization, ~~pursuant to G.S. 57D~~ shall ~~file~~ submit to the Board for approval an application to amend the articles along with a ~~certified~~ copy of all amendments to ~~the articles of organization~~ the articles. ~~within 30 days after the effective date of each amendment. They shall also file a copy of any amendment to the bylaws, certified to be a true copy by the manager(s) of the professional limited liability company within 30 days after adoption of the amendment.~~ The application to amend articles requires the applicant to provide the legal name of the entity, any changes to the name of the entity, current contact information for the entity, a list of new shareholders or members, and a list of amendments to be adopted. The application shall be signed by a corporate officer or company official before a notary public. If the amendment is compliant with Article 11, G.S. 90 and the rules of this Chapter, the Board shall provide a letter of approval for submission to the North Carolina Secretary of State.

(e) Articles of Dissolution of an entity registered with the Board shall be filed directly with the North Carolina Secretary of State. A copy of these articles shall be provided to the Board.

~~(j)~~(f) The Board shall issue a certificate authorizing transfer of shares or membership when ~~membership is transferred~~ a transfer occurs in the professional corporation or professional limited liability company. ~~This certificate of transfer shall be permanently retained by the company. The membership books of the company shall be kept at the principal office of the company and shall be subject to inspection by authorized agents of the Board.~~ Transfer of shares or membership within a professional corporation or professional limited liability company shall only be to a person licensed to practice veterinary medicine in this State.

~~(k)~~(g) All documents required by ~~these Rules~~ this Rule to be submitted to the Board by the professional corporation or professional limited liability company shall be properly executed. ~~executed by the manager(s) of the professional limited liability company, and duly acknowledged before a notary public or some other officer qualified to administer oaths.~~

*Authority G.S. 57D-2-01; 90-181.1; 90-186; ~~90-187.11.~~*

**21 NCAC 66 .0211 VETERINARY TELEMEDICINE**

(a) "Veterinary telemedicine" or "telemedicine" means the use of electronic or telecommunication technologies to remotely provide medical information regarding a patient's clinical health status and to deliver veterinary medical services to a patient that resides in or is located in the State. The delivery of veterinary medical services through telemedicine is the practice of veterinary ~~medicine.~~ medicine as defined in G.S. 90-181(6).

(b) A veterinarian may provide veterinary medical services via telemedicine to a patient only after establishing a ~~Veterinarian-Client-Patient Relationship (VCPR).~~ veterinarian-client-patient relationship (VCPR) as defined in G.S. 90-181(7a). No person shall practice veterinary telemedicine except a veterinarian within the context of a VCPR. A VCPR ~~cannot~~ shall not be established by any electronic means or telecommunication technologies.

(c) "Veterinary telemonitoring" occurs when any person, licensed or unlicensed, utilizes a medical device, smart phone, monitoring sensor, or other technology, in combination with an Internet connection, to collect and store health information for a patient of the veterinarian and to transmit it to a veterinarian, as directed or requested by a veterinarian.

(d) "Veterinary ~~Teleconsulting"~~ teleconsulting" occurs when any person, licensed or unlicensed, whose expertise the veterinarian believes would benefit the veterinarian's patient, provides advice or other information by any method of communication to a veterinarian at the veterinarian's direction or request.

(e) Veterinarians practicing telemedicine shall be held to the same standard of care as veterinarians providing in-person medical care. Veterinarians shall use their professional judgement to determine whether telemedicine is appropriate and in the best interest of the patient. Veterinarians shall maintain a medical record of the telemedicine ~~patient(s)~~ provided to patients as required by ~~21 NCAC 66 .0207(b)(12).~~ Rule .0207(b)(12) of this Section.

*History Note: G.S. 90-186(10);*
*Eff. ~~September 1, 2021.~~ September 1, 2021;*
*Amended Eff. January 1, 2027.*

**SECTION .0400 - RULES: PETITIONS: HEARINGS**

**21 NCAC 66 .0401 ~~RULE-MAKING~~ RULEMAKING PETITIONS**

(a) A person may petition the Board to adopt a new rule or change or amend an existing rule by ~~sending~~ submitting a ~~rule-making~~ written rulemaking petition to the Board at the Board's address set out in Rule .0101 of this Chapter. The petition ~~must~~ shall be ~~titled~~

~~"Petition for Rule-making"~~ <u>labeled as "Petition for Rulemaking"</u> and ~~must~~ <u>shall</u> include the following information:

(1) the name and address of the person submitting the petition;
(2) a citation to any rule for which a change or repeal is requested;
(3) a draft of any proposed rule or amended rule;
(4) an explanation of why the new rule, amendment, or repeal is requested and the effects of the new rule, amendment, or repeal on the Board's procedure or the persons regulated by the Board; <u>and</u>
(5) any other information the person submitting the petition considers relevant.

<u>(b) Within three business days of receipt of a rulemaking petition, the Board shall send the proposed text of the requested rule change and the statement of the effect of the requested rule change to the Office of Administrative Hearings.</u>

~~(b)~~<u>(c)</u> The Board ~~must~~ <u>shall</u> decide whether to grant or deny a petition for ~~rule-making~~ <u>rulemaking</u> within 120 days of receiving the petition. In making its decision, the Board ~~will~~ <u>shall</u> consider the information submitted with the petition and any other relevant information.

~~(c)~~<u>(d)</u> ~~When~~ <u>If</u> the Board denies a petition for ~~rule-making,~~ <u>rulemaking,</u> ~~it must~~ <u>the Board shall</u> send ~~written notice of the denial to the person who submitted the request. The notice must state the reason for the denial.~~ <u>the person who submitted the petition a written statement of the reasons for denying the petition.</u> ~~When~~ <u>If</u> the Board grants a ~~rule-making~~ <u>rulemaking</u> petition, ~~it must~~ <u>the Board shall</u> initiate ~~rule-making~~ <u>rulemaking</u> proceedings <u>as set forth in Article 2A of Chapter 150B of the North Carolina General Statutes</u> and send written notice of the proceedings to the person who submitted the ~~request.~~ <u>petition.</u>

*Authority G.S. 90-185(6); ~~150B-16;~~ <u>150B-20.</u>*

**21 NCAC 66 .0402 NOTICE OF ~~RULE-MAKING~~ <u>RULEMAKING</u> HEARINGS**

~~Upon a determination to hold a rule-making proceeding, either in response to a petition or otherwise,~~ <u>If the Board holds a rulemaking hearing, in response to a petition or by the Board's own action,</u> the Board shall give notice to all interested persons <u>on the mailing list maintained pursuant to G.S. 150B-21.2(d).</u> ~~pursuant to the procedure established in Article 2 of Chapter 150B of the North Carolina General Statutes.~~

*Authority G.S. 90-185; ~~150B-12;~~ <u>150B-21.2.</u>*

**21 NCAC 66 .0403 NOTICE MAILING LIST**

Any person desiring to be placed on the mailing list for Board ~~rule-making~~ <u>rulemaking</u> notices ~~may file such request in writing,~~ <u>shall submit a written request and provide their</u> ~~furnishing his name~~ <u>name, email address,</u> and mailing address to the Board. ~~The letter of request should state those subject areas within the authority of the Board for which the person wants notice.~~ The Board may ~~require reasonable postage and stationery costs to be paid by a person who is mailed a rule-making notice.~~ <u>charge the person making the request the actual cost of mailing the notice as a reasonable fee.</u>

*Authority G.S. 90-185; ~~150B-12;~~ <u>150B-21.2.</u>*

**21 NCAC 66 .0404 SUBMISSION OF ~~DATA~~ <u>COMMENTS</u>**

Any person ~~desiring~~ <u>seeking</u> to present ~~data, views~~ <u>oral</u> or <u>written</u> ~~arguments~~ <u>comments</u> on a proposed rule ~~must~~ <u>shall</u> comply with the ~~statement of procedure~~ <u>instructions on how and where to submit these comments</u> as contained in the Notice of Hearing <u>posted on the Board's website and published in the notice of text in the North Carolina Register.</u> ~~for the rule.~~ Any person ~~desiring~~ <u>intending to deliver</u> ~~to make an~~ oral ~~presentation~~ <u>comments</u> to the Board ~~prior to or at the hearing is encouraged to~~ <u>shall</u> submit a written copy of the presentation to the Board prior to or at the hearing.

*Authority G.S. 90-185; ~~150B-12;~~ <u>150B-21.2.</u>*

**21 NCAC 66 .0405 PRESIDING OFFICER: POWERS AND DUTIES**

The presiding officer at a ~~rule-making~~ <u>rulemaking</u> hearing shall ~~have complete control of~~ <u>exercise full authority over</u> the ~~proceedings,~~ <u>proceedings. This authority</u> ~~including~~ <u>includes</u> ~~recognition of the~~ <u>recognizing</u> speakers, <u>allocating</u> time ~~allotments~~ for presentations, ~~the right to question speakers,~~ <u>questioning participants,</u> ~~direction of the discussion~~ <u>guiding the discussion,</u> and <u>managing the overall conduct</u> of the hearing. The presiding ~~officer, at all times, will take care that each person participating~~ <u>officer shall ensure that all participants</u> in the hearing ~~is~~ <u>are</u> given a fair opportunity to present <u>their</u> views, ~~data~~ <u>data,</u> and comments. ~~The presiding officer shall conduct the rule-making hearing pursuant to the procedure established in Article 2 of Chapter 150B of the North Carolina General Statutes.~~

*Authority G.S. 90-185; ~~150B-12.~~*

**21 NCAC 66 .0406 RECORD OF PROCEEDINGS**

~~A record of all rule-making proceedings will be maintained in the Board office for as long as the rule is in effect.~~ <u>The Board shall maintain a record of a rulemaking proceeding.</u> ~~This record shall contain: the original petition (if any), the notice,~~ <u>The record shall include</u> all written comments ~~submitted,~~ <u>received, a transcript, minutes, or recording of any public hearing on the rule, any fiscal note that has been prepared for the rule, and any written explanation made by the Board for adopting or amending the rule.</u> ~~any statement of explanation made to an interested party, and the minutes of the proceedings.~~

*Authority G.S. 90-185; ~~150B-12;~~ <u>150B-21.2.</u>*

**SECTION .0500 - DECLARATORY RULINGS**

**21 NCAC 66 .0501 PROCEDURE FOR DECLARATORY RULING**

(a) ~~The Board shall decide whether to grant or deny a request to make a declaratory ruling on the validity of a rule or on the applicability of particular facts to a statute or to a rule or order of the Board within 60 days of receiving the petition. The Board shall deny a request for a declaratory ruling when the Board deems the~~

~~petition undesirable.~~ If the Board receives a written request for a declaratory ruling, the Board shall either grant or deny the request.
(b) If the petition for a declaratory ruling is granted, the Board shall issue a declaratory ruling as to the validity of a rule or as to the applicability to a given state of facts of a statute administered by the Board, or of a rule or order of the Board. The Board shall also issue a declaratory ruling to resolve a conflict or inconsistency within the Board regarding an interpretation of the law or a rule adopted by the Board. ~~The Board will ordinarily refuse to grant a petition for a declaratory ruling when there has been a similar factual determination in a contested case or one is likely to be made in a pending contested case or investigation~~
(c) The Board shall deny a petition for a declaratory ruling when the Board determines there has been a similar factual determination in a contested case or one is likely to be made in a pending contested case or investigation.
~~(b) The Board will presume that its current rules are valid unless this presumption is rebutted by persuasive evidence as offered in the petition for the declaratory ruling. When the Board determines that a rule is invalid, the Board shall initiate rule-making proceedings and send written notice of the proceeding to the person who submitted the request.~~
(d) The Board shall respond to a request for a declaratory ruling as follows:

(1) Within 30 days of receipt of the request for a declaratory ruling, the Board shall make a written decision to grant or deny the request. If the Board does not make a written decision to grant or deny the request within 30 days, the failure shall be deemed a decision to deny the request.
(2) If the Board grants the request, the Board shall issue a written ruling on the merits within 45 days of the decision to grant the request.
(3) If the Board fails to issue a declaratory ruling within 45 days, the failure shall be deemed a denial on the merits.

*Authority G.S. 90-185; ~~150B-17;~~ 150B-4.*

*This Section contains information for the meeting of the Rules Review Commission on August 27, 2026 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comments on any proposed permanent rule before the Commission should submit those comments pursuant to 26 NCAC 05 .0103. Anyone wishing to submit written comments on any proposed permanent rule before the Commission should submit those comments pursuant to 26 NCAC 05 .0104. Anyone wishing to address the Commission should comply with 26 NCAC 05 .0105 and .0106.*

**RULES REVIEW COMMISSION MEMBERS**

**Appointed by Senate**
Bill Nelson (2nd Vice-Chair)
Jeanette Doran
John Hahn
Jeff Hyde
Wyatt Dixon, III

**Appointed by House**
Jake Parker (Chair)
Paul Powell (1st Vice-Chair)
Wayne R. Boyles, III
Randy Overton

**COMMISSION COUNSEL**

| | |
|---|---|
| Seth M. Ascher | 984-236-1934 |
| Travis Wiggs | 984-236-1929 |
| Christopher S. Miller | 984-236-1935 |

**RULES REVIEW COMMISSION MEETING DATES**

| | |
|---|---|
| August 27, 2026 | October 29, 2026 |
| September 29, 2026 | November 24, 2026 |

***AGENDA***
**RULES REVIEW COMMISSION**
***Thursday, August 27, 2026, 10:00 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
- Child Care Commission - 10A NCAC 09 .1101, 1102, .1703, .1729, .2101 (Ascher)
- Child Care Commission -10A NCAC 09 .2102(Miller)
- Mining Commission - 15A NCAC 05A .0101, .0202; 05B .0103, .0104, .0105, .0106, .0110, .0111, .0112, .0113, .0114, .0115, .0116, .0117; 05F .0101, .0103, .0105, .0106, .0111, .0112; 05G .0103, .0104, .0105 (Miller)

IV. Review of Log of Filings (Permanent Rules) for rules filed June 21, 2026 through July 20, 2026
1. State Board of Elections (Ascher)
2. Commission for Mental Health/DD/SAS (Ascher)
3. Alcoholic Beverage Control Commission (Miller)
4. Department of Environmental Quality (Ascher)
5. Board of Athletic Trainer Examiners (Miller)
6. Board of Barber and Electrolysis Examiners (Wiggs)
7. Board of Pharmacy (Wiggs)
8. Respiratory Care Board (Wiggs)

V. Log of Filings (Temporary Rules) for any rule filed within 15 business days before the RRC Meeting

VI. Existing Rules Review
- Review of Reports
  1. 02 NCAC 34 - Structural Pest Control Committee (Wiggs)
  2. 10A NCAC 67, 68, 69, 70P, 72, 73 - Social Services Commission (Wiggs)
  3. 15A NCAC 07A, 07H, 07I, 07J, 07K, 07L, 07M - Coastal Resources Commission (Ascher)
- Readoptions

VII. Commission Business
1. Request for amendment of the 2024 - 2027 Periodic Review Schedule
   - 15A NCAC 05A, 05B, 05F, 05G - Mining Commission (Ascher)
2. Approval of the 2027 RRC Meetings Schedule
3. Closed session, to consult with attorneys regarding CRC v. RRC and CJETS v. RRC
   - Next meeting: Thursday, September 29, 2026

**Commission Review**
***Log of Permanent Rule Filings***
***June 21, 2026 through July 20, 2026***

**ELECTIONS, STATE BOARD OF**

The rules in Chapter 9 concern conduct of vote recounts by county boards of elections.

General Guidelines 08 NCAC 09 .0106
Amend*

First Recount 08 NCAC 09 .0107
Amend*

Secondary Recounts 08 NCAC 09 .0110
Amend*

the rules in subchapter 10c include voting sites

Definitions 08 NCAC 10C .0101
Adopt*

Voting Sites Buffer Zones 08 NCAC 10C .0102
Adopt*

Voting Site Electioneering Zones 08 NCAC 10C .0103
Adopt*

Conduct at Voting Sites 08 NCAC 10C .0104
Adopt*

The rules in Chapter 17 concern photo identification.

Verification of Photo Identification During In-Person Voting 08 NCAC 17 .0101
Amend*

Photo Identification for Absentee-by-Mail Ballots 08 NCAC 17 .0109
Amend*

The rules in Chapter 18 concern absentee ballots.

Definitions 08 NCAC 18 .0201
Adopt*

Review for Deficiencies 08 NCAC 18 .0501
Adopt*

Curable Deficiencies 08 NCAC 18 .0502
Adopt*

Non-Curable Deficiencies 08 NCAC 18 .0503
Adopt*

Irregularities That Do Not Require Further Action from th... 08 NCAC 18 .0504
Adopt*

Irregularities That Require further action 08 NCAC 18 .0505
Adopt*

**MENTAL HEALTH/DD/SAS, COMMISSION FOR**

The rules in Chapter 26 are from the Mental Health, Developmental Disabilities and Substance Abuse Services Commission. The rules in Subchapter 26F concern controlled substances including schedules of controlled substances (.0100).

| | |
|---|---|
| Schedule I<br>Amend* | 10A NCAC 26F .0102 |

**ALCOHOLIC BEVERAGE CONTROL COMMISSION**

The rules in Subchapter 15C concern industry members, retail/industry member relationships, ship chandlers, air carriers, and fuel alcohol including definitions and application procedures (.0100); product approvals, listing procedures and product lists (.0200); packaging and labeling of malt beverages and wine (.0300); standards of identity for wine containers (.0400); general provisions for industry members (.0500); sales and deliveries of malt beverages and wine (.0600); alcoholic beverages, retailer/industry member relationship and trade practices (.0700); ships chandler's permit (.0800); distillers and representatives (.0900); air carriers (.1000); fuel alcohol permits (.1100); administrative action by commission (.1200); and special event permits (.1300).

| | |
|---|---|
| Definitions<br>Readopt with Changes* | 14B NCAC 15C .0801 |
| Importation and Transportation Under Customs Bonds<br>Readopt with Changes* | 14B NCAC 15C .0802 |
| Application for Permit<br>Readopt with Changes* | 14B NCAC 15C .0804 |
| Compliance: Inspection<br>Readopt with Changes* | 14B NCAC 15C .0805 |
| Distiller, Supplier and Brokerage Representatives: Prohib...<br>Readopt with Changes* | 14B NCAC 15C .0901 |
| Revocation Or Suspension of Permits<br>Readopt with Changes* | 14B NCAC 15C .0902 |
| Application for Permit<br>Readopt with Changes* | 14B NCAC 15C .1001 |
| Separate Permits Required<br>Readopt with Changes* | 14B NCAC 15C .1002 |
| Sales of Alcoholic Beverages in Terminal<br>Readopt with Changes* | 14B NCAC 15C .1003 |
| Application for Fuel Alcohol Permit: Operation<br>Readopt with Changes* | 14B NCAC 15C .1101 |
| Change of Plant Location<br>Readopt with Changes* | 14B NCAC 15C .1102 |
| Inspection of Premises: Availability of Permit<br>Readopt with Changes* | 14B NCAC 15C .1103 |
| Effect of Administrative Action<br>Readopt with Changes* | 14B NCAC 15C .1201 |

**ENVIRONMENTAL QUALITY, DEPARTMENT OF**

The rules in Chapter 1 are departmental rules. The rules in Subchapter 1A concern the general organization of the department.

| | |
|---|---|
| How to Contact the Department<br>Readopt with Changes* | 15A NCAC 01A .0102 |

The rules in Chapter 1 are departmental rules. The rules in Subchapter 1S are from the office of environmental education including the north carolina environmental education certification program (.0100).

| | |
|---|---|
| Fees<br>Readopt with Changes* | 15A NCAC 01S .0101 |

**ATHLETIC TRAINER EXAMINERS, BOARD OF**

The rules in Chapter 3 are Athletic Trainer Examiner rules including rules about licensure (.0100); fees (.0200); renewal of license (.0300); disciplinary procedures (.0400); and athletic trainer protocol (.0500).

| | |
|---|---|
| Application for Licensure<br>Readopt without Changes* | 21 NCAC 03 .0101 |
| Good Moral Character<br>Readopt without Changes* | 21 NCAC 03 .0102 |
| Fees<br>Readopt without Changes* | 21 NCAC 03 .0201 |
| Suspension of Authority and Escrow of Funds<br>Readopt without Changes* | 21 NCAC 03 .0202 |
| Renewal Request Form<br>Readopt without Changes* | 21 NCAC 03 .0301 |
| Continuing Education<br>Readopt without Changes* | 21 NCAC 03 .0302 |
| Lapsed License<br>Readopt without Changes* | 21 NCAC 03 .0303 |
| Board Approval of Courses<br>Readopt without Changes* | 21 NCAC 03 .0304 |
| Armed Services Extension for Credential<br>Readopt without Changes* | 21 NCAC 03 .0310 |
| Disciplinary Actions<br>Readopt without Changes* | 21 NCAC 03 .0401 |
| Minimum Requirements<br>Readopt without Changes* | 21 NCAC 03 .0501 |

**BARBER AND ELECTROLYSIS EXAMINERS, BOARD OF**

The rules in 6U concern electrolysis fees and forms.

| | |
|---|---|
| Temporary License for Electrology Applicants<br>Amend* | 21 NCAC 06U .0105 |

**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).

| | |
|---|---|
| Standardized Orders<br>Adopt* | 21 NCAC 46 .1420 |
| Limited Service Permits | 21 NCAC 46 .1616 |

Amend*

| | | | | |
|---|---|---|---|---|
| Transfer of Prescription Information<br>Amend* | 21 | NCAC | 46 | .1806 |
| Direct-to-Patient Delivery Systems<br>Amend* | 21 | NCAC | 46 | .1821 |
| Alternate Delivery Sites<br>Adopt* | 21 | NCAC | 46 | .1822 |
| Emergency Closure<br>Amend* | 21 | NCAC | 46 | .2516 |

**RESPIRATORY CARE BOARD**

The rules in Chapter 61 are from the Respiratory Care Board and concern organization and definitions (.0100); application for license (.0200); licensing (.0300); continuing education requirements for license holders (.0400); miscellaneous provisions (.0500); rulemaking and declaratory rulings (.0600); and administrative hearing procedures (.0700).

| | | | | |
|---|---|---|---|---|
| Definitions<br>Amend* | 21 | NCAC | 61 | .0103 |
| Application Process<br>Amend* | 21 | NCAC | 61 | .0201 |
| Fees<br>Amend* | 21 | NCAC | 61 | .0204 |
| Background Investigation<br>Amend* | 21 | NCAC | 61 | .0205 |
| License Number: Display of License<br>Amend* | 21 | NCAC | 61 | .0301 |
| License by Reciprocity<br>Amend* | 21 | NCAC | 61 | .0306 |
| Continuing Duty to Report<br>Amend* | 21 | NCAC | 61 | .0308 |
| Continuing Education Requirements<br>Amend* | 21 | NCAC | 61 | .0401 |
| Documentation and Audit Requirements<br>Adopt* | 21 | NCAC | 61 | .0402 |
| Change of Address or Business Name<br>Amend* | 21 | NCAC | 61 | .0501 |
| Applicable Hearing Rules<br>Amend* | 21 | NCAC | 61 | .0701 |
| Contested Cases<br>Amend* | 21 | NCAC | 61 | .0706 |