

**NORTH CAROLINA
REGISTER**

IN THIS ISSUE



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November 1, 2000

This issue contains documents officially filed through October 11, 2000.

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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Athletic Trainer Examiners	3
4	Commerce	Auctioneers	4
5	Correction	Barber Examiners	6
6	Council of State	Certified Public Accountant Examiners	8
7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
10	Health and Human Services	Cosmetic Art Examiners	14
11	Insurance	Dental Examiners	16
12	Justice	Dietetics/Nutrition	17
13	Labor	Electrical Contractors	18
14A	Crime Control & Public Safety	Electrolysis	19
15A	Environment and Natural Resources	Foresters	20
16	Public Education	Geologists	21
17	Revenue	Hearing Aid Dealers and Fitters	22
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Note: Title 21 contains the chapters of the various occupational licensing boards.

NORTH CAROLINA REGISTER
 Publication Schedule For January 2000 - December 2000

FILING DEADLINES			NOTICE OF RULE- MAKING PROCEEDIN GS	NOTICE OF TEXT							TEMPORARY RULE
volume and issue number	issue date	last day for filing	earliest register issue for publication of text	earliest date for public hearing	non-substantial economic impact			substantial economic impact			270 th day from issue date
					end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	
14:13	01/04/00	12/09/99	03/15/00	01/19/00	02/03/00	02/21/00	05/09/00	03/06/00	03/20/00	05/09/00	09/30/00
14:14	01/14/00	12/21/99	03/15/00	01/31/00	02/14/00	02/21/00	05/09/00	03/14/00	03/20/00	05/09/00	10/10/00
14:15	02/01/00	01/10/00	04/03/00	02/16/00	03/02/00	03/20/00	05/09/00	04/03/00	04/20/00	01/24/01	10/28/00
14:16	02/15/00	01/25/00	04/17/00	03/01/00	03/16/00	03/20/00	05/09/00	04/17/00	04/20/00	01/24/01	11/11/00
14:17	03/01/00	02/09/00	05/01/00	03/16/00	03/31/00	04/20/00	01/24/01	05/01/00	05/22/00	01/24/01	11/26/00
14:18	03/15/00	02/23/00	05/15/00	03/30/00	04/14/00	04/20/00	01/24/01	05/15/00	05/22/00	01/24/01	12/10/00
14:19	04/03/00	03/13/00	06/15/00	04/18/00	05/03/00	05/22/00	01/24/01	06/02/00	06/20/00	01/24/01	12/29/00
14:20	04/17/00	03/27/00	07/03/00	05/02/00	05/17/00	05/22/00	01/24/01	06/16/00	06/20/00	01/24/01	01/12/01
14:21	05/01/00	04/07/00	07/03/00	05/16/00	05/31/00	06/20/00	01/24/01	06/30/00	07/20/00	01/24/01	01/26/01
14:22	05/15/00	04/24/00	07/17/00	05/30/00	06/14/00	06/20/00	01/24/01	07/14/00	07/20/00	01/24/01	02/09/01
14:23	06/01/00	05/10/00	08/01/00	06/16/00	07/03/00	07/20/00	01/24/01	07/31/00	08/21/00	01/24/01	02/26/01
14:24	06/15/00	05/24/00	08/15/00	06/30/00	07/17/00	07/20/00	01/24/01	08/14/00	08/21/00	01/24/01	03/12/01
15:01	07/03/00	06/12/00	09/01/00	07/18/00	08/02/00	08/21/00	01/24/01	09/01/00	09/20/00	01/24/01	03/30/01
15:02	07/17/00	06/23/00	09/15/00	08/01/00	08/16/00	08/21/00	01/24/01	09/15/00	09/20/00	01/24/01	04/13/01
15:03	08/01/00	07/11/00	10/02/00	08/16/00	08/31/00	09/20/00	01/24/01	10/02/00	10/20/00	01/24/01	04/28/01
15:04	08/15/00	07/25/00	10/16/00	08/30/00	09/14/00	09/20/00	01/24/01	10/16/00	10/20/00	01/24/01	05/12/01
15:05	09/01/00	08/11/00	11/01/00	09/18/00	10/02/00	10/20/00	01/24/01	10/31/00	11/20/00	01/24/01	05/29/01
15:06	09/15/00	08/24/00	11/15/00	10/02/00	10/16/00	10/20/00	01/24/01	11/14/00	11/20/00	01/24/01	06/12/01
15:07	10/02/00	09/11/00	12/01/00	10/17/00	11/01/00	11/20/00	01/24/01	12/01/00	12/20/00	05/2002	06/29/01
15:08	10/16/00	09/25/00	12/15/00	10/31/00	11/15/00	11/20/00	01/24/01	12/15/00	12/20/00	05/2002	07/13/01
15:09	11/01/00	10/11/00	01/02/01	11/16/00	12/01/00	12/20/00	05/2002	01/02/01	01/22/01	05/2002	07/29/01
15:10	11/15/00	10/24/00	01/16/01	11/30/00	12/15/00	12/20/00	05/2002	01/16/01	01/22/01	05/2002	08/12/01
15:11	12/01/00	11/07/00	02/01/01	12/18/00	01/02/01	01/22/01	05/2002	01/30/01	02/20/01	05/2002	08/28/01
15:12	12/15/00	11/22/00	02/15/01	01/02/01	01/16/01	01/22/01	05/2002	02/13/01	02/20/01	05/2002	09/11/01

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) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) 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;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month closest to (either before or after) the first or fifteenth respectively 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 RULE-MAKING PROCEEDINGS

END OF COMMENT PERIOD TO A NOTICE OF RULE-MAKING PROCEEDINGS: This date is 60 days from the issue date. An agency shall accept comments on the notice of rule-making proceeding until the text of the proposed rules is published, and the text of the proposed rule shall not be published until at least 60 days after the notice of rule-making proceedings was published.

EARLIEST REGISTER ISSUE FOR PUBLICATION OF TEXT: The date of the next issue following the end of the comment period.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD
(1) RULE WITH NON-SUBSTANTIAL ECONOMIC IMPACT: An agency shall accept comments on the text of a proposed rule for at least 30 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

(2) RULE WITH SUBSTANTIAL ECONOMIC IMPACT: An agency shall accept comments on the text of a proposed rule published in the Register and that has a substantial economic impact requiring a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after publication or until the date of any public hearing held on the rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY: This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

IN ADDITION

This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.

STATE BOARD OF ELECTIONS
6400 Mail Service Center, Raleigh, NC 27699-6400

GARY O. BARTLETT
Director

Mailing Address:
P.O. Box 2169
Raleigh, NC 27602-2169
(919) 733-7173
Fax (919) 715-0135

October 2, 2000

Mr. Thomas A. Farr
Maupin Taylor & Ellis, P.A.
P.O. Box 12646
Research Triangle Park, NC 27709-2646

Re: Request for Opinion Pursuant to G.S. 163-278.23

Dear Tom:

In your letter of October 2, 2000, you request an opinion pursuant to G.S. 163-278.23 on two requirements for political campaign advertisements recently added to the North Carolina Campaign Reporting Act.

The first question is relative to the requirement in G.S. 163-278.39(a)(5) that print media sponsored by a political party must state in the legend whether or not the mailing is authorized by a candidate. You state that some NCGOP candidates may be generally aware that the NCGOP is planning to conduct mailings into certain state legislative districts and that some have given their positions on issues. It is further state that beyond that, no Republican candidate has had any input into producing the mailings.

Considering the information submitted it is my opinion that the candidates have not authorized the mailings described above. Provided no further coordination occurs between the NCGOP and the Republican candidates it is appropriate for the NCGOP legend on these mailings to state:

"Paid for by the North Carolina Republican Party
Not authorized by a candidate"

G.S. 163-278.39(a)(6) requires the name of the candidate who benefits to be listed if the mailings are coordinated with the benefiting candidates. It is not necessary for the legend to include the names of the candidates who are intended to benefit from the mailing because there had been no consultation with them.

The second question is whether or not the requirement for disclosure as an in-kind contribution in G.S. 163-278.11(b) applies to these mailings. The first part of the requirement that "a political party executive committee that makes an expenditure that benefits a candidate or group of candidates shall report the expenditure, including the date, amount, and purpose of the expenditure and the name of and office sought by the candidate or candidates on whose behalf the expenditure was made" must be fulfilled.

The second part that "a candidate who benefits from the expenditure shall report the expenditure or the proportionate share of the expenditure from which the candidate benefited as an in-kind contribution if the candidate or the candidate's committee has coordinated with the political party executive committee concerning the expenditure" is not required with the mailings. The reporting requirement is based on whether or not the mailings were coordinated.

Please feel free to contact me if you need assistance.

Sincerely,

Gary O. Bartlett
Executive Secretary - Director

IN ADDITION

The following cited decisions are recent decisions issued by the Office of Administrative Hearings, which invalidate a rule in the North Carolina Administrative Code.

Rule 4 NCAC 2S .1004 – General Provisions

James L. Conner, II, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 4 NCAC 2S .1004(c) void as applied in *Daniel W. Shelton t/a Shelton Broers v. N.C. Alcoholic Beverage Control Commission* (99 ABC 1641).

Rule 4 NCAC 2S .1005 – Prohibited Statements In Advertising Or On Labels

James L. Conner, II, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 4 NCAC 2S .1005(a)(3) void as applied in *Daniel W. Shelton t/a Shelton Broers v. N.C. Alcoholic Beverage Control Commission* (99 ABC 1641).

U.S. Department of Justice

Civil Rights Division

*Voting Section
PO. Box 66128
Washington, D.C. 20035-6128*

JDR:GS:SMC:par
DJ 166-012-3
2000-3375

September 21, 2000

Kenneth R. Hoyle, Sr., Esq.
County Attorney
P.O. Box 1968
Sanford, NC 27331-1968

Dear Mr. Hoyle:

This refers to four polling place changes, the creation of West Sanford No. Four Voting Precinct, and the establishment of its polling place for Lee County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on August 21, 2000.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

U.S. Department of Justice

Civil Rights Division

*Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128*

JDR:RPL:TGL;jdh
DJ 166-012-3
2000-3021
2000-3169

September 22, 2000

David A. Holec, Esq.
City Attorney
P.O. Box 7207
Greenville, NC 27835-7207

Dear Mr. Holec:

This refers to nine annexations (Ordinance Nos. 00-15, 00-46, 00-58 through 00-62, 00-69, and 00-70) and their designation to districts of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on July 25 and August 8, 2000.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine these submissions if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

IN ADDITION

U.S. Department of Justice

Civil Rights Division

JDR:JBG:SMC:par
DJ 166-012-3
2000-3828

*Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128*

October 5, 2000

Donald I. McRee, Jr., Esq.
Hornthal, Riley, Ellis & Maland
P.O. Box 220
Elizabeth City, NC 27907-0220

Dear Mr. McRee:

This refers to the additional one-stop absentee voting site and its hours for Pasquotank County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on September 26, 2000.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

RULE-MAKING PROCEEDINGS

A Notice of Rule-making Proceedings is a statement of subject matter of the agency's proposed rule making. The agency must publish a notice of the subject matter for public comment at least 60 days prior to publishing the proposed text of a rule. Publication of a temporary rule serves as a Notice of Rule-making Proceedings and can be found in the Register under the section heading of Temporary Rules. A Rule-making Agenda published by an agency serves as Rule-making Proceedings and can be found in the Register under the section heading of Rule-making Agendas. Statutory reference: G.S. 150B-21.2.

TITLE 11 – DEPARTMENT OF INSURANCE

CHAPTER 8 – ENGINEERING AND BUILDING CODES

Notice of Rule-making Proceedings is hereby given by NCDOI/NC Code Officials Qualification Board in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 11 NCAC 8 .0500-.0800 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 143-151.13

Statement of the Subject Matter: Licensing rules for Code officials.

Reason for Proposed Action: Rules are being updated to comply with present standards.

Comment Procedures: Written comments may be sent to Mike Page, NC Department of Insurance, 410 N. Boylan Ave., Raleigh, NC 27603.

CHAPTER 8 - ENGINEERING AND BUILDING CODES

Notice of Rule-making Proceedings is hereby given by NCDOI/NC Home Inspector Licensure Board in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 11 NCAC 8. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 143-151.49; 143-151.55

Statement of the Subject Matter: Home Inspector continuing education rules.

Reason for Proposed Action: Rules are being updated to comply with present standards.

Comment Procedures: Written comments may be sent to Grover Sawyer, NC Department of Insurance, 410 N. Boylan Avenue, Raleigh, NC 27611.

CHAPTER 10 – PROPERTY AND CASUALTY DIVISION

Notice of Rule-making Proceedings is hereby given by NC Department of Insurance in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 11 NCAC 10 .1206 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 58-2-40; 58-3-150; 58-7-95; 58-41-50

Statement of the Subject Matter: Commercial property and casualty filing forms and Rate Bureau deviation requirements.

Reason for Proposed Action: Rules are being updated to comply with present standards.

Comment Procedures: Written comments may be sent to Ellen K. Sprenkel, NC Department of Insurance, PO Box 26837, Raleigh, NC 27611.

CHAPTER 12 – LIFE AND HEALTH DIVISION

Notice of Rule-making Proceedings is hereby given by NC Department of Insurance in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 11 NCAC 12 .0423 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 58-2-40; 58-3-150; 58-7-95; 58-41-50

RULE-MAKING PROCEEDINGS

Statement of the Subject Matter: *Variable annuity reporting requirements.*

Reason for Proposed Action: *Rules are being updated to comply with present standards.*

Comment Procedures: *Written comments may be sent to Ellen K. Sprenkel, NC Department of Insurance, PO Box 26387, Raleigh, NC 27611.*

Citation to Existing Rule Affected by this Rule-making: *15A NCAC 3 - Other rules may be proposed in the course of the rule-making process.*

Authority for the Rule-making: *G.S. 143B-289.52*

Statement of the Subject Matter: *Rules necessary to implement the Red Drum Fishery Management Plan, the Oyster Fishery Management Plan and the Clam Fishery Management Plan.*

Reason for Proposed Action: *The Marine Fisheries Commission will be considering rules in the next several months to implement the Red Drum Fishery Management Plan, the Oyster Fishery Management Plan and the Clam Fishery Management Plan. Copies of these draft plans are available at the Division of Marine Fisheries, 3441 Arendell St., PO. Box 769, Morehead City, NC 28557.*

Comment Procedures: *Comments are encouraged and may be sent to the Marine Fisheries Commission, c/o Juanita Gaskill, PO Box 769, Morehead City, NC 28557.*

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 3 – MARINE FISHERIES

Notice of Rule-making Proceedings *is hereby given by the NC Marine Fisheries Commission in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.*

PROPOSED RULES

This Section contains the text of proposed rules. At least 60 days prior to the publication of text, the agency published a Notice of Rule-making Proceedings. The agency must accept comments on the proposed rule for at least 30 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. The required comment period is 60 days for a rule that has a substantial economic impact of at least five million dollars (\$5,000,000). Statutory reference: G.S. 150B-21.2.

TITLE 2 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Agriculture intends to adopt the rule cited as 2 NCAC 52B .0213. Notice of Rule-making Proceedings was published in the Register on September 1, 2000.

Proposed Effective Date: July 1, 2002

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rule by submitting a request in writing no later than November 16, 2000, to David S. McLeod, Secretary, NC Board of Agriculture, PO Box 27647, Raleigh, NC 27611.

Reason for Proposed Action: Federal regulations establish various categories of livestock tuberculosis status for states and areas within states. A recent outbreak in Michigan has lead to concern that the federal rules are not sufficient to prevent the importation of infected or exposed animals.

Comment Procedures: Written comments may be submitted no later than December 1, 2000, to David S. McLeod, Secretary, NC Board of Agriculture, PO Box 27647, Raleigh, NC 27611.

Fiscal Impact

- State
Local
Substantive (>=\$5,000,000)
None

CHAPTER 52 – VETERINARY DIVISION

SUBCHAPTER 52B – ANIMAL DISEASE

SECTION .0200 – ADMISSION OF LIVESTOCK TO NORTH CAROLINA

02 NCAC 52B .0213 IMPORTATION REQUIREMENTS: TUBERCULOSIS NONMODIFIED ACCREDITED STATE OR ZONE

- (a) All cattle, bison, sheep, goats, cervidae, and camelids six months of age or older imported into North Carolina from a tuberculosis nonmodified accredited state or zone, as defined in 9 CFR Part 77, shall be accompanied by a permit for entry issued by the State Veterinarian within 30 days prior to entry.
(b) The permit number and date of issuance shall be shown on the health certificate. The health certificate shall accompany the

animals and shall state that the animals are individually and permanently identified and that the animals have been classified negative to two official tuberculin tests 90 days apart, with the last negative tuberculin test conducted within 30 days prior to entering North Carolina. The herd of origin shall have been classified negative to an official tuberculin test within the past 12 months. In addition, these animals, on arrival in North Carolina, shall be isolated for a minimum of 60 days, at which time they shall be classified negative to an official tuberculin test prior to entry into the herd.

(c) Permits of entry may be obtained by contacting the State Veterinarian, North Carolina Department of Agriculture and Consumer Services.

Authority G.S. 106-307.5.

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to adopt the rules cited as 11 NCAC 11A .0514 - .0515. Notice of Rule-making Proceedings was published in the Register on September 1, 2000.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: November 27, 2000

Time: 10:30 a.m.

Location: 3rd Floor Hearing Room, Dobbs Building, 430 N. Salisbury Street, Raleigh, NC 27611

Reason for Proposed Action: The purpose of these rules is to incorporate provisions from the NAIC Model Regulation into the N.C. Administrative Code as provided by G.S. 58-2-205.

Comment Procedures: Written comments may be sent to the attention of Raymond Martinez, N.C. Department of Insurance, PO Box 26387, Raleigh, NC 27611

Fiscal Impact

- State
Local
Substantive (>=\$5,000,000)
None

CHAPTER 11 – FINANCIAL EVALUATION DIVISION

PROPOSED RULES

SUBCHAPTER 11A – GENERAL PROVISIONS

SECTION .0500 – CPA AUDITS

11 NCAC 11A .0514 SEASONING REQUIREMENTS

No partner or other person responsible for rendering a report may act in that capacity for more than seven consecutive years. Following that period of service the person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two years. An insurer may make application to the Commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The Commissioner shall consider the following factors in determining if the relief should be granted:

- (1) Number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm;
(2) Premium volume of the insurer; or
(3) Number of jurisdictions in which the insurer transacts business.

Authority G.S. 58-2-40; 58-2-205.

11 NCAC 11A .0515 NOTES TO FINANCIAL STATEMENTS

The notes to financial statements required 11 NCAC 11A .0504(b)(6)(A) shall be those required by the appropriate NAIC Annual Statement Instructions and NAIC Accounting Practices and Procedures Manual, including subsequent amendments and editions. These publications are available for inspection in the Financial Evaluation Division of the Department and may be purchased from the National Association of Insurance Commissioners for a cost of two hundred fifteen dollars (\$215) and two hundred twenty-five dollars (\$225) respectively. The address and telephone number of the NAIC are: NAIC Executive Headquarters, 2301 McGee, Suite 800, Kansas City, MO 64108-2604, (816) 842-3600.

Authority G.S. 58-2-40; 58-2-205.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Marine Fisheries Commission intends to adopt the rule cited as 15A NCAC 3L .0207. Notice of Rulemaking Proceedings was published in the Register on November 1, 1999. This text was previously published in the Register on July 17, 2000, in Volume 15, Issue 2, pages 132-142.

Proposed Effective Date: August 1, 2002

Instructions on how to Demand a Public Hearing: (must be requested in writing within 15 days of notice):

Reason for Proposed Action: G.S. 143B-289.52(e) authorizes the adoption of temporary rules within six months of adoption of amendment of a fishery management plan or the notification of a

change in management measures needed to remain in compliance with a fishery management plan. 15A NCAC 3L .0207 was adopted effective August 1, 2000 to comply with such a plan. A typing error caused to horseshoe crab limit to be 50 instead of 500. The 500 limit will allow a legal bycatch of horseshoe crabs and maintain compliance with the Horseshoe Crab Fishery Management Plan.

Comment Procedures: Written comments are encouraged to the Marine Fisheries Commission, Juanita Gaskill, PO Box 769, Morehead City, NC 28557. Written comments must be received by December 1, 2000.

Fiscal Impact

- State
Local
Substantive (>=\$5,000,000)
None

CHAPTER 3 – MARINE FISHERIES

SUBCHAPTER 3L – SHRIMP, CRABS, AND LOBSTER

SECTION .0200 – CRABS

15A NCAC 03L .0207 HORSESHOE CRABS

- (a) It is unlawful to possess more than 500 50 horseshoe crabs per vessel per trip.
(b) Horseshoe crabs taken for biomedical use under a Horseshoe Crab Biomedical Use Permit are exempt from this Rule.
(c) The annual (January through December) commercial quota for North Carolina for horseshoe crabs shall be established by the Atlantic States Marine Fisheries Commission Horseshoe Crab Management Plan. Once the quota is projected to be taken, the Fisheries Director shall, by proclamation, close the season for the landing of horseshoe crabs.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 7H .0308, .1705. Notice of Rule-making Proceedings was published in the Register on July 17, 2000.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: November 16, 2000

Time: 4:30 p.m.

Location: The Blockade Runner, 275 Waynick Boulevard, Wrightsville Beach, NC 28480

Reason for Proposed Action: A petition for rulemaking was received from the Town of Surf City asking that the rules on sandbag erosion control structures of the CRC's administrative rules be amended so that a more reasonable standard is applied to determine removal of the structures when a community is

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actively pursuing a beach nourishment project. It has been determined that these erosion control structures need to stay in place to encourage and allow adequate time for beach re-nourishment and for re-vegetation efforts to be carried out.

Comment Procedures: Please contact Charles Jones, 151-B, Highway 24, Hestron Plaza II, Morehead City, NC 28557. 252-808-2808. Comments will be received through December 1, 2000.

Fiscal Impact

- State
- Local
- Substantive (≥\$5,000,000)
- None

CHAPTER 7 – COSTAL MANAGEMENT

SUBCHAPTER 7H – STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0300 – OCEAN HAZARD AREAS

15A NCAC 7H .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS

- (a) Ocean Shoreline Erosion Control Activities:
 - (1) Use Standards Applicable to all Erosion Control Activities:
 - (A) all oceanfront erosion response activities shall be consistent with the general policy statements in 15A NCAC 7M .0200.
 - (B) permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, are prohibited. Such structures include, but are not limited to: bulkheads; seawalls; revetments; jetties; groins and breakwaters.
 - (C) rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.
 - (D) all permitted oceanfront erosion response projects, other than beach bulldozing and temporary placement of sandbag structures, shall demonstrate sound engineering for their planned purpose.
 - (E) shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for important fish and wildlife species unless adequate mitigation measures are incorporated into project design, as set forth in Rule .0306(I) of this Section.
 - (F) project construction shall be timed to minimize adverse effects on biological activity.
 - (G) prior to completing any erosion response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.

- (H) erosion control structures that would otherwise be prohibited by these standards may be permitted on finding that:
 - (i) the erosion control structure is necessary to protect a bridge which provides the only existing road access to a substantial population on a barrier island; that is vital to public safety; and is imminently threatened by erosion;
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and
 - (iii) the proposed erosion control structure will have no adverse impacts on adjacent properties in private ownership and will have minimal impacts on public use of the beach.
- (I) structures that would otherwise be prohibited by these standards may also be permitted on finding that:
 - (i) the structure is necessary to protect an historic site of national significance, which is imminently threatened by shoreline erosion;
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site;
 - (iii) the structure is limited in extent and scope to that necessary to protect the site; and
 - (iv) any permit for a structure under this Part (I) may be issued only to a sponsoring public agency for projects where the public benefits clearly outweigh the short or long range adverse impacts. Additionally, the permit must include conditions providing for mitigation or minimization by that agency of any significant and unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.
- (J) structures that would otherwise be prohibited by these standards may also be permitted on finding that:
 - (i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits;
 - (ii) dredging alone is not practicable to maintain safe access to the affected channel;
 - (iii) the structure is limited in extent and scope to that necessary to maintain the channel;
 - (iv) the structure will not result in substantial adverse impacts to fisheries or other public trust resources; and
 - (v) any permit for a structure under this Part (J) may be issued only to a sponsoring

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public agency for projects where the public benefits clearly outweigh the short or long range adverse impacts. Additionally, the permit must include conditions providing for mitigation or minimization by that agency of any significant and unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.

(K) proposed erosion response measures using innovative technology or design will be considered as experimental and will be evaluated on a case-by-case basis to determine consistency with 15A NCAC 7M .0200 and general and specific use standards within this Section.

(2) Temporary Erosion Control Structures:

(A) permissible temporary erosion control structures shall be limited to sandbags placed above mean high water and parallel to the shore.

(B) temporary erosion control structures as defined in Part (2)(A) of this Subparagraph may be used only to protect imminently threatened roads and associated right of ways, and buildings and associated septic systems. A structure will be considered to be imminently threatened if its foundation septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, tend to increase the risk of imminent damage to the structure.

(C) temporary erosion control structures may be used to protect only the principal structure and its associated septic system, but not such appurtenances as gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.

(D) temporary erosion control structures may be placed seaward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.

(E) temporary erosion control structures must not extend more than 20 feet past the sides of the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the structure to be protected or the right-of-way in the case of roads.

(F) a temporary erosion control structure may remain in place for up to two years after the date of approval if it is protecting a building with a total floor area of 5000 sq. ft. or less, or, for up to five years if the building has a total floor area of more than 5000 sq. ft. A temporary erosion control structure may remain in place for up to five years if

it is protecting a bridge or a road. The property owner shall be responsible for removal of the temporary structure within 30 days of the end of the allowable time period. A temporary sandbag erosion control structure with a base width not exceeding 20 feet and a height not exceeding 6 feet may remain in place for up to five years or until May 2008, whichever is later regardless of the size of the structure if the community in which it is located is actively pursuing a beach nourishment project as of ~~May 22, 2000~~. October 1, 2001. For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment project if it has:

(i) been issued a CAMA permit, where necessary, approving such project;

(ii) been deemed worthy of further consideration by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local money, when necessary; or

(iii) received a favorable economic evaluation report on a federal project approved prior to 1986. If beach nourishment is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void and existing sandbags are subject to all applicable time limits set forth in Parts (A) through (N) of this Subparagraph. Sandbag structures within nourishment project areas that exceed the 20 foot base width and 6 foot height limitation may be reconstructed to meet the size limitation and be eligible for this time extension: otherwise they must be removed by May 1, 2000 pursuant to Part (N) of this Subparagraph.

(G) once the temporary erosion control structure is determined to be unnecessary due to relocation or removal of the threatened structure, or beach nourishment, it must be removed by the property owner within 30 days.

(H) removal of temporary erosion control structures may not be required if they are covered by dunes with vegetation sufficient to be considered stable and natural.

(I) the property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.

(J) sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed six feet.

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- (K) soldier pilings and other types of devices to anchor sandbags shall not be allowed.
- (L) an imminently threatened structure may be protected only once, regardless of ownership. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) shall begin at the time the initial erosion control structure is installed. For the purpose of this Rule:
 - (i) a building and septic system shall be considered as separate structures; and
 - (ii) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each section of sandbags shall begin at the time that section is installed in accordance with Part (F) of this Subparagraph.
- (M) existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) of this Subparagraph.
- (N) existing sandbag structures that have been properly installed prior to May 1, 1995 shall be allowed to remain in place according to the provisions of Parts (F), (G) and (H) of this Subparagraph with the pertinent time periods beginning on May 1, 1995.
- (3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size and type. Sand to be used for beach nourishment shall be taken only from those areas where the resulting environmental impacts will be minimal.
- (4) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from any point seaward of the first line of stable vegetation to create a protective sand dike or to obtain material for any other purpose) is development and may be permitted as an erosion response if the following conditions are met:
 - (A) the area on which this activity is being performed must maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and shall follow the pre-emergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation;
 - (B) the activity must not exceed the lateral bounds of the applicant's property unless he has permission of the adjoining land owner(s);
 - (C) movement of material from seaward of the low water line will require a CAMA Major Development and State Dredge and Fill Permit;
 - (D) the activity must not significantly increase erosion on neighboring properties and must not have a significant adverse effect on important natural or cultural resources; and
 - (E) the activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.
- (b) Dune Establishment and Stabilization. Activities to establish dunes shall be allowed so long as the following conditions are met:
 - (1) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same general configuration as adjacent natural dunes.
 - (2) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.
 - (3) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas will be immediately replanted or temporarily stabilized until planting can be successfully completed.
 - (4) Sand used to establish or strengthen dunes must be of the same general characteristics as the sand in the area in which it is to be placed.
 - (5) No new dunes shall be created in inlet hazard areas.
 - (6) Sand held in storage in any dune, other than the frontal or primary dune, may be redistributed within the AEC provided that it is not placed any farther oceanward than the crest of a primary dune or landward toe of a frontal dune.
 - (7) No disturbance of a dune area will be allowed when other techniques of construction can be utilized and alternative site locations exist to avoid unnecessary dune impacts.
- (c) Structural Accessways:
 - (1) Structural accessways shall be permitted across primary dunes so long as they are designed and constructed in a manner which entails negligible alteration on the primary dune. Structural accessways may not be considered threatened structures for the purpose of Paragraph (a) of this Rule.
 - (2) An accessway shall be conclusively presumed to entail negligible alteration of a primary dune:
 - (A) the accessway is exclusively for pedestrian use;
 - (B) the accessway is less than six feet in width;
 - (C) the accessway is raised on posts or pilings of five feet or less depth, so that wherever possible only the posts or pilings touch the frontal dune. Where this is deemed impossible, the structure shall touch the dune only to the extent absolutely necessary. In no case shall an accessway be permitted if it will diminish the dune's capacity as a protective barrier against flooding and erosion; and
 - (D) any areas of vegetation that are disturbed are revegetated as soon as feasible.
 - (3) An accessway which does not meet Part (2)(A) and (B) of this Paragraph shall be permitted only if it meets a public purpose or need which cannot otherwise be met

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and it meets Part (2)(C) of this Paragraph. Public fishing piers shall not be deemed to be prohibited by this Rule, provided all other applicable standards are met.

- (4) In order to avoid weakening the protective nature of primary and frontal dunes a structural accessway (such as a "Hatteras ramp") shall be provided for any off-road vehicle (ORV) or emergency vehicle access. Such accessways shall be no greater than 10 feet in width and shall be constructed of wooden sections fastened together over the length of the affected dune area.

(d) Construction Standards. New construction and substantial improvements (increases of 50 percent or more in value on square footage) to existing construction shall comply with the following standards:

- (1) In order to avoid unreasonable danger to life and property, all development shall be designed and placed so as to minimize damage due to fluctuations in ground elevation and wave action in a 100 year storm. Any building constructed within the ocean hazard area shall comply with the North Carolina Building Code including the Coastal and Flood Plain Construction Standards, Chapter 34, Volume I or Section 39, Volume I-B and the local flood damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the building code or a flood damage prevention ordinance is inconsistent with any of the following AEC standards, the more restrictive provision shall control.
- (2) All structures in the ocean hazard area shall be on pilings not less than eight inches in diameter if round or eight inches to a side if square.
- (3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on the primary dune or nearer to the ocean, the pilings must extend to five feet below mean sea level.
- (4) All foundations shall be adequately designed to be stable during applicable fluctuations in ground elevation and wave forces during a 100 year storm. Cantilevered decks and walkways shall meet this standard or shall be designed to break-away without structural damage to the main structure.

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

**SECTION .1700 – GENERAL PERMIT FOR
EMERGENCY WORK REQUIRING A CAMA AND/OR A
DREDGE AND FILL PERMIT**

15A NCAC 7H .1705 SPECIFIC CONDITIONS

(a) Temporary Erosion Control Structures in the Ocean Hazard AEC.

- (1) Permittable temporary erosion control structures shall be limited to sandbags placed above mean high water and parallel to the shore.
- (2) Temporary erosion control structures as defined in Subparagraph (1) of this Paragraph may be used only to

protect imminently threatened roads and associated right of ways, and buildings and associated septic systems. A structure will be considered to be imminently threatened if its foundation, septic system, or, right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is not obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, tend to increase the risk of imminent damage to the structure.

- (3) Temporary erosion control structures may be used to protect only the principal structure and its associated septic system, but not such appurtenances as gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.
- (4) Temporary erosion control structures may be placed seaward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
- (5) Temporary erosion control structures must not extend more than 20 feet past the sides of the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the structure to be protected or the right-of-way in the case of roads.
- (6) The permittee shall be responsible for the removal of remnants of all or portions of any damaged temporary erosion control structure.
- (7) A temporary erosion control structure may remain in place for up to two years after the date of approval if it is protecting a building with a total floor area of 5000 sq. ft. or less, or, for up to five years if the building has a total floor area of more than 5000 sq. ft. A temporary erosion control structure may remain in place for up to five years if it is protecting a bridge or a road. The property owner shall be responsible for removal of the temporary structure within 30 days of the end of the allowable time period. A temporary sandbag erosion control structure with a base width not exceeding 20 feet and a height not exceeding 6 feet may remain in place for up to five years or until May 2008, whichever is later, regardless of the size of the structure it is protecting if the community in which it is located is actively pursuing a beach nourishment project as of ~~May 22, 2000.~~ October 1, 2001. For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment project if it has:
 - (A) been issued a CAMA permit, where necessary, approving such project;
 - (B) an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local money, when necessary; or
 - (C) received a favorable economic evaluation report on a federal project approved prior to 1986. If beach nourishment is rejected by the sponsoring agency or community, or ceases to be actively planned for

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a section of shoreline, the time extension is void and existing sandbags are subject to all applicable time limits set forth in Parts (1) through (15) of this Subparagraph. Sandbag structures within nourishment project areas that exceed the 20 foot base width and 6 foot height limitation may be reconstructed to meet the size limitation and be eligible for this time extension: otherwise they must be removed by May 1, 2000 pursuant to Part (15) of this Subparagraph.

- (8) Once the temporary erosion control structure is determined to be unnecessary due to relocation or removal of the threatened structure or beach nourishment, it must be removed by the permittee within 30 days.
 - (9) Removal of temporary erosion control structures shall not be required if they are covered by dunes with vegetation sufficient to be considered stable and natural.
 - (10) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed six feet.
 - (11) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
 - (12) Excavation below mean high water in the Ocean Hazard AEC may be allowed to obtain material to fill sandbags used for emergency protection.
 - (13) An imminently threatened structure may only be protected once regardless of ownership. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Subparagraph (7) shall begin at the time the initial erosion control structure is installed. For the purpose of this rule:
 - (A) a building and septic system will be considered as separate structures.
 - (B) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each section of sandbags shall begin at the time that section is installed in accordance with Subparagraph (7) of this Rule.
 - (14) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Subparagraph (7) of this Rule.
 - (15) Existing sandbag structures that have been properly installed prior to May 1, 1995 shall be allowed to remain in place according to the provisions of Subparagraphs (7), (8) and (9) of this Paragraph with the pertinent time periods beginning on May 1, 1995.
- (b) Erosion Control Structures in the Estuarine Shoreline, Estuarine Waters, and Public Trust AECs. Work permitted by this general permit shall be subject to the following limitations:

- (1) no work shall be permitted other than that which is necessary to reasonably protect against or reduce the imminent danger caused by the emergency or to restore the damaged property to its condition immediately before the emergency;
 - (2) the erosion control structure shall be located no more than 20 feet waterward of the endangered structure; and
 - (3) fill material used in conjunction with emergency work for storm or erosion control in the Estuarine Shoreline, Estuarine Waters and Public Trust AECs shall be obtained from an upland source.
- (c) Protection, Rehabilitation, or Temporary Relocation of Public Facilities or Transportation Corridors.
- (1) Work permitted by this general permit shall be subject to the following limitations:
 - (A) no work shall be permitted other than that which is necessary to reasonably protect against or reduce the imminent danger caused by the emergency or to restore the damaged property to its condition immediately before the emergency;
 - (B) the erosion control structure shall be located no more than 20 feet waterward of the endangered structure;
 - (C) any fill materials used in conjunction with emergency work for storm or erosion control shall be obtained from an upland source except that dredging for fill material to protect public facilities or transportation corridors will be considered in accordance with standards in 15A NCAC 7H .0208; and
 - (D) all fill materials or structures associated with temporary relocations which are located within Coastal Wetlands, Estuarine Water, or Public Trust AECs shall be removed after the emergency event has ended and the area restored to pre-disturbed conditions.
 - (2) This permit only authorizes the immediate protection or temporary rehabilitation or relocation of existing public facilities. Long-term stabilization or relocation of public facilities shall be consistent with local governments' post-disaster recovery plans and policies which are part of their Land Use Plans.

Authority G.S. 113-229(cl); 113A-107(a),(b); 113A-113(b); 113A-118.1.

APPROVED RULES

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting of September 29, 2000 pursuant to G.S. 150B-21.17(a)(1) and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules is published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

These rules, unless otherwise noted, will become effective on the 31st legislative day of the 2001 Session of the General Assembly or a later date if specified by the agency unless a bill is introduced before the 31st legislative day that specifically disapproves the rule. If a bill to disapprove a rule is not ratified, the rule will become effective either on the day the bill receives an unfavorable final action or the day the General Assembly adjourns. Statutory reference: G.S. 150B-21.3.

APPROVED RULE CITATION				REGISTER CITATION TO THE NOTICE OF TEXT
10	NCAC	42E	.0704*	not required G.S. 150B-21.5(a)(2), Eff. October 1, 2000
10	NCAC	42Q	.0116*	not required G.S. 150B-21.5(a)(2), Eff. October 1, 2000
10	NCAC	42S	.0501*	not required G.S. 150B-21.5(a)(2), Eff. October 1, 2000
13	NCAC	07A	.0401	14:12 NCR
13	NCAC	15	.0201	14:23 NCR
15A	NCAC	07H	.0209*	14:16 NCR
15A	NCAC	19B	.0320-.0321*	14:20 NCR
15A	NCAC	19B	.0502*	14:20 NCR
15A	NCAC	26B	.0104*	14:20 NCR
18	NCAC	06	.1101*	not required G.S. 150B-21.5(a)(4), Eff. October 1, 2000
18	NCAC	06	.1202*	not required G.S. 150B-21.5(a)(2), Eff. October 1, 2000
18	NCAC	06	.1206*	not required G.S. 150B-21.5(a)(3), Eff. October 1, 2000
18	NCAC	06	.1210*	not required G.S. 150B-21.5(a)(3);(a)(4), Eff. October 1, 2000
21	NCAC	14I	.0104*	14:22 NCR
21	NCAC	14P	.0105*	14:22 NCR
21	NCAC	16I	.0105*	14:19 NCR
21	NCAC	16R	.0103*	14:19 NCR
21	NCAC	16R	.0105*	14:19 NCR

TITLE 10 - DEPARTMENT OF HEALTH AND HUMAN SERVICES

10 NCAC 42E .0704 CERTIFICATION REQUIREMENT

(a) Subchapter 42E contains standards which have been developed for certification of adult day care programs. The standards relate to all aspects of operation of an adult day care program including administration, facility, and program operation. Adult day care programs, as defined in G.S. 131D-6, must be certified as meeting these standards. Programs exempted from certification requirements by G.S. 131D-6 must meet these standards for certification only if receiving funds administered by the Division of Aging for social services programs established by federal legislation. Certification is the responsibility of the county department of social services and the Department of Health and Human Services.

(b) Any program making application for certification or making timely and sufficient application for renewal of certification must be in compliance with all standards for certification. If all standards are not being met, certification will be denied or limited as appropriate. Certification of any program in willful violation of standards as defined in Rule .0705(b) of this

Subchapter will be revoked. Procedures in G.S. 150B-3 will be followed.

(c) Any program which was in operation, not currently certified, and serving individuals prior to January 1, 1986, will have a period of no more than 90 days to make application for certification. During this time period the program may continue to operate unless continued operation will endanger the health, safety or welfare of the participants. During this time period consultation and technical assistance will be provided by the county department of social services to aid the program to achieve full compliance with the rules in this Subchapter.

History Note: Authority G.S. 131D-6; 143B-153; Eff. July 1, 1979; Amended Eff. October 1, 2000; July 1, 1990; January 1, 1986.

10 NCAC 42Q .0116 ALLOCATION

Funds will be allocated to county departments of social services on the basis of each county's rate of expenditure for the prior state fiscal year.

History Note: Authority G.S. 143B-153; Eff. July 23, 1979;

Amended Eff. October 1, 2000.

10 NCAC 42S .0501 STATE DIVISION OF AGING'S RESPONSIBILITIES

The Division of Aging has the following responsibilities in certification of adult day care programs:

- (1) Consultation. The adult day care consultant in the Division of Aging shall be available to work with county departments of social services and day care providers regarding the development of adult day care services, interpretation of standards and related issues; The regional service representatives shall be available to county departments of social services for consultation regarding the development of adult day care services as part of a county social services system;
- (2) Certification. The Division of Aging shall be responsible for all actions regarding certification of adult day care programs based on the report and recommendations of the county department of social services and the adult day care consultant in the central office.

*History Note: Authority G.S. 143B-153;
Eff. July 1, 1979;
Amended Eff. October 1, 2000.*

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 07H .0209 ESTUARINE SHORELINES

(a) Rationale. As an AEC, estuarine shorelines, although characterized as dry land, are considered a component of the estuarine system because of the close association with the adjacent estuarine waters. This Section defines estuarine shorelines, describes the significance, and articulates standards for development.

(b) Description. Estuarine shorelines are those non-ocean shorelines extending from the normal high water level or normal water level along the estuarine waters, estuaries, sounds, bays, and brackish waters as set forth in an agreement adopted by the Wildlife Resources Commission and the Department of Environment and Natural Resources [described in Rule .0206(a) of this Section] for a distance of 75 feet landward. For those estuarine shorelines immediately contiguous to waters classified as Outstanding Resource Waters by the Environmental Management Commission, the estuarine shoreline AEC shall extend to 575 feet landward from the mean high water level or normal water level, unless the Coastal Resources Commission establishes the boundary at a greater or lesser extent following required public hearing(s) within the affected county or counties.

(c) Significance. The development within estuarine shorelines influences the quality of estuarine life and is subject to the damaging processes of shore front erosion and flooding.

(d) Management Objective. To ensure shoreline development is compatible with both the dynamic nature of estuarine shorelines and the values of the estuarine system.

(e) Use Standards.

- (1) All development projects, proposals, and designs shall preserve and not weaken or eliminate natural barriers to erosion, including, but not limited to, peat marshland,

resistant clay shorelines, and cypress-gum protective fringe areas adjacent to vulnerable shorelines.

- (2) All development projects, proposals, and designs shall limit the construction of impervious surfaces and areas not allowing natural drainage to only so much as is necessary to adequately service the major purpose or use for which the lot is to be developed. Impervious surfaces shall not exceed 30 percent of the AEC area of the lot, unless the applicant can effectively demonstrate, through innovative design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. Redevelopment of areas exceeding the 30 percent impervious surface limitation may be permitted if impervious areas are not increased and the applicant designs the project to comply with the intent of the rule to the maximum extent practical.
- (3) All development projects, proposals, and designs shall comply with the following mandatory standards of the North Carolina Sedimentation Pollution Control Act of 1973:
 - (A) All development projects, proposals, and designs shall provide for a buffer zone along the margin of the estuarine water which is sufficient to confine visible siltation within 25 percent of the buffer zone nearest the land disturbing development.
 - (B) No development project proposal or design shall permit an angle for graded slopes or fill which is greater than an angle which can be retained by vegetative cover or other erosion-control devices or structures.
 - (C) All development projects, proposals, and designs which involve uncovering more than one acre of land shall plant a ground cover sufficient to restrain erosion within 30 working days of completion of the grading; provided that this shall not apply to clearing land for the purpose of forming a reservoir later to be inundated.
- (4) Development shall not have a significant adverse impact on estuarine and ocean resources. Significant adverse impacts shall include but not be limited to development that would directly or indirectly impair water quality standards, increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit spoils waterward of normal water level or normal high water level, or cause degradation of shellfish beds.
- (5) Development shall not interfere with existing public rights of access to, or use of, navigable waters or public resources.
- (6) No public facility shall be permitted if such facility is likely to require public expenditures for maintenance and continued use, unless it can be shown that the public purpose served by the facility outweighs the required public expenditures for construction, maintenance, and continued use. For the purpose of this standard, "public facility" shall mean a project which is paid for in any part by public funds.
- (7) Development shall not cause irreversible damage to valuable, historic architectural or archaeological resources as documented by the local historic

commission or the North Carolina Department of Cultural Resources.

- (8) Established common-law and statutory public rights of access to the public trust lands and waters in estuarine areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways.
 - (9) Within the AEC for shorelines contiguous to waters classified as Outstanding Resource Waters by the EMC, no CAMA permit shall be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit will be issued if the activity would, based on site specific information, degrade the water quality or outstanding resource values.
- (f) Specific Use Standards for ORW Estuarine Shorelines.
- (1) Within the AEC for estuarine shorelines contiguous to waters classified as ORW by the EMC, all development projects, proposals, and designs shall limit the built upon area to no more than 25 percent of the AEC area of the land to be developed or any lower site specific percentage as adopted by the EMC as necessary to protect the exceptional water quality and outstanding resource values of the ORW, and shall:
 - (A) have no stormwater collection system;
 - (B) provide a buffer zone of at least 30 feet from the mean high water line;
 - (C) otherwise be consistent with the use standards set out in Paragraph (e) of this Rule.
 - (2) Development (other than single-family residential lots) more than 75 feet from the normal high water line or normal water line but within the AEC that as of June 1, 1989:
 - (A) the development has a CAMA permit application in process, or
 - (B) the development has received preliminary subdivision plat approval or preliminary site plan approval under applicable local ordinances, and in which substantial financial resources have been invested in design or improvement.
 - (3) Single-family residential lots which would not be buildable under the low-density standards defined in Paragraph (f)(1) of this Rule may be developed for single-family residential purposes so long as the development complies with those standards to the maximum extent possible.
 - (4) For ORW's nominated subsequent to June 1, 1989, the effective date in Paragraph (f)(2) of this Rule shall be the dates of nomination by the EMC.
- (g) Urban Waterfronts.
- (1) Description. Urban Waterfronts are waterfront areas, not adjacent to Outstanding Resource Waters, in the Coastal Shorelines AEC that lie within the corporate limits of any municipality duly chartered within the 20 coastal counties of the state. In determining whether an area is an urban waterfront, the following criteria shall be met as of the effective date of this Rule:
 - (A) The area lies wholly within the corporate limits of a municipality; and
 - (B) the area is in a central business district where there is minimal undeveloped land, mixed land uses, and urban level services such as water, sewer, streets, solid waste management, roads, police and fire protection or an industrial zoned area adjacent to a central business district.
 - (2) Significance. Urban waterfronts are recognized as having cultural, historical and economic significance for many coastal municipalities. Maritime traditions and longstanding development patterns make these areas suitable for maintaining or promoting dense development along the shore. With proper planning and stormwater management, these areas may continue to preserve local historical and aesthetic values while enhancing the economy.
 - (3) Management Objectives. To provide for the continued cultural, historical, aesthetic and economic benefits of urban waterfronts. Activities such as in-fill development, reuse and redevelopment facilitate efficient use of already urbanized areas and reduce development pressure on surrounding areas, thus minimizing the adverse cumulative environmental effects on estuarine and ocean systems. While recognizing that opportunities to preserve buffers are limited in highly developed urban areas, they are encouraged where practical.
 - (4) Use Standards:
 - (A) Within the Coastal Shorelines AEC for shorelines contiguous to all waters not classified as Outstanding Resource Waters, no buffer pursuant to this Rule is required for development within designated Urban Waterfronts that meets the following standards:
 - (i) The development must be consistent with the locally adopted land use plan;
 - (ii) Impervious surfaces shall not exceed 30 percent of the AEC area of the lot. Impervious surfaces may exceed 30 percent if the applicant can effectively demonstrate, through a stormwater management system design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. The stormwater management system shall be designed by an individual who meets any North Carolina occupational licensing requirements for the type of system proposed and approved during the permit application process. Redevelopment of areas exceeding the 30 percent impervious surface limitation may be permitted if impervious areas are not increased and the applicant designs the project to comply with the intent of the rule to the maximum extent practical.
 - (iii) the development shall meet all state stormwater management requirements as required by the NC Environmental Management Commission.
 - (B) Non-water dependent uses over estuarine waters, public trust waters and coastal wetlands may be

allowed only within designated Urban Waterfronts as set out below.

- (i) Existing structures over coastal wetlands, estuarine waters or public trust areas may be used for non-water dependent purposes.
- (ii) New structures built for non-water dependent purposes are limited to pile supported, single story, unroofed, unenclosed decks and boardwalks, and must meet the following criteria:
 - (I) The proposed development must be consistent with a locally adopted waterfront access plan that provides for enhanced public access to the shoreline;
 - (II) Structures must be pile supported and require no filling of coastal wetlands, estuarine waters or public trust areas;
 - (III) Structures shall not extend more than 20 feet waterward of the normal high water level or normal water level;
 - (IV) Structures must be elevated at least three feet over the wetland substrate as measured from the bottom of the decking;
 - (V) Structures shall have no more than six feet of any dimension extending over coastal wetlands;
 - (VI) Structures shall not interfere with access to any riparian property and shall have a minimum setback of 15 feet between any part of the structure and the adjacent property owners areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the structure commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development;
 - (VII) Structures must be consistent with the US Army Corps of Engineers setbacks along federally authorized waterways;
 - (VIII) Structures shall have no significant adverse impacts on fishery resources, water quality or adjacent

wetlands and there must be no reasonable alternative that would avoid wetlands. Significant adverse impacts shall include but not be limited to the development that would directly or indirectly impair water quality standards, increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit spoils waterward of normal water level or normal high water level, or cause degradation of shellfish beds;

- (IX) Structures shall not degrade waters classified as SA or High Quality Waters Outstanding Resource Waters as defined by the NC Environmental Management Commission;
- (X) Structures shall not degrade primary Nursery Areas as defined by the NC Marine Fisheries Commission; and
- (XI) Structures shall not pose a threat to navigation.

History Note: Temporary Amendment Eff. December 18, 1981;

Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124;

Eff. September 9, 1977;

Amended Eff. April 1, 2001; August 1, 2000; August 3, 1992; December 1, 1991; May 1, 1990; October 1, 1989.

15A NCAC 19B .0320 INTOXILYZER: MODEL 5000

The operational procedures to be followed in using the Intoxilyzer, Model 5000 are:

- (1) Insure instrument displays time and date;
- (2) Insure observation period requirements have been met;
- (3) Press "START TEST"; when "INSERT CARD" appears, insert test record;
- (4) Enter information as prompted;
- (5) Verify instrument calibration;
- (6) When "PLEASE BLOW" appears, collect breath sample;
- (7) When "PLEASE BLOW" appears, collect breath sample; and
- (8) When test record ejects, remove.

If the alcohol concentrations differ by more than 0.02, a third breath sample shall be collected when "PLEASE BLOW" appears. Subsequent tests shall be administered as soon as feasible by repeating steps (1) through (8), as applicable.

History Note: Authority G.S. 20-139.1(b);

Eff. January 1, 1985;

Amended Eff. April 1, 2001; April 1, 1993; April 1, 1992; January 1, 1990.

15A NCAC 19B .0321 PREVENTIVE MAINTENANCE: INTOXILYZER: MODEL 5000

The preventive maintenance procedures for the Intoxilyzer Model 5000 to be followed at least once every four months are:

- (1) Verify alcoholic breath simulator thermometer shows 34 degrees, plus or minus .2 degree centigrade;

- (2) Verify instrument displays time and date;
- (3) Press "START TEST"; when "INSERT CARD" appears, insert test record;
- (4) Enter information as prompted;
- (5) Verify instrument calibration;
- (6) When "PLEASE BLOW" appears, collect breath sample;
- (7) When "PLEASE BLOW" appears, collect breath sample;
- (8) When test record ejects, remove;
- (9) Verify Diagnostic Program; and
- (10) Verify alcoholic breath simulator solution is being changed every four months or after 125 Alcoholic Breath Simulator tests, whichever occurs first.

A signed original of the preventive maintenance record shall be kept on file for at least three years.

History Note: Filed as a Temporary Amendment Eff. September 1, 1989 for a period of 180 days to expire on February 28, 1990; Authority G.S. 20-139.1(b) (b4); Eff. January 1, 1985; Amended Eff. April 1, 2001; April 1, 1993; April 1, 1992; January 1, 1990.

15A NCAC 19B .0502 APPROVAL: ALCOHOL SCREENING TEST DEVICES: USE

- (a) Alcohol screening test devices that measure alcohol concentration through testing the breath of individuals are approved on the basis of results of evaluations by the Forensic Tests for Alcohol Branch. Devices shall meet the minimum requirements as set forth in the current state purchase and contract bid specifications for Alcohol Screening Test Devices. Evaluations are not limited in scope and may include any factors deemed appropriate to insure the accuracy, reliability, stability, cost, and ease of operation and durability of the device being evaluated. On the basis of evaluations to date, approved devices are listed in 15A NCAC 19B .0503 of this Section.
- (b) When the validity of an alcohol screening test of the breath of a driver administered by a law enforcement officer depends upon approval by the Commission of the test device and its manner of use, the test shall be administered as follows:
 - (1) The officer shall determine that the driver has removed all food, drink, tobacco products, chewing gum and other substances and objects from his mouth. Dental devices or oral jewelry need not be removed.
 - (2) Unless the driver volunteers the information that he has consumed an alcoholic beverage within the previous 15 minutes, the officer shall administer a screening test as soon as feasible. If a test made without observing a waiting period results in an alcohol concentration reading of 0.08 or more, the officer shall wait five minutes and administer an additional test. If the results of the additional test show an alcohol concentration reading more than 0.02 under the first reading, the officer shall disregard the first reading.
 - (3) The officer may request that the driver submit to one or more additional screening tests.
 - (4) In administering any screening test, the officer shall use an alcohol screening test device approved under 15A NCAC 19B .0503 of this Section in accordance with the operational instructions supplied with or listed on the

device, except that the waiting periods set out in this Rule supersede any period specified by the manufacturer of the device.

History Note: Authority G.S. 20-16.3; Eff. February 1, 1976; Readopted Eff. December 5, 1977; Amended Eff. April 1, 2001; September 1, 1990; January 1, 1990; October 1, 1983.

15A NCAC 26B .0104 REPORTING OF CANCER

- (a) Health care facilities and providers shall submit a complete abstract for each cancer case that is screened, diagnosed, treated, or followed by its staff and that was initially diagnosed with cancer subsequent to May 7, 1999. A complete abstract is defined as one that adheres to the standards and definitions of the North American Association of Central Cancer Registries (NAACCR), the World Health Organization (WHO), the American College of Surgeons Commission on Cancer (COC), and the National Cancer Institute Surveillance, Epidemiology, and End Results Program (SEER). These standards and definitions are delineated in the following publications: the NAACCR *Standards for Cancer Registries*, the WHO *International Classification of Diseases for Oncology*; the COC *Standards of the Commission on Cancer, Volume II, Registry Operations and Data Standards (ROADS)*; and the SEER Coding Manuals. Subsequent amendments and editions of these publications are included. NAACCR documents are free of charge and may be obtained from the North American Association of Central Cancer Registries, 2121 West White Oaks Drive, Springfield, Illinois 62704. The *International Classification of Diseases for Oncology* may be purchased for twenty-seven dollars (\$27.00) from WHO Publications Center USA, 49 Sheridan Avenue, New York, NY 12210. The *ROADS* publication may be purchased for twenty dollars (\$20.00) from ACS Publications Fulfillment Section, Box 92425, Chicago, IL 60675-2425. SEER publications are free of charge and may be obtained from the National Cancer Institute, Publications Ordering Service, P.O. Box 24128, Baltimore, MD 21227.
- (b) A health care provider or facility may delegate the tasks of reporting cancer cases to office or hospital staff, but the provider or facility shall not delegate the legal responsibility for the reporting of cancer to others.
- (c) A report of cancer shall be submitted to the registry by health care facilities and providers by one of the following methods:
 - (1) by submission of an electronic file containing the information required in Paragraph (a) of this Rule;
 - (2) for pathology laboratories, by submission of a positive electronic pathology report containing the information required in Paragraph (a) of this Rule; or
 - (3) facilities or providers that have fewer than 30 reportable cases per year may submit photocopies of the medical record sufficient to complete a full abstract of the case.
- (d) The following documents shall not constitute a report of cancer:
 - (1) a death certificate; and
 - (2) a request for authorization submitted to the Cancer program requesting third party reimbursement for treatment of cancer, although a positive pathology report is required by 10 NCAC 8A .0408(f).

(e) Reports shall be forwarded to the following address: Central Cancer Registry, State Center for Health Statistics, 1908 Mail Service Center, Raleigh, North Carolina 27699-1908.

History Note: Authority G.S. 130A-205; 130A-208 through 130A-213;

Eff. January 1, 1982;

Amended Eff. October 1, 1984; October 1, 1982;

Transferred and Recodified from 10 NCAC 8A .0804 Eff. April 4, 1990;

Amended Eff. April 1, 2001; December 1, 1990.

TITLE 18 – SECRETARY OF STATE

18 NCAC 06 .1101 LOCATION AND HOURS

The Securities Division of the Department of the Secretary of State is located in Suite 100, Legislative Office Building, 300 North Salisbury Street, Raleigh, North Carolina 27611-5909. The mailing address is: Securities Division, P.O. Box 29622, Raleigh, NC 27626-0525. Office hours for the public are 8:00 a.m. to 5:00 p.m. Monday through Friday, except state holidays.

History Note: Authority G.S. 78A-49(a); 147-36;

Eff. April 1, 1981;

Amended Eff. October 1, 2000; October 1, 1988; November 1, 1982.

18 NCAC 06 .1202 RECOGNIZED SECURITIES MANUALS

(a) The publications recognized by the administrator as securities manuals for the purposes set forth in G.S. 78A-17(2)a. shall be:

- (1) Standard and Poor's Corporation Records,
- (2) Mergent's Industrial Manual,
- (3) Mergent's Over-the-Counter Industrial Manual,
- (4) Mergent's International Manual, and
- (5) Periodic supplements to each recognized securities manual.

Other publications may be recognized by the administrator, on a case by case basis, upon a showing that the information required by G.S. 78A-17(2)a. is actually contained in the publication.

(b) None of the publications in Paragraph (a) shall be recognized as relating to the securities of a particular issuer unless all of the information required by G.S. 78A-17(2)a. is contained in the publication, and:

- (1) such information has been continuously published in that securities manual for at least fifteen months preceding the commencement of a distribution in reliance on G.S. 78A-17(2)a.; or
- (2) during the twelve months preceding the commencement of a distribution in reliance on G.S. 78A-17(2)a., the issuer's common stock or equivalent security has traded at the price of five dollars (\$5.00) or more per share for a period of at least thirty consecutive days as quoted in the Wall Street Journal or similar national publication; or
- (3) as of the end of its most recent fiscal year, the issuer had:
 - (A) a tangible net worth (i.e., net worth computed by excluding intangible assets) of at least one million dollars (\$1,000,000), and

(B) net income, after taxes, or at least one hundred fifty thousand dollars (\$150,000); or

- (4) during the twelve months preceding a distribution in reliance on G.S. 78A-17(2)a., the issuer completed a public offering of securities which raised at least five million dollars (\$5,000,000).

History Note: Authority G.S. 78A-17(2)a.; 78A-49(a);

Eff. April 1, 1981;

Amended Eff. October 1, 2000; February 1, 1991; September 1, 1990; October 1, 1988.

18 NCAC 06 .1206 LIMITED OFFERING EXEMPTION PURSUANT TO G.S. 78A-17(17)

(a) Transactions made in reliance upon Rule 505 of Regulation D promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended, 17 C.F.R. 230.505 (1982) and (and as subsequently amended), including any offer or sale made exempt by application of Rule 508(a), as made effective in Release No. 33-6389 and as amended in Release Nos. 33-6437, 33-6663, 33-6758, and 33-6825, shall be exempt from the requirements of G.S. 78A-24, provided there is compliance with the conditions and limitations of this Rule .1206 and Rules .1207 and .1208 of this Section.

(b) No exemption under this Rule .1206 is available for the offer or sale of securities if the issuer or any other person or entity to which Rule .1206 applies is disqualified pursuant to Rule .1207 of this Section unless the administrator, upon application and a showing of good cause by the issuer, or such other person or entity, modifies or waives the disqualification. For purposes of this Rule .1206, "good cause" means a substantial reason amounting in law to a legal excuse for noncompliance with a restriction imposed by Rule .1207, and shall be relevant to considerations of the public interest, the protection of the investing public, the age and nature of the particular disqualifying event, the business experience, qualifications, and disciplinary history of the disqualified person, the need for full disclosure of information relevant to investment decisions, and the burden and cost of compliance with regulatory requirements applicable to the transaction in the absence of the availability of the exemption.

(c) No commission, discount, finder's fee or other similar remuneration or compensation shall be paid, directly or indirectly, to any person for soliciting any prospective purchaser of any security sold to a resident of this State in reliance upon the exemption provided by this Rule .1206 unless such person is either registered pursuant to G.S. 78A-36 or exempt from registration thereunder or the issuer reasonably believes that such person is so registered or exempt therefrom.

(d) In all sales to those accredited investors defined in 17 C.F.R. 230.501(a)(5) who reside in this State (except sales to such accredited investors made by or through a dealer registered under G.S. 78A-36) and in all sales to nonaccredited investors who reside in this State the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that one of the following conditions is satisfied:

- (1) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his/her other security holdings and as to his/her financial situation and needs. For the purpose of this condition only, it may be presumed that if the

investment does not exceed 10 percent of the investor's net worth, it is suitable.

- (2) The purchaser, either alone or with his/her purchaser representative(s), has such knowledge and experience in financial and business matters that he/she is or they are capable of evaluating the merits and risks of the prospective investments.

(e) In all sales of direct participation programs securities pursuant to the exemption provided by this Rule .1206, the provisions of Rule .1313 of this Chapter regarding registered offerings of direct participation program securities shall be applicable in addition to all other requirements of this Rule .1206.

(f) Any prospectus or disclosure document used in this state in connection with an offer and sale of securities made in reliance upon the exemption provided by this Rule .1206 shall disclose conspicuously the legend(s) required by the provisions of Rule .1316 of this Chapter.

(g) Nothing in the exemption provided by this Rule .1206 is intended to or shall be construed as in any way relieving the issuer or any person acting on behalf of the issuer from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of the Act.

(h) Transactions which are exempt under this Rule may not be combined with offers and sales exempt under any other rule or section of this Act; however, nothing in this limitation shall act as an election. Should for any reason, an offer and sale of securities made in reliance upon the exemption provided by this Rule .1206 fail to comply with all of the conditions hereof, the issuer may claim the availability of any other applicable exemption.

(i) A failure to comply with a term, condition or requirement of Paragraphs (c) and (d) of this Rule will not result in loss of the exemption from the requirements of G.S. 78A-24 for any offer or sale to a particular individual or entity if the person relying on the exemption shows:

- (1) the failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity; and
- (2) the failure to comply was insignificant with respect to the offering as a whole; and
- (3) a good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of Paragraphs (c) and (d) of this Rule.

Where an exemption is established only through reliance upon this Paragraph (i) of this Rule, the failure to comply shall nonetheless be actionable by the administrator under G.S. 78A-47.

(j) In any proceeding involving this Rule .1206, the burden of proving the exemption or an exception from a definition or condition is upon the person claiming it.

(k) In view of the objective of this Rule .1206 and the purpose and policies underlying the Act, this exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this Rule .1206, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this Rule .1206 or Rules .1207 and .1208 of this Section. The administrator may, by order, waive any condition of or limitation upon the availability of the exemption provided by this Rule .1206.

(l) In determining whether to waive a condition of or limitation on the availability of the exemption provided by this Rule .1206,

the Administrator shall consider matters and information relevant to the public policy intended by G.S. 78A, which is the protection of the investing public from persons effecting securities transactions by employing devices, schemes, or artifices to defraud, making untrue statements of material fact or misleading omission of material fact, and engaging in acts, practices, or courses of business which operate or would operate as a fraud or deceit upon any person. Such considerations shall include, but not be limited to the following:

- (1) the need for full and adequate disclosure of information relevant to investment decisions;
- (2) the business history, qualifications, and disciplinary history of the person or persons effecting the securities transactions;
- (3) the experience, suitability, character, expertise, and financial strength of the offerers in the particular transaction;
- (4) the costs of compliance with applicable regulatory requirements;
- (5) the benefits to the particular investors and to the general investing public of compliance with applicable regulatory requirements;
- (6) the terms, conditions, and provisions of the particular securities transaction; and
- (7) any other factors which are relevant to the protection of the investing public.

(m) The exemption provided by this Rule .1206 shall be known and may be cited as the "North Carolina Limited Offering Exemption."

(n) Pursuant to G.S. 78A-18, the administrator may by order deny or revoke the exemption provided by this Rule .1206 with respect to a specific security or security transaction.

History Note: Filed as a Temporary Rule Eff. October 1, 1983, for a period of 120 days to expire on January 29, 1984; Authority G.S. 78A-17(17); 78A-49(a); Eff. January 1, 1984; Amended Eff. September 1, 1990; October 1, 1988; Temporary Amendment Eff. October 1, 1997; Amended Eff. October 1, 2000; August 1, 1998.

18 NCAC 06 .1210 SECURITIES EXCHGS/AUTO QUOTATION SYS APPROVED/ADMINISTRATOR

For purposes of G.S. 78A-16(15), the following securities exchanges and automated quotation systems are approved provided such exchanges or systems comply with the provisions of Paragraphs (1) through (4) of the Memorandum of Understanding regarding a Model Uniform Marketplace Exemption From State Securities Registration Requirements [SEC Release 33-6810 (December 16, 1988), CCH NASAA Reports, par. 2,351] or the Memorandum of Understanding between The North American Securities Administrators Association, Inc. and The Philadelphia Stock Exchange, Inc., incorporated herein by reference. The incorporated material may be obtained, free of charge, from the North Carolina Secretary of State, Securities Division, 300 North Salisbury Street, Suite 100, Raleigh, North Carolina 27603-5909 or by mail, from the Securities Division, P.O. Box 29622, Raleigh, North Carolina 27626-0525:

- (1) New York Stock Exchange;
- (2) American Stock Exchange;
- (3) Pacific Stock Exchange;

- (4) Midwest Stock Exchange;
- (5) NASDAQ National Market System;
- (6) Chicago Board Options Exchange; and
- (7) Philadelphia Stock Exchange.

History Note: Authority G.S. 88B-4; 88B-21; 88B-23(a); 88B-24; 88B-29; Temporary Adoption Eff. January 1, 1999; Eff. August 1, 2000.

History Note: Filed as a Temporary Adoption Eff. December 8, 1990 for a period of 180 days to expire on June 5, 1991; Filed as a Temporary Adoption Eff. June 11, 1990 for a period of 180 days to expire on December 8, 1990; ARRC Objection Lodged June 21, 1990; ARRC Objection Removed August 20, 1990; ARRC Objection Lodged December 20, 1990; Authority G.S. 78A-16(15); 150B-21.6; Eff. February 1, 1991; Amended Eff. October 1, 2000; May 1, 1995; August 1, 1991.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 14 – BOARD OF COSMETIC ARTS

21 NCAC 14I .0104 WITHDRAWALS

- (a) When a student who is enrolled in a cosmetic art school withdraws from such school, whether by reason of transfer to another school, dismissal, suspension, voluntary disenrollment, or for any reason other than graduation, the cosmetic art school shall report the withdrawal to the Board within 30 working days.
- (b) Such report shall contain the following:
 - (1) name of the student,
 - (2) Social Security number,
 - (3) the last day of attendance,
 - (4) the reason for withdrawal (if known),
 - (5) the hours completed at the time of withdrawal, and
 - (6) copy of all live model/mannequin performances completed at the time of withdrawal.
- (c) A student may elect to withdraw from a cosmetic art program up to 5 school days from the first date of attendance. Hours earned during the time period prior to withdrawal will not be credited.

History Note: Authority G.S. 88B-4; 88B-16; Eff. February 1, 1976; Amended Eff. August 1, 1998; April 1, 1991; January 1, 1989; April 1, 1988; Temporary Amendment Eff. February 10, 2000; Amended Eff. April 1, 2001; August 1, 2000.

21 NCAC 14P .0105 RENEWALS; EXPIRED LICENSES; LICENSES REQUIRED:

- (a) The presumptive civil penalty for operating a cosmetic art shop with an expired license is:

(1) 1st offense	warning (\$100.00)
(2) 2nd offense	\$250.00
(3) 3rd offense	\$500.00
- (b) The presumptive civil penalty for practicing cosmetology, manicuring, or esthetics with an expired license is:

(1) 1st offense	warning (\$100.00)
(2) 2nd offense	\$250.00
(3) 3rd offense	\$500.00

CHAPTER 16 - BOARD OF DENTAL EXAMINERS

21 NCAC 16I .0105PENALTY/NON-COMPLIANCE/CONTINUING EDUCATION REQUIREMENT

If the applicant for a renewal certificate fails to provide proof of completion of reported continuing education hours for the current year as required by 21 NCAC 16I .0102 and .0104 of this Subchapter, the Board may refuse to issue a renewal certificate for the year for which renewal is sought, until such time as the licensee completes the required hours of education for the current year and meets all other qualifications for renewal. Should the applicant fail to meet the qualifications for renewal, including completing the required hours of continuing education, by March 31st, the license becomes void and must be reinstated. If the applicant applies for credit for continuing education hours or a reduction of continuing education hours and fails to provide the required documentation upon request, the Board may refuse to issue a certificate of renewal until such time as the applicant meets the qualifications for credit. Should the applicant fail to provide the required documentation by March 31st, the license becomes void and must be reinstated.

History Note: Authority G.S. 90-225.1; Eff. May 1, 1994; Amended Eff. April 1, 2001.

21 NCAC 16R .0103 REPORTING OF CONTINUING EDUCATION

(a) The number of hours completed shall be indicated on the renewal application form submitted to the Board and confirmed by the dentist's signature. Upon request by the Board or its authorized agent, the dentist shall provide official documentation of attendance at courses indicated. Such documentation shall be provided by the organization offering or sponsoring the course. Documentation must include:

- (1) the title;
- (2) the number of hours of instruction;
- (3) the date of the course attended;
- (4) the name(s) of the course instructor(s); and
- (5) the name of the organization offering or sponsoring the course.

(b) All records, reports and certificates relative to continuing education hours must be maintained by the licensee for at least two years and shall be produced upon request of the Board or its authorized agent. Evidence of service or affiliation with an agency or institution as specified in 21 NCAC 16R .0104 shall be in the form of verification of affiliation or employment which is documented by a director or an official acting in a supervisory capacity.

History Note: Authority G.S. 90-31.1; Eff. May 1, 1994; Amended Eff. April 1, 2001.

21 NCAC 16R .0105 PENALTY/NON-COMPLIANCE/CONTINUING EDUCATION REQUIREMENT

APPROVED RULES

If the applicant for a renewal certificate fails to provide proof of completion of reported continuing education hours for the current year as required by 21 NCAC 16R .0101 and .0103 of this Subchapter, the Board may refuse to issue a renewal certificate for the year for which renewal is sought, until such time as the licensee completes the required hours of education for the current year and meets all other qualifications for renewal. Should the applicant fail to meet the qualifications for renewal, including completing the required hours of continuing education, by March 31st, the license becomes void and must be reinstated. If the applicant applies for credit for or exemption

from continuing education hours and fails to provide the required documentation upon request, the Board shall refuse to issue a certificate of renewal until such time as the applicant meets the qualifications for exemption or credit. Should the applicant fail to provide the required documentation by March 31st, then the license becomes void and must be reinstated.

History Note: Authority G.S. 90-31.1;

Eff. May 1, 1994;

Amended Eff. April 1, 2001.

RULES REVIEW COMMISSION

This Section contains the agenda for the next meeting of the Rules Review Commission on Thursday, October 19, 2000, 10:00 a.m., at 1307 Glenwood Ave., Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners by Friday, October 13, 2000, at 5:00 p.m. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Teresa L. Smallwood, Chairman
John Arrowood
Laura Devan
Jim Funderburke
David Twiddy

Appointed by House

R. Palmer Sugg, 1st Vice Chairman
Jennie J. Hayman, 2nd Vice Chairman
Walter Futch
Paul Powell
George Robinson

RULES REVIEW COMMISSION MEETING DATES

October 19, 2000	December 16, 2000
January 20, 2001	February 17, 2001
March 16, 2001	April 20, 2001
May 18, 2001	June 15, 2001

RULES REVIEW COMMISSION

September 29, 2000

MINUTES

The Rules Review Commission convened at 10:00 a.m. on Thursday morning, September 21, 2000, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. There were only five Commissioners present: Vice Chairman Jennie Hayman, David Twiddy, John Arrowood, Laura Devan, and Walter Futch. Since there was no quorum the only business transacted was to adjourn the meeting until Friday, September 29, 2000 at 10:00 a.m.

At 10:00 a.m. on Friday, September 29, 2000, the Rules Review Commission reconvened. Commissioners in attendance were Vice Chairman Palmer Sugg, Jennie Hayman, Laura Devan, David Twiddy, John Arrowood, Paul Powell, Walter Futch, Robert Saunders, and George Robinson.

Staff members present were: Joseph J. DeLuca, Staff Director; Bobby Bryan, Rules Review Specialist; and Sandy Webster.

The following people attended:

Ann Wall	LABOR
Tom Harris	LABOR
John Bogner	LABOR
Bill Crowell	DENR/DEM
Bob Hamilton	Auctioneers Licensing Board
Bruce Marshburn	Auctioneers Licensing Board
Gary Cyrus	DENR/Aging
Lynne Berry	DENR/Aging
Dale Herman	DHHS
Al Eisele	DHHS
Dee Williams	Cosmetic Art Examiners
Stephanie Montgomery	DHHS/SSC
Denise Stanford	Dental Board

APPROVAL OF MINUTES

The meeting was called to order at 10:02 a.m. with Vice Chairman Sugg presiding. The Vice Chairman asked for any discussion, comments, or corrections concerning the minutes of the August 17, 2000 meeting. The minutes were approved as written.

FOLLOW-UP MATTERS

10 NCAC 42E .0704: Social Services Commission – The rewritten rule submitted by the agency was approved by the Commission.

10 NCAC 42Q .0016: Social Services Commission – The rewritten rule submitted by the agency was approved by the Commission.

10 NCAC 42S .0501: Social Services Commission – The rewritten rule submitted by the agency was approved by the Commission.

15A NCAC 7H .0209: Coastal Resources Commission – The rewritten rule submitted by the agency was approved by the Commission.

15A NCAC 19B .0320, .0321, and .0502: DHHS/Commission for Health Services – The rewritten rules submitted by the agency were approved by the Commission.

15A NCAC 26B .0104: Commission for Health Services – The rewritten rule submitted by the agency was approved by the Commission.

21 NCAC 14I .0104: State Board of Cosmetic Art Examiners - The rewritten rule submitted by the agency was approved by the Commission.

21 NCAC 14P .0105: State Board of Cosmetic Art Examiners - The rewritten rule submitted by the agency was approved by the Commission.

LOG OF FILINGS

Vice Chairman Sugg presided over the review of the log and all rules were a unanimously approved with the following exceptions:

Department of Labor – All rules were withdrawn by the agency with the exception of 13A NCAC 7A .0401 and 13 NCAC 15 .0201 which were approved by the Commission.

15A NCAC 2B .0257: Environmental Management Commission – The Commission objected to this rule due to lack of statutory authority and ambiguity. In (b)(1)(C) it is unclear what are “recreational lands” and “rights-of-way.” In (b)(2) and (4) the meaning and intent of the rule is unclear. It first states that the entire rule applies to “applicators” (2) and “consultants” (4) but then seems to limit the requirements to (c)(2) for both applicators and consultants. (An easily corrected error, but not for purposes of this analysis is that the reference in (b)(4) to (c)(2) should probably be to (c)(4).) In (b)(2) and following, it is unclear who is an “applicator.” Is it the employer or supervisor on a landscaping crew or is it the person who may (or may not) mix the ingredients and apply it to the landscape? In (b)(4) and following, it is also unclear who or what a “consultant” is.

There does not appear to be any authority cited for the provisions in (c) and (d) requiring certification as having successfully completed nutrient management training for applicators and consultants. In (d)(3) it is unclear what constitutes “sound nutrient management recommendations.” In (e)(1)(A) it is unclear whether the N.C. Soil and Water Conservation Commission has adopted standards. If so, then they should be referenced. Likewise in (e)(2)(A) and (B) it is unclear whether the “rules” referred to actually exist.

15 NCAC 2B .0258: Environmental Management Commission – The Commission objected to this rule due to ambiguity. In (a)(1) and (2) it is unclear how “new” developments can achieve a reduction based on decade old levels. Is it a reduction from what 1991 new developments contributed or a reduction from the entire nitrogen/phosphorous loading from all sources in 1991? At any rate it is also unclear why the purpose paragraph needs to be so specific since the remainder of the rule is quite specific about precisely what local governments must do. If the rest of the rule hinges on achieving a specific numerical level, then that level needs to be clear.

Marine Fisheries Commission – The period of review was extended on all rules submitted for the September Log, based on a request by the agency and an opponent of one of the rule filings.

N C Auctioneers Commission - The period of review was extended on all rules submitted for the September Log.

21 NCAC 16I .0103 and .0104: State Board of Dental Examiners – These rules were withdrawn by the Board.

21 NCAC 16I .0102: State Board of Dental Examiners – The Commission objected to this rule due to lack of statutory authority and ambiguity. In (b), it is not clear what is meant by “extenuating circumstance.” This does not appear to be the specific guidelines required by G.S. 150B-19(6) for an agency to waive its rules.

21 NCAC 16R .0102 and .0104: State Board of Dental Examiners – These rules were withdrawn by the Board.

COMMISSION PROCEDURES AND OTHER BUSINESS

Mr. DeLuca reported that no word had been received on the Pharmacy Board lawsuit and that a motion hearing calendar on the Labor lawsuit had been scheduled for the week of November 13. He also reported that Lisa Johnson would be replacing Sandy on October 16. The Commissioners unanimously elected Paul Powell Chairman, John Arrowood first Vice Chairman, and Jennie Hayman second Vice Chairman.

The next meeting will be on Thursday, October 19, 2000.

The meeting adjourned at 11:00 a.m.

Respectfully submitted,
Sandy Webster

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698. Also, the Contested Case Decisions are available on the Internet at the following address: <http://www.state.nc.us/OAH/hearings/decision/caseindex.htm>.

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Sammie Chess Jr.
Beecher R. Gray
Melissa Owens Lassiter

James L. Conner, II
Robert Roosevelt Reilly Jr.
Beryl E. Wade

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
ALCOHOL BEVERAGE CONTROL COMMISSION				
NC ABC Commission v Food Lion, Inc. T/A Food Lion Store 540	99 ABC 0366	Mann	05/30/00	
NC ABC Commission v.DCL., Inc. T/A Cheap Shot O'Malleys	99 ABC 1341	Morrison	06/15/00	15:03 NCR 340
Daniel W. Shelton T/A Shelton Broers v.NC ABC Commission	99 ABC 1641	Conner	08/31/00	15:08 NCR 879
NC ABC Commission v. Harris Teeter, Inc. T/A Harris Teeter 142	99 ABC 1746	Lassiter	05/01/00	
NC ABC Commission v. Headlights, Inc. T/A Headlights	00 ABC 0302	Gray	08/21/00	
Steven Wilson McCrae v. NC ABC Commission	00 ABC 0598	Wade	08/23/00	
Xavier DeShawn Bradley v. NC ABC Commission	00 ABC 0619	Mann	08/08/00	
CRIME CONTROL AND PUBLIC SAFETY				
Mamie Lee French v. N.C. Crime Victims Compensation Commission	99 CPS 1646	Conner	04/27/00	15:01 NCR 38
HEALTH AND HUMAN SERVICES				
William M. Gardin v. Department of Health & Human Services	98 CRA 1054	Lassiter	06/20/00	
Frederica LaShon Smith v. Department of Health & Human Services	00 CRA 0278 ¹	Wade	06/30/00	
Charles Cecil Douglas v. Department of Health & Human Services	00 CRA 0648	Wade	08/23/00	
Child Support Enforcement Section				
Steven M. Helms v. Department of Health & Human Services	98 CSE 1634	Gray	07/13/00	
Michael A. Cameron v. Department of Health & Human Services	99 CSE 0424	Mann	09/25/00	
Marcus James Ward v. Department of Health & Human Services	99 CSE 0784	Wade	09/29/00	
Richard C. Mack v. Department of Health & Human Services	99 CSE 1244	Mann	08/16/00	
John Ray McCarroll v. Department of Health & Human Services	99 CSE 1272	Lassiter	08/16/00	
Loany Centeno v. Department of Health & Human Services	99 CSE 1325	Chess	06/29/00	
Craig D. McLeod v. Department of Health & Human Services	99 CSE 1369	Lassiter	08/29/00	
Joseph E. Toothman v. Department of Health & Human Services	99 CSE 1428	Gray	09/27/00	
Darryl Glenn Cannady v. Department of Health & Human Services	99 CSE 1457	Gray	07/27/00	
Michael A. Whitlow v. Department of Health & Human Services	99 CSE 1482	Gray	07/11/00	
Susan Marie Grier v. Department of Health & Human Services	99 CSE 1484	Mann	06/02/00	
David R. McDonald v. Department of Health & Human Services	99 CSE 1486	Lassiter	10/02/00	
Larry N. McLain v. Department of Health & Human Services	99 CSE 1488	Lassiter	08/16/00	
Randy Gillespie v. Department of Health & Human Services	99 CSE 1491	Gray	08/22/00	
Samuel E. Massenber, Jr. v. Department of Health & Human Services	99 CSE 1513	Morrison	09/27/00	
Nina Maier v. Department of Health & Human Services	99 CSE 1541	Gray	07/28/00	
Ronald E. Davis, Jr. v. Department of Health & Human Services	99 CSE 1554	Gray	07/28/00	
Kenneth Jones v. Department of Health & Human Services	99 CSE 1590	Gray	08/22/00	
Anthony C. Lambert v. Department of Health & Human Services	99 CSE 1699	Gray	06/05/00	
Wendy Gosnell v. Department of Health & Human Services	00 CSE 0073	Mann	06/14/00	
Dwight Dion Hallman v. Department of Health & Human Services	00 CSE 0098	Mann	06/14/00	
Davis, Donald George v. Department of Health & Human Services	00 CSE 0107	Wade	06/08/00	
Davis, Donald George v. Department of Health & Human Services	00 CSE 0108	Wade	06/08/00	
Thomas Jackson v. Department of Health & Human Services	00 CSE 0165	Chess	07/27/00	
Albertus Shaw III v. Department of Health & Human Services	00 CSE 0176	Gray	06/05/00	
Linwood Morris v. Department of Health & Human Services	00 CSE 0178	Mann	06/14/00	
John H. Jones v. Department of Health & Human Services	00 CSE 0181	Morrison	08/25/00	

CONTESTED CASE DECISIONS

Eddie J. Sykes v. Department of Health & Human Services	00 CSE 0192	Lassiter	06/13/00
Andrew S. McKenzie v. Department of Health & Human Services	00 CSE 0193	Wade	06/08/00
Darryal K. Anderson v. Department of Health & Human Services	00 CSE 0200	Gray	06/09/00
John V. Wiberg, Jr. v. Department of Health & Human Services	00 CSE 0211	Mann	06/23/00
William Jerry Gibbs v. Department of Health & Human Services	00 CSE 0213	Gray	06/22/00
Izell Anthony Twigg v. Department of Health & Human Services	00 CSE 0226	Gray	06/07/00
Don Fitzgerald Harris v. Department of Health & Human Services	00 CSE 0230	Mann	08/01/00
Benjamin E. Walker v. Department of Health & Human Services	00 CSE 0232	Morrison	07/31/00
Randy Keith Beddard v. Department of Health & Human Services	00 CSE 0236	Lassiter	06/20/00
Delinda Guthrie Montague v. Department of Health & Human Services	00 CSE 0237	Mann	08/01/00
Lavarr Sharpe v. Department of Health & Human Services	00 CSE 0240	Mann	06/26/00
Timothy Holtzclaw v. Department of Health & Human Services	00 CSE 0245	Gray	09/14/00
Melton Tillery v. Department of Health & Human Services	00 CSE 0246	Lassiter	06/20/00
Darla Judkin v. Department of Health & Human Services	00 CSE 0254	Chess	08/23/00
Ronald L. Long, Jr. v. Department of Health & Human Services	00 CSE 0265	Mann	08/31/00
David Lee Jones v. Department of Health & Human Services	00 CSE 0269	Conner	09/27/00
Walter Witherspoon v. Department of Health & Human Services	00 CSE 0268	Chess	06/19/00
Frederica LaShon Smith v. Department of Health & Human Services	00 CSE 0279	Wade	06/08/00
John Wayne Chambers v. Department of Health & Human Services	00 CSE 0280	Mann	06/30/00
George Fuller v. Department of Health & Human Services	00 CSE 0283	Morrison	06/28/00
Robert G. Wilson v. Department of Health & Human Services	00 CSE 0285	Lassiter	05/25/00
Gary Frank Ramsey v. Department of Health & Human Services	00 CSE 0292	Mann	06/29/00
Pierce Foster Williams, Jr., v. Department of Health & Human Services	00 CSE 0297	Conner	09/26/00
Shylatron Copeland v. Department of Health & Human Services	00 CSE 0316	Mann	06/26/00
Isaac L. McCoy v. Department of Health & Human Services	00 CSE 0324	Lassiter	06/29/00
Robert Boening v. Department of Health & Human Services	00 CSE 0341	Mann	06/26/00
Joseph Patrick Santana v. Department of Health & Human Services	00 CSE 0344	Morrison	06/07/00
Hilton R. Shaw v. Department of Health & Human Services	00 CSE 0346	Lassiter	07/07/00
Anthony B. Bryant v. Department of Health & Human Services	00 CSE 0351	Wade	07/19/00
Michael Shelton DeBerry v. Department of Health & Human Services	00 CSE 0353	Gray	06/22/00
Leroy L. Alford v. Department of Health & Human Services	00 CSE 0354	Mann	06/26/00
Michael A. Tarach v. Department of Health & Human Services	00 CSE 0357	Morrison	07/26/00
Jeffrey T. Daye v. Department of Health & Human Services	00 CSE 0369	Lassiter	07/07/00
Michael Powell v. Department of Health & Human Services	00 CSE 0389	Conner	07/27/00
Jerry M. Thurmond v. Department of Health & Human Services	00 CSE 0390	Wade	06/30/00
Donald E. Church v. Department of Health & Human Services	00 CSE 0394	Gray	07/11/00
Ricky Barrett v. Department of Health & Human Services	00 CSE 0415	Mann	07/17/00
Kenneth Ray Smith v. Department of Health & Human Services	00 CSE 0416	Morrison	05/31/00
Juan M. Acosta v. Department of Health & Human Services	00 CSE 0417	Lassiter	06/24/00
Stanley Ray Allison v. Department of Health & Human Services	00 CSE 0425	Gray	07/11/00
James T. Graham v. Department of Health & Human Services	00 CSE 0426	Wade	06/08/00
Rufus Mitchell Simmons, Jr. v. Department of Health & Human Services	00 CSE 0431	Gray	06/27/00
James Howard Alexander v. Department of Health & Human Services	00 CSE 0433	Mann	06/26/00
Steve A. Hayward v. Department of Health & Human Services	00 CSE 0435	Morrison	07/14/00
Leonard Gabriel v. Department of Health & Human Services	00 CSE 0450	Mann	06/29/00
Patrick L. Moore v. Department of Health & Human Services	00 CSE 0463	Wade	06/19/00
Gregory Lee Bell v. Department of Health & Human Services	00 CSE 0464	Connor	06/29/00
Tamika B. Jenkins v. Department of Health & Human Services	00 CSE 0466	Chess	06/19/00
William R. Parker v. Department of Health & Human Services	00 CSE 0467	Gray	06/26/00
Vernon Ledbetter v. Department of Health & Human Services	00 CSE 0468	Mann	06/14/00
Garry L. Studer v. Department of Health & Human Services	00 CSE 0471	Lassiter	07/31/00
Johnnie Green v. Department of Health & Human Services	00 CSE 0472	Wade	08/09/00
Roger Shular v. Department of Health & Human Services	00 CSE 0478	Mann	07/26/00
William A. Toney v. Department of Health & Human Services	00 CSE 0480	Wade	06/19/00
Larry O. Anthony v. Department of Health & Human Services	00 CSE 0484	Connor	06/26/00
Johnny Daye v. Department of Health & Human Services	00 CSE 0485	Gray	06/22/00
Jose A. Seijo v. Department of Health & Human Services	00 CSE 0491	Morrison	06/26/00
Randy Hammonds v. Department of Health & Human Services	00 CSE 0495	Lassiter	06/20/00
Shawn F. Moser Sr. v. Department of Health & Human Services	00 CSE 0511	Conner	08/14/00
Timothy Franklin Clowney v. Department of Health & Human Services	00 CSE 0512	Wade	08/09/00
Clarence Evans v. Department of Health & Human Services	00 CSE 0513 ²	Conner	07/28/00
Clarence Evans v. Department of Health & Human Services	00 CSE 0545 ²	Conner	07/28/00
Rickey L. Gullede v. Department of Health & Human Services	00 CSE 0558	Mann	06/26/00
Damon Barnes Jr. v. Department of Health & Human Services	00 CSE 0567	Lassiter	08/16/00
William A. Bell v. Department of Health & Human Services	00 CSE 0589	Gray	08/21/00
Robert Lee Thompson v. Department of Health & Human Services	00 CSE 0592	Wade	08/10/00
William T. Hutto v. Department of Health & Human Services	00 CSE 0594	Conner	09/07/00
Julian Orlando Fernandez v. Department of Health & Human Services	00 CSE 0599	Gray	08/21/00
Bryan Keith Wilkerson v. Department of Health & Human Services	00 CSE 0607	Morrison	08/01/00
Rodney A. Hopper v. Department of Health & Human Services	00 CSE 0613	Wade	08/23/00
Tabitha Angley v. Department of Health & Human Services	00 CSE 0614	Conner	07/27/00
Douglas M. Coker v. Department of Health & Human Services	00 CSE 0622	Chess	07/11/00
Mark Christopher Smith v. Department of Health & Human Services	00 CSE 0627	Gray	08/21/00
Terrence L. Holder v. Department of Health & Human Services	00 CSE 0640	Morrison	08/18/00
Mikal M. Mua'zzin v. Department of Health & Human Services	00 CSE 0651	Conner	08/28/00
Jose' D. Rivas v. Department of Health & Human Services	00 CSE 0658	Chess	08/07/00
Valerie A. Simpson v. Department of Health & Human Services	00 CSE 0673	Morrison	07/07/00
James H. Hopper, Jr. v. Department of Health & Human Services	00 CSE 0677	Lassiter	08/29/00
Joseph I. Woodcock v. Department of Health & Human Services	00 CSE 0684	Lassiter	07/07/00
Kenneth R. Harker v. Department of Health & Human Services	00 CSE 0686	Wade	09/11/00
Justine Roberts v. Department of Health & Human Services	00 CSE 0694	Conner	08/28/00
Dana E. Grice v. Department of Health & Human Services	00 CSE 0709	Morrison	09/08/00
Alfred R. Swain v. Department of Health & Human Services	00 CSE 0718	Mann	06/28/00

CONTESTED CASE DECISIONS

James C. Martin, Jr. v. Department of Health & Human Services	00 CSE 0751	Conner	08/30/00
Wade A. Burgess v. Department of Health & Human Services	00 CSE 0757	Gray	08/22/00
Parnell Dougloss Sparks v. Department of Health & Human Services	00 CSE 0761	Morrison	06/06/00
Kevin S. Tate v. Department of Health & Human Services	00 CSE 0764	Lassiter	09/11/00
Jeffrey Otis Hairr v. Department of Health & Human Services	00 CSE 0766	Mann	07/17/00
Ricky A. Phillips v. Department of Health & Human Services	00 CSE 0777	Morrison	08/01/00
Catherine A. Odom v. Department of Health & Human Services	00 CSE 0792	Mann	08/31/00
George Franklin Anderson v. Department of Health & Human Services	00 CSE 0793	Morrison	08/09/00
Raymond Thomas Carpenter, Jr. v. Department of Health & Human Svcs	00 CSE 0810	Mann	09/25/00
Darrell Johnson v. Department of Health & Human Services	00 CSE 0811	Wade	09/29/00
Ronald Owen Goodwin v. Department of Health & Human Services	00 CSE 0831	Chess	09/07/00
Jean M. Brown v. Department of Health & Human Services	00 CSE 0848	Wade	08/10/00
Richard B. Malloy v. Department of Health & Human Services	00 CSE 0849	Wade	10/02/00
Ronald R. Lemmons v. Department of Health & Human Services	00 CSE 0865	Gray	08/21/00
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11. The Petitioner has been completely insulin dependant as a result of his diabetes for many years. Fluctuations in his medication, diet, and hypothyroidism affect his ability to perform every day functions. These conditions cause lethargy, loss of concentration, forgetfulness, and depression.

12. Petitioner's most recent surgery for his eye condition occurred in March of 1999, shortly before he was dismissed from employment at the end of April of 1999. This surgery was necessary in order to slow the degenerative process in his eyes and restore better vision to his right eye.

13. The Petitioner is a handicapped individual because he suffers from diabetes mellitus, diminished vision and hypothyroidism. These conditions affect his everyday life activities, in respect to his ability to see like a normal person, his ability to read and understand and write like a normal person, and his ability to work and concentrate like a normal person. The providing of vocational rehabilitation services to the Petitioner by the North Carolina Commission of the Blind through the Department of Health and Human Resources of the State of North Carolina is evidence that he suffers from a handicapping condition. The Petitioner's condition can be expected to last for the rest of his life and there is no recognized cure for diabetes mellitus with diminished vision and hypothyroidism. The Petitioner is insulin dependent and will remain insulin dependent for the rest of his life.

14. The Petitioner was hired effective, July 6, 1998, by the Respondent in the Greenville office to work as a Rehabilitation Counselor Trainee, Pay Grade 66.

15. The Petitioner's initial assignment with the Respondent was in the Probation/Parole Program in the Greenville office of the Division of Vocational Rehabilitation Services. The Petitioner was the only individual assigned to work within that program. The program generally required the assignment of only one Rehabilitation Counselor.

16. The Petitioner's immediate supervisor in that program for most of the period in question was Nathan Barnhill. Carlton Hardee was the manager for the Greenville office.

17. The Petitioner replaced an individual who had served in that program for a number of years. Alford left the job on approximately June 30, 1998, a week before the Petitioner arrived to fill the position. Alford, therefore, was not available to train the Petitioner or engage in any activities to assist him in respect to filling the position in question.

18. The physical office for the Vocational Rehabilitation Counselor involved in Probation and Parole was located at a place separate from the main office for the Division in Greenville. The office location where the Petitioner served during the period of time that he was employed by the Respondents did not contain facilities for clerical support. The clerical support was in the main office. The Petitioner would have to visit the main office in order to obtain clerical assistance or clerical support in respect to the performance of his duties.

19. While clerical support staff was available during the time he was employed, he found it very difficult to use the staff because of his physical separation of his office from the main office.

20. The Petitioner was required to undergo certain training programs throughout the course of his employment with the Respondent. These programs included the CORE program and the COAST program. Attendance at these programs was in addition to the Petitioner's regular duties. These programs required the Petitioner to review extensive manuals and other educational materials in order to complete the programs satisfactorily. The review of these educational materials and other materials took the Petitioner longer than a normal person because of his handicapping condition. The Petitioner, however, completed both of these training programs successfully before his termination from employment.

21. After the Petitioner began his employment in July of 1998, he began to experience difficulty in respect to keeping up with the case load that he had been assigned, including preparing and documenting case files. This difficulty became apparent to his supervisor, Mr. Hardee, as early as September of 1998 - approximately two (2) months after he was employed. The difficulty was directly related to this handicapping condition, especially in respect to his visual impairment.

22. The Petitioner had originally recorded his disabilities on his application when he was employed as Trainee in the Kinston office. Human Resources Personnel with the Respondent were aware of his disabilities. At one point during the course of the Petitioner's employment and prior to his termination, Mr. Hardee had specifically requested information concerning the recording of his disability on the application form.

23. Furthermore, as early as September of 1998, the Petitioner communicated, in writing, information concerning his disability to Mr. Hardee. He knew that the Petitioner suffered from diabetes mellitus, visual inequities, and problems with his short term memory.

24. Throughout the course of his employment with the Respondent, the Petitioner, on various occasions, requested of his immediate supervisor, Nathan Barnhill, or the office manager, Carlton Hardee, the following:

- (a) an appropriate table from which he would work (which was provided shortly after the request);
- (b) a lamp to give sufficient illumination in his work space so that he could see better for the purpose of performing his job (which was not provided);
- (c) in December of 1998, a copy of the vocational rehabilitation manual on audio tape or CDs to assist him in respect to being able to absorb and comprehend the material in the manual (which was not provided); and
- (d) the assistance of a technician or other clerical person to help him with his paperwork in respect to his case files (which was not provided) (non-handicapped employees had access to the assistance of a technician or other clerical person).

25. Management was aware of these requests which were made orally to various supervisors before the Petitioner's dismissal in April of 1999. Management was also aware, as early as September of 1998, of the Petitioner's disability.

26. These requests to management were requests for reasonable accommodation made by the Petitioner to assist him in respect to reading, understanding, comprehending, and providing written documentation in case files which he was required to maintain as a part of his job as a Rehabilitation Counselor Trainee.

27. While some of these requests were considered by management, with the exception of the providing of the table, no other request was granted or provided.

28. The providing of illumination, an audio tape of the rehabilitation manual, and additional clerical or technical assistance to the Petitioner would have assisted him in respect to the performance of his job and specifically the handling of his case load and the required documentation necessary to carry out the functions of his position. Such accommodation would also have assisted him in respect to understanding and applying the detailed information contained in the manual, the preparation of paperwork and maintenance of his files.

29. The Petitioner was dismissed during his probationary and trainee status because of his inability to provide necessary documentation in his case load files and his inability to, essentially, keep up with the paperwork necessary to show progress in respect to the case load he was assigned. In addition, the placing of the Petitioner in a separate office with no direct access to clerical assistance directly hampered his ability to perform his job.

30. The Respondent knew or should have known that such requests for assistance on the part of the Petitioner were valid requests for accommodation. The requests did not have to be in writing.

31. The Respondent had the capability of providing additional clerical assistance by use of existing clerical staff to the Petitioner, additional illumination in his work space, and audio tapes, either by CD or cassette, of the rehabilitation manual, prior to the Petitioner's dismissal from employment.

32. The Respondent's Division of Vocational Rehabilitation has the mission of promoting employment for persons with disabilities. Supervisors located within the Greenville offices of the Division of Vocational Rehabilitation Services had extensive experience in dealing with persons with disabilities and should have used that experience in assisting the Petitioner to retain his employment.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the subject matter and persons in this Contested Case Petition.

2. The Petitioner, is a qualified handicapped individual with a recognized disability, who is entitled to "reasonable accommodation" in respect to the performance of his position as a full time Vocational Rehabilitation Counselor Trainee with the State of North Carolina, working in the Division of Vocational Rehabilitation Services in Greenville.

3. The Petitioner herein requested "reasonable accommodation" in at least the four specific areas set forth in the Findings of Fact hereinabove prior to his dismissal from employment on April 30, 1999.

4. The Petitioner addressed these requests for reasonable accommodation to appropriate supervisory personnel within the Greenville office of the Division of Vocational Rehabilitation Services.

5. These requests for reasonable accommodation were directly related to the performance of the Petitioner's position and directly related to the Respondent's reasons for dismissing him from employment, effective April 30, 1999, for inability to perform the essential functions of his position.

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6. These requests for reasonable accommodation, had they been met or granted, would most likely have assisted the Petitioner in respect to the performance of his position and would most likely have resulted in him being able to reasonably perform the essential functions of his position prior to his dismissal.

7. These requests for reasonable accommodation would not have resulted in unreasonable expense for the State of North Carolina, The Department of Health and Human Services, or the Division of Vocational Rehabilitation. They were reasonable requests for accommodation.

8. Dismissal of the Petitioner herein from his trainee position, therefore, was directly related to the Respondent's failure to grant his requests for "reasonable accommodation" and was accomplished by the Respondent without considering or providing reasonable accommodation to the Petitioner herein.

9. The Petitioner, therefore, has been discriminated against in violation of the provisions of N.C.G.S. § 126-16, in that he is a qualified handicapped individual who was not provided reasonable accommodation directly related to the performance of the essential functions of his position which, if granted, would most likely have resulted in his ability to satisfactorily perform the essential functions of his position.

RECOMMENDED DECISION

1. In accordance with the foregoing, the undersigned recommends that the State Personnel Commission reverse the Respondent's decision to dismiss the Petitioner herein and that he be reinstated to his previous position or some other equivalent position with all of the benefits of continued State employment from the effective date of his dismissal.

2. That Petitioner be granted all attorney's fees and costs in respect to this matter.

3. That the Petitioner be provided any other relief to which he is entitled under the State Personnel Act for his improper dismissal.

4. That the Respondents be ordered to provide the Petitioner reasonable accommodation in accordance with the Findings set forth herein, upon his return to employment, which accommodation, should include, at a minimum, the following:

- (a) illumination of his work area;
- (b) clerical or technical assistance which is readily available to him in order to read, understand and prepare documentation;
- (c) a copy of the rehabilitation manual on audio tape, either cassette or CD.

NOTICE

The State Personnel Commission is the Agency which will make the Final Decision in this contested case. It is required to give each party the opportunity to file exceptions to this Recommended Decision and to present written arguments to those who will make the Final Decision. The Agency will serve a copy of the Final Decision on all parties, the attorneys of record and to the Office of Administrative Hearings.

This the 3rd day of August, 2000.

Robert Roosevelt Reilly, Jr.
Temporary Administrative Law Judge