

**NORTH CAROLINA
REGISTER**

IN THIS ISSUE



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This issue contains documents officially filed through August 24, 2004.

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<http://oahnt.oah.state.nc.us/register/CI.pdf>

NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

The North Carolina Administrative Code (NCAC) has four major classifications of rules. Three of these, titles, chapters, and sections are mandatory. The major classification 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. Subchapters are optional classifications to be used by agencies when appropriate.

NCAC TITLES		TITLE 21 LICENSING BOARDS	TITLE 24 INDEPENDENT AGENCIES
1	ADMINISTRATION	1 Acupuncture	1 Housing Finance
2	AGRICULTURE & CONSUMER SERVICES	2 Architecture	2 Agricultural Finance Authority
3	AUDITOR	3 Athletic Trainer Examiners	3 Safety & Health Review Board
4	COMMERCE	4 Auctioneers	4 Reserved
5	CORRECTION	6 Barber Examiners	5 State Health Plan Purchasing Alliance Board
6	COUNCIL OF STATE	8 Certified Public Accountant Examiners	
7	CULTURAL RESOURCES	10 Chiropractic Examiners	
8	ELECTIONS	11 Employee Assistance Professionals	
9	GOVERNOR	12 General Contractors	
10A	HEALTH AND HUMAN SERVICES	14 Cosmetic Art Examiners	
11	INSURANCE	16 Dental Examiners	
12	JUSTICE	17 Dietetics/Nutrition	
13	LABOR	18 Electrical Contractors	
14A	CRIME CONTROL & PUBLIC SAFETY	19 Electrolysis	
15A	ENVIRONMENT & NATURAL RESOURCES	20 Foresters	
16	PUBLIC EDUCATION	21 Geologists	
17	REVENUE	22 Hearing Aid Dealers and Fitters	
18	SECRETARY OF STATE	25 Interpreter/Transliterator	
19A	TRANSPORTATION	26 Landscape Architects	
20	TREASURER	28 Landscape Contractors	
21*	OCCUPATIONAL LICENSING BOARDS	29 Locksmith Licensing	
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23	COMMUNITY COLLEGES	31 Marital and Family Therapy	
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		48 Physical Therapy Examiners	
		50 Plumbing, Heating & Fire Sprinkler Contractors	
		52 Podiatry Examiners	
		53 Professional Counselors	
		54 Psychology	
		56 Professional Engineers & Land Surveyors	
		57 Real Estate Appraisal	
		58 Real Estate Commission	
		60 Refrigeration Examiners	
		61 Respiratory Care	
		62 Sanitarian Examiners	
		63 Social Work Certification	
		64 Speech & Language Pathologists & Audiologists	
		65 Therapeutic Recreation Certification	
		66 Veterinary Medical	
		68 Substance Abuse Professionals	
		69 Soil Scientists	

Note: Title 21 contains the chapters of the various occupational licensing boards and Title 24 contains the chapters of independent agencies.

NORTH CAROLINA REGISTER
 Publication Schedule for January 2004 – December 2004

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule (first legislative day of the next regular session)	270 th day from publication in the Register
18:13	01/02/04	12/08/03	01/17/04	03/02/04	03/22/04	05/01/04	05/10/04	09/28/04
18:14	01/15/04	12/19/03	01/30/04	03/15/04	03/22/04	05/01/04	05/10/04	10/11/04
18:15	02/02/04	01/09/04	02/17/04	04/02/04	04/20/04	06/01/04	01/26/05	10/29/04
18:16	02/16/04	01/26/04	03/02/04	04/16/04	04/20/04	06/01/04	01/26/05	11/12/04
18:17	03/01/04	02/09/04	03/16/04	04/30/04	05/20/04	07/01/04	01/26/05	11/26/04
18:18	03/15/04	02/23/04	03/30/04	05/14/04	05/20/04	07/01/04	01/26/05	12/10/04
18:19	04/01/04	03/11/04	04/16/04	06/01/04	06/21/04	08/01/04	01/26/05	12/27/04
18:20	04/15/04	03/24/04	04/30/04	06/14/04	06/21/04	08/01/04	01/26/05	01/10/05
18:21	05/03/04	04/12/04	05/18/04	07/02/04	07/20/04	09/01/04	01/26/05	01/28/05
18:22	05/17/04	04/26/04	06/01/04	07/16/04	07/20/04	09/01/04	01/26/05	02/11/05
18:23	06/01/04	05/10/04	06/16/04	08/02/04	08/20/04	10/01/04	01/26/05	02/26/05
18:24	06/15/04	05/24/04	06/30/04	08/16/04	08/20/04	10/01/04	01/26/05	03/12/05
19:01	07/01/04	06/10/04	07/16/04	08/30/04	09/20/04	11/01/04	01/26/05	03/28/05
19:02	07/15/04	06/23/04	07/30/04	09/13/04	09/20/04	11/01/04	01/26/05	04/11/05
19:03	08/02/04	07/12/04	08/17/04	10/01/04	10/20/04	12/01/04	01/26/05	04/29/05
19:04	08/16/04	07/26/04	08/31/04	10/15/04	10/20/04	12/01/04	01/26/05	05/13/05
19:05	09/01/04	08/11/04	09/16/04	11/01/04	11/22/04	01/01/05	01/26/05	05/29/05
19:06	09/15/04	08/24/04	09/30/04	11/15/04	11/22/04	01/01/05	01/26/05	06/12/05
19:07	10/01/04	09/10/04	10/16/04	11/30/04	12/20/04	02/01/05	05/00/06	06/28/05
19:08	10/15/04	09/24/04	10/30/04	12/14/04	12/20/04	02/01/05	05/00/06	07/12/05
19:09	11/01/04	10/11/04	11/16/04	12/31/04	01/20/05	03/01/05	05/00/06	07/29/05
19:10	11/15/04	10/22/04	11/30/04	01/14/05	01/20/05	03/01/05	05/00/06	08/12/05
19:11	12/01/04	11/05/04	12/16/04	01/31/05	02/21/05	04/01/05	05/00/06	08/28/05
19:12	12/15/04	11/22/04	12/30/04	02/14/05	02/21/05	04/01/05	05/00/06	09/11/05

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 after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF TEXT

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

END OF REQUIRED COMMENT PERIOD
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

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

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.

**EXECUTIVE ORDER NO. 63
PROCLAMATION OF STATE OF DISASTER
BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA**

Section 1. I have determined that a state of disaster and state of emergency, as defined in G.S. 166A-4(3) and G.S. 14-288.1(10), exists in the State of North Carolina, due to the approach and proximity of Tropical Storm Bonnie and Hurricane Charley, which began on August 12, 2004.

Section 2. Pursuant to G.S. 166A-6 and 14-288.15, I, therefore, proclaim the existence of a state of disaster and a state of emergency in the State.

Section 3. I hereby order all state and local government entities and agencies to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 4. I hereby delegate to Bryan E. Beatty, Secretary of Crime Control and Public Safety, and/or his designee, all power and authority granted to me and required of me by Chapter 166A, and Article 36A of Chapter 14 of the General Statutes for the purpose of implementing the said Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in the State.

Section 5. Further, Bryan E. Beatty, Secretary of Crime Control and Public Safety, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in G.S. 143B-476.

Section 6. I hereby order this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of emergency or disaster prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and, (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

Section 7. This proclamation shall become effective immediately and shall continue until it is terminated in writing.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh this 13th day of August in the year of our Lord two thousand and four, and of the Independence of the United States of America the two hundred and twenty-eighth.

MICHAEL F. EASLEY
GOVERNOR

ATTEST:

ELAINE MARSHALL
SECRETARY OF STATE

EXECUTIVE ORDER NO. 64
EMERGENCY RELIEF FOR DAMAGE
CAUSED BY HURRICANE CHARLEY

WHEREAS, the Governor of Florida has proclaimed that a State of Emergency and State of Disaster exists in Florida due to Hurricane Charley and thereby, has requested that States, through which property carrying vehicles regulated by size and weight laws, allow exemptions of said laws when vehicles traveling through such states are bearing equipment and supplies to provide relief to the disaster stricken areas in the State of Florida; and

WHEREAS, under the provisions of N.C.G.S. §§ 166A-4 and 166A-6(c)(3), the Governor of North Carolina, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, with the concurrence of the Council of State, I have found that vehicles bearing equipment and supplies to relieve Florida's grief stricken areas must adhere to the registration requirements of N.C.G.S. § 20-86.1 and N.C.G.S. § 20-382, fuel tax requirements of N.C.G.S. § 105-449.47, and the size and weight requirements of N.C.G.S. § 20-116 and N.C.G.S. § 20-118; I have further found that citizens in that state will likely suffer losses and, therefore suffer an imminent threat of widespread damage.

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

Section 1. The Department of Crime Control & Public Safety in conjunction with the N.C. Department of Transportation **shall waive** certain size and weight restrictions and penalties therefore arising under N.C.G.S. § 20-116 and N.C.G.S. § 20-118, and certain registration requirements and penalties therefore arising under N.C.G.S. §§ 20-86.1, 20-382, 105-449.47, 105-449.49, for the vehicles transporting equipment and supplies along North Carolina Interstate roadways, en route to Florida's grief stricken areas.

Section 2. Notwithstanding the waivers set forth above, size and weight restrictions and penalties **have not been waived** under the following conditions:

- (A) When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 95,000 pounds gross weight, whichever is less.
- (B) When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- (C) When a vehicle/vehicle combination exceeds 12 feet in width and a total overall vehicle combination length of 75 feet from bumper to bumper.

Section 3. Vehicles referenced under Section 1 shall be exempt from the following registration requirements:

- (A) The \$50.00 fee listed in N.C.G.S. § 105-449.49, for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. § 105-449.45(a)(1), applies.
- (B) The registration requirements under N.C.G.S. § 20-382, concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance as required.
- (C) Non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the exemptions identified by this Executive Order.

Section 4. The size and weight exemption for vehicles will be allowed on all North Carolina Interstate routes **only**.

Section 5. The waiver of regulations under 49 CFR (Federal Motor Carrier Safety Regulations) issued by the State of Florida, **does not apply** to the CDL and Insurance Requirements. This waiver shall be in effect for 26 days from the date of this Order.

Section 6. The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1, 2, and 3, in a manner which would best accomplish the implementation of this rule without endangering motorists in North Carolina.

Section 7. Upon request, exempted vehicles will be required to produce identification sufficient to establish that its load will be used for emergency relief efforts associated with Hurricane Charley.

EXECUTIVE ORDERS

This Executive Order is effective immediately and shall remain in effect for twenty-six (26) days.

In witness whereof, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in the city of Raleigh this 18th day of August, 2004.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

**SUMMARY OF PUBLIC NOTICE FROM THE
DIVISION OF WASTE MANAGEMENT
RECEIPT OF DOCUMENTS PERTAINING TO THE FORMER SEABOARD CHEMICAL CORPORATION**

Notice is hereby given of the Division of Waste Management's receipt of the following documents which are available for public review.

1. The 2000 Supplemental Remedial Investigation and Annual Monitoring Report dated 2/14/01.
2. The Supplemental Groundwater Flow and Transport Modeling Report dated May 2000.
3. The Revised Feasibility Study dated 19 April 2001.
4. The Revised Draft Human Health and Ecological Risk Assessment dated April 2001.
5. The September 2001 Supplemental Remedial Investigation and Annual Monitoring Report dated 12/31/01 and Report on Geophysical Surveys by AG&E Schnabel dated October 23, 2001.
6. The August 2002 Report of Extraction Rate/Capture Zone Test.
7. The 2002 Annual Monitoring Report dated February 13, 2003.
8. The Final Report of Limited Groundwater Pump-and-Treat Modeling dated January 2004.
9. Seaboard Modeling and Stream Flows-Supplemental Report dated December 4, 2003.
10. Annual Monitoring Report--September-October 2003 dated January 15, 2004.
11. Description of Remedial Alternatives dated January 16, 2004.

These documents pertain to activities conducted in and around the former Seaboard Chemical Corporation facility located at 5899 Riverdale Drive, Jamestown, Guilford County, North Carolina, and the adjacent closed City of High Point Riverdale Drive Landfill.

The public comment period will extend for sixty (60) days following the publication of this notice. Comments regarding these reports should be addressed to:

Robert Glaser, Unit Supervisor
Hazardous Waste Section
401 Oberlin Road, Suite 150
Raleigh, NC 27605

All documents submitted by Seaboard Group II and the City of High Point are available as part of the administrative record. Copies of the record are available for review at the High Point Public Library and the North Carolina Hazardous Waste Section's file room during the hours noted below:

High Point Public Library
901 North Main Street
High Point, North Carolina 27261

9:00 am to 9:00 pm Monday-Thursday, 9:00 am to 6:00 pm Friday and Saturday, and, beginning in September, 1:30-5:30 pm Sunday. No appointment is necessary to review the administrative record however if there are any questions please call Tamara Ruebel at (336) 883-3643.

or

Hazardous Waste Section
File Room
401 Oberlin Road, Suite 150
Raleigh, NC 27605

9:00 a.m. to 4:00 p.m. Monday through Friday. Call (919) 733-2178, ext. 311 for an appointment to review the administrative record at this location.

All comments received during the public comment period or at any public meeting that may be held will be considered in the formulation of a final decision on these documents.

IN ADDITION

NC DENR will provide auxiliary aids and services for disabled persons who wish to review the documents to comply with the Americans with Disabilities Act. To receive special services, please contact Robert Glaser at the address above, via email at robert.glaser@ncmail.net or by calling (919) 733-2178 extension 218 as early as possible so arrangements can be made.

NOTICE OF RULE MAKING PROCEEDINGS AND PUBLIC HEARING

NORTH CAROLINA BUILDING CODE COUNCIL

Notice of Rule-making Proceedings is hereby given by N.C. Building Code Council in accordance with G.S. 150B-21.5(d).

Citation to Existing Rule Affected by this Rule-Making: North Carolina Building Code, North Carolina Energy Code, and North Carolina Residential Code

Authority for Rule-making: G.S. 143-136; 143-138.

Reason for Proposed Action: To incorporate changes in the NC Building Code as a result of rulemaking petitions filed with the NC Building Code Council and incorporate changes proposed by the Council.

Public Hearing: December 13, 2004, 1:00PM, NC Department of Insurance, 322 Chapanoke Road, Suite 200, Raleigh, NC 27603

Comment Procedures: Written comments may be sent to Barry Gupton, Secretary, N.C. Building Code Council, c/o NC Department of Insurance, 322 Chapanoke Road, Suite 200, Raleigh, NC 27603. Comment period expires on November 8, 2004.

Statement of Subject Matter:

1. Request by Residential Committee to clarify the current code language dealing with waterproofing that is required for habitable basements as detailed in the Residential Code.

R406.2 Concrete and masonry foundation basement waterproofing. ~~In areas where a high water table or other severe soil water conditions are known to exist,~~ Exterior foundation basement walls that retain earth and enclose habitable or usable spaces located below grade shall be waterproofed with a membrane extending from the top of the footing to the finished grade.

Exception: Exterior basement walls that retain earth and enclose usable spaces located below grade may be dampproofed where a subsurface soil investigation is performed to determine that the existing ground-water table is not within 5 feet (1524 mm) below the lowest floor level.

(remainder same)

This code change is proposed to clarify the Code requirements for waterproofing.

2. Request by the Residential and Energy Conservation Code Committees to revise the requirements for vapor retarder to be consistent with the requirements in the International Energy Conservation Code.

1403.3 Vapor retarder. ~~An approved interior noncorrodible vapor retarder shall be provided. Vapor retarders shall be tested in accordance with ASTM E 96.~~ Vapor retarder requirements shall comply with the International Energy Code.

Exceptions:

- ~~1. Where other approved means to avoid condensation and leakage of moisture are approved.~~
- ~~2. Plain and reinforced concrete or masonry exterior walls designed and constructed in accordance with Chapter 19 and Chapter 21, respectively.~~

This code change is proposed to eliminate vapor retarders except where required by the IECC.

3. Request by the Residential and Energy Conservation Code Committees to revise the requirements for moisture control requirements to be consistent with the requirements in the International Energy Code.

Delete section 502.1.1 and substitute the following:

502.1.1 Moisture Control. The building design shall not create conditions of accelerated deterioration from moisture condensation. Only in Zone 11, above grade shall frame walls, floors, and ceilings not ventilated to allow moisture to escape be required to have an approved vapor retarder. The vapor retarder shall be installed on the warm-in-winter side of the thermal insulation.

Exceptions:

1. In construction where moisture or its freezing will not damage the materials.
2. Where other approved means to avoid condensation are provided.

Delete section 802.1.2 and substitute the following:

802.1.2 Moisture Control. Only in Zone 11, shall all frame walls, floors, and ceilings not ventilated to allow moisture to escape be required to have an approved vapor retarder having maximum permeance rating of 1.0 perm (5.72×10^{-8} g/Pa-s-m²) when tested in accordance with Procedure A of ASTM E96, on the warm-in-winter side of the thermal insulation.

Exceptions:

1. In construction where moisture or its freezing will not damage the materials.
2. Where other approved means to avoid condensation in unventilated frame wall, floor, roof, and ceiling cavities are provided.

This code change is proposed to eliminate vapor retarders except where required by the IECC.

4. Request by the Residential Code and Energy Code Committees to revise section R322.1 dealing with Moisture Control in the Residential Code.

Delete section R322.1 and substitute the following:

R322.1 Moisture Control. Only in Zone 11 counties identified in Table N1101.2, above grade shall frame walls, floors and ceilings not ventilated to allow moisture to escape be required to have an approved vapor retarder. The vapor retarder shall be installed on the warm-in-winter side of the thermal insulation.

Exceptions:

1. In construction where moisture or its freezing will not damage the materials.
2. Where the framed cavity or space is ventilated to allow moisture to escape.

Delete the following without replacement:

1. Note "a" in Table N1101.2 without replacement.
2. Superscript "a" that appears beside certain counties in Table N1101.2 for the state of North Carolina.

This code change is proposed to eliminate vapor retarders except where required by the IECC.

STATE BOARD OF ELECTIONS

6400 Mail Service Center—Raleigh, North Carolina 27699-6400

GARY O. BARTLETT
Executive Director

Mailing Address:
P.O. Box 2169
Raleigh, NC 27602
(910) 733-7173
FAX (919) 715-0135

August 13, 2004

Easter Outdoor, Inc.
P.O. Box 2267
Smithfield, NC 27577

RE: S.L. 2004-125 (H 737) and Billboard Advertising

Dear Mr. Moore:

Your letter of August 11, 2004 requests an advisory opinion pursuant to G.S. 163-278.23 regarding any restrictions placed on a Section 527 organization for billboard or outdoor advertising as it relates to the provisions of S.L. 2004-125 (H 737).

S.L., 2004-125 does not include billboard or other outdoor advertising in the definitions of "electioneering communications" contained in Articles 22E or 22F of the General Statutes of North Carolina. Therefore any restrictions or disclosure requirements placed upon "electioneering communications" under these Articles, would not apply to billboards or other outdoor advertising.

Sincerely,

Gary O. Bartlett
Executive Director

Attachments: Your letter of August 11, 2004

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days.

Statutory reference: G.S. 150B-21.2.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Sheriffs' Education and Training Standards Commission intends to amend the rules cited as 12 NCAC 10B .0204, .0301, .0405-.0406, .0505, .0703-.0704, .0709, .0713, .0802, .0903-.0905, .0911, .0913-.0915, .0919.

Proposed Effective Date: January 1, 2005

Public Hearing:

Date: September 30, 2004

Time: 9:30 a.m.

Location: 114 W. Edenton St., Room G01, Raleigh, NC

Reason for Proposed Action:

12 NCAC 10B .0204 – Proposal to add the requirement/discretion to deny or revoke certification of an individual who has had certification denied or revoked by a similar North Carolina, out-of-state or federal approving, certifying or licensing agency.

12 NCAC 10B .0301 – Technical change to amend a case cited in the definition of good moral character.

12 NCAC 10B .0405 – Proposed amendment to language regarding the hiring agency's obligation to notify to the officer that he/she is being separated to be consistent with Division practice (i.e., that notice can be in the form of a letter rather than the signature of the officer on the form itself).

12 NCAC 10B .0406 – Proposed amendment to allow for reinstatement of certification with the same agency provided updated background materials are received and if the individual has not exceeded a 6-month break in-service.

12 NCAC 10B .0505 - Proposed amendment to the challenge option to parallel the provisions in place for initial BLET enrollees. Specifically, under the current rule, an individual can fail more than 2 unit examinations, and still be allowed to remediate in the corresponding blocks of instruction. New enrollees that fail more than 2 units at the end of BLET, must re-enroll in the entire course.

12 NCAC 10B .0703 - Technical amendment to change the word "certified" to "designated" to be consistent with past rule change. Additionally, proposed amendment to instructor-student ratio in the Physical Fitness block of instruction.

12 NCAC 10B .0704 and .0709 - Deletion of retention of records as it is redundant with the Department of Community College's retention schedule.

12 NCAC 10B .0713 - Proposed amendment to make rule consistent with state law.

12 NCAC 10B .0802 - Proposed amendment to accreditation process to require the submission of documents upon end of course delivery, rather than requiring Division to annually audit those records, and instead making accredited sites subject to unannounced inspections.

12 NCAC 10B .0903 and .0913 - Proposed amendment to delete Director's authority to grant a waiver of instructor requirements, so that such waiver requests are within the sole discretion of the Commission.

12 NCAC 10B .0904, .0911, .0914, and .0919 - Proposed amendment to allow for the denial/revocation of instructor certification if individual justice officer or other certification is denied/revoked for cause.

12 NCAC 10B .0905, .0915 - Proposed amendment to further simplify instructor renewal process as automation of databases now allows Division staff to verify status of general Instructor Certification issued through the Criminal Justice Commission.

Procedure by which a person can object to the agency on a proposed rule: *Objections shall be submitted in writing explaining the reasons for objection and specifying the portion of the rule to which the objection is being made. Such objections should be sent to Julia Lohman, Sheriffs' Standards Division, NC Department of Justice, PO Box 629, Raleigh, NC 27602.*

Written comments may be submitted to: *Julia Lohman, Sheriffs' Standards Division, NC Department of Justice, PO Box 629, Raleigh, NC 27602, phone (919) 716-6460, fax (919) 716-6753, and email jlohman@ncdoj.com.*

Comment period ends: November 15, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: *If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.*

Fiscal Impact

State 12 NCAC 10B .0703

- Local** 12 NCAC 10B .0406, .0505, .0703
- Substantive** (≥\$3,000,000)
- None** 12 NCAC 10B .0204, .0301, .0405, .0704, .0709, .0713, .0802, .0903-.0905, .0911, .0913-.0915, .0919

CHAPTER 10 - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

SUBCHAPTER 10B - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

SECTION .0200 - ENFORCEMENT RULES

12 NCAC 10B .0204 SUSPENSION: REVOCATION: OR DENIAL OF CERTIFICATION

(a) The Commission shall revoke or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of:

- (1) a felony; or
- (2) a crime for which the authorized punishment could have been imprisonment for more than two years.

(b) The Commission shall revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer:

- (1) has not enrolled in and satisfactorily completed the required basic training course in its entirety within a one year time period as specified by these Rules; or
- (2) fails to meet or maintain any of the minimum employment or certification standards required by 12 NCAC 10B .0300; or
- (3) fails to satisfactorily complete the minimum in-service training requirements as presented in 12 NCAC 10B .2000 and .2100; or
- (4) has refused to submit to the drug screen as required in 12 NCAC 10B .0301(6) or .0406(b)(4) or in connection with an application for or certification as a justice officer or a criminal justice officer as defined in 12 NCAC 9A .0103(6); or
- (5) has produced a positive result on any drug screen reported to the Commission as specified in 12 NCAC 10B .0410 or reported to any commission, agency, or board established to certify, pursuant to said commission, agency, or boards' standards, a person as a justice officer or a criminal justice officer as defined in 12 NCAC 9A .0103(6), unless the positive result is explained to the Commission's satisfaction.

(c) The Commission may revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or certified justice officer:

- (1) has knowingly made a material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal

Justice Education and Training Standards Commission. This Rule shall also apply to obtaining or attempting to obtain in-service firearms requalification as required by 12 NCAC 10B .2000 and .2100; or

- (2) has knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission. This Rule shall also apply to obtaining or attempting to obtain in-service firearms requalification as required by 12 NCAC 10B .2000 and .2100; or

- (3) has knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, aided another in obtaining or attempting to obtain credit, training, or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission. This Rule shall also apply to obtaining or attempting to obtain in-service firearms requalification as required by 12 NCAC 10B .2000 and .2100; or

- (4) has been removed from office by decree of the Superior Court in accordance with the provisions of G.S. 128-16 or has been removed from office by sentence of the court in accord with the provisions of G.S. 14-230; or

- (5) has been denied certification or had such certification suspended or revoked by the North Carolina Criminal Justice Education and Training Standards ~~Commission~~ Commission, or a similar North Carolina, out-of-state or federal approving, certifying or licensing agency.

(d) The Commission may revoke, suspend or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of:

- (1) a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor and which occurred after the date of initial certification; or
- (2) a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor within the five-year period prior to the date of appointment; or
- (3) four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(b) as Class B misdemeanors regardless of the date of commission or conviction; or
- (4) four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor, each of which occurred after the date of initial certification; or

- (5) four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor except the applicant shall be certified if the last conviction or commission occurred more than two years prior to the date of appointment; or
 - (6) any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor regardless of the date of commission or conviction.
- (e) Without limiting the application of G.S. 17E, a person who has had his certification suspended or revoked may not exercise the authority or perform the duties of a justice officer during the period of suspension or revocation.
- (f) Without limiting the application of G.S. 17E, a person who has been denied certification may not be employed or appointed as a justice officer or exercise the authority or perform the duties of a justice officer.

Authority G.S. 17E-7.

**SECTION .0300 – MINIMUM STANDARDS FOR
EMPLOYMENT AND CERTIFICATION AS A
JUSTICE OFFICER**

**12 NCAC 10B .0301 MINIMUM STANDARDS FOR
JUSTICE OFFICERS**

- (a) Every Justice Officer employed or certified in North Carolina shall:
- (1) be a citizen of the United States;
 - (2) be at least 21 years of age;
 - (3) be a high school graduate, or the equivalent (GED);
 - (4) have been fingerprinted by the employing agency;
 - (5) have had a medical examination by a licensed physician;
 - (6) have produced a negative result on a drug screen administered according to the following specifications:
 - (A) the drug screen shall be a urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive result using a gas chromatography/mass spectrometry (GC/MS) or other reliable initial and confirmatory tests as may, from time to time, be authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs; and
 - (B) a chain of custody shall be maintained on the specimen from collection to the eventual discarding of the specimen; and

- (C) the drugs whose use shall be tested for shall include at least cannabis, cocaine, phencyclidine (PCP), opiates and amphetamines or their metabolites; and
 - (D) the test threshold values established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs are hereby incorporated by reference, and shall automatically include any later amendments and editions of the referenced materials. Copies of this information may be obtained from the National Institute on Drug Abuse, 5600 Fisher Lane, Rockville, Maryland 20857 at no cost at the time of adoption of this Rule; and
 - (E) the test conducted shall be not more than 60 days old, calculated from the time when the laboratory reports the results to the date of employment; and
 - (F) the laboratory conducting the test must be certified for federal workplace drug testing programs, and must adhere to applicable federal rules, regulations and guidelines pertaining to the handling, testing, storage and preservation of samples, except that individual agencies may specify other drugs to be tested for in addition to those drugs set out in Part (C) of this Rule;
 - (G) every agency head shall make arrangements for the services of a medical review officer (MRO) for the purpose of review of drug tests reported by the laboratory and such officer shall be a licensed physician;
- (7) within five working days notify the Standards Division and the appointing department head in writing of all criminal offenses with which the officer is charged and all Domestic Violence Orders (50B) which are issued by a judicial official and which provide an opportunity for both parties to be present; and shall also give notification, in writing, to the Standards Division and the appointing department head following the adjudication of these criminal charges and Domestic Violence Orders (50B). This shall include all criminal offenses except minor traffic offenses and shall specifically include any offense of Driving Under The Influence (DUI) or Driving While Impaired (DWI). A minor traffic offense is defined, for purposes of this Subparagraph, as an offense where the maximum punishment allowable is 60 days or

less. Other offenses under G.S. 20 (Motor Vehicles) or similar laws of other jurisdictions which shall be reported to the Division expressly include G.S. 20-139 (persons under the influence of drugs), G.S. 20-28(b) (driving while license revoked or permanently suspended) and G.S. 20-166 (duty to stop in event of accident). The initial notification required must specify the nature of the offense, the date of offense, and the arresting agency. The notifications of adjudication required must specify the nature of the offense, the court in which the case was handled and the date of disposition, and must include a certified copy of the final disposition from the Clerk of Court in the county of adjudication. The notifications of adjudication must be received by the Standards Division within 30 days of the date the case was disposed of in court. Officers required to notify the Standards Division under this Subparagraph shall also make the same notification to their employing or appointing department head within 20 days of the date the case was disposed of in court. The department head, provided he has knowledge of the officer's charge(s) and Domestic Violence Orders (50B) shall also notify the Division within 30 days of the date the case or order was disposed of in court. Receipt by the Standards Division of timely notification of the initial offenses charged and of adjudication of those offenses, from either the officer or the department head, is sufficient notice for compliance with this Subparagraph;

- (8) be of good moral as defined in: In re Willis, 299 N.C. 1, 215 S.E.2d 771 appeal dismissed 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6 S.E.2d 854 (1940); In re Legg, 325 N.C. 658, 386 S.E.2d 174 (1989); In re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); In re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E.2d 647 (1983); and their progeny;
- (9) have a background investigation conducted by the employing agency, to include a personal interview prior to employment;
- (10) not have committed or been convicted of a crime or crimes as specified in 12 NCAC 10B .0307.

(b) The requirements of this Rule shall apply to all applications for certification and shall also be applicable at all times during which the justice officer is certified by the Commission.

Authority G.S. 17E-7; 95-230; 95-231; 95-232; 95-233; 95-234; 95-235.

SECTION .0400 – CERTIFICATION OF JUSTICE OFFICERS

12 NCAC 10B .0405 REPORT OF SEPARATION

(a) An agency separating a person from employment or appointment as a justice officer shall, not later than 10 days after separation, forward to the Division a completed Report of Separation (F-5).

(b) Although not presently required by these Rules, it is recommended by the Commission that the employing agency cancel the oath of office of a justice officer who has separated.

(c) The employing agency shall notify the justice officer ~~with appropriate notations on the Report of Separation (Form F-5),~~ of the effective date of separation as reported to the ~~Division.~~ Division, and provide documentation of such notification at the time Report of Separation (Form F-5) is submitted to the Division. Where no such documentation is provided, the Division will mail a copy of the Report of Separation (Form F-5) to the justice officer's last known address.

Authority G.S. 17E-4.

12 NCAC 10B .0406 LATERAL TRANSFER/REINSTATEMENTS

(a) The General or Grandfather Certification of an officer meeting the requirements of 12 NCAC 10B .0103(9) may laterally transfer to an agency and be certified upon compliance with this Rule.

(b) The employing agency shall verify the applicant's certification status with the Division prior to submission of the application for certification as a justice officer.

(c) In order for an officer to be certified pursuant to ~~this Rule, Paragraph (a) of this Rule,~~ Paragraph (a) of this Rule, the employing agency shall submit to the Division, along with the Report of Appointment ~~(F-4), (F-4 or F-4T),~~ the documents required in 12 NCAC 10B .0408.

(d) An officer whose certification has been suspended pursuant to 12 NCAC 10B .0204(b)(1) may have that certification reinstated provided that:

- (1) the period of suspension has been ~~one year~~ six months or less; and
- (2) the employing agency submits to the Division, along with a Report of Appointment, the documents required in 12 NCAC 10B .0305.
- ~~(2)(3)~~ the officer has successfully completed the basic training requirements as prescribed in 12 NCAC 10B .0500 or .0600 or .1300.

(e) An officer for whom a Report of Separation (Form F-5) has been submitted to the Division, and who is re-appointed in the same agency, may be reinstated provided that:

- (1) the period of separation has been 6-months or less; and
- (2) the employing agency submits to the Division, along with a Report of Appointment, the documents required in 12 NCAC 10B .0305.

~~(e)(f)~~ Requirements of Paragraph (c) of this Rule are waived for officers whose certifications are reinstated pursuant to ~~Paragraph (d) Paragraphs (d) and (e)~~ Paragraph (d) and (e) of this Rule.

~~(f)(g)~~ All information maintained pursuant to the requirements of this Rule shall be subject to all state and federal laws governing confidentiality.

Authority G.S. 17E-4; 17E-7.

SECTION .0500 – MINIMUM STANDARDS OF TRAINING FOR DEPUTY SHERIFFS

12 NCAC 10B .0505 EVALUATION FOR TRAINING WAIVER

The Division staff shall evaluate each deputy's training and experience to determine if equivalent training has been satisfactorily completed as specified in 12 NCAC 10B .0504(a). The following rules shall be used by Division staff in evaluating an applicant's training and experience to determine eligibility for a waiver of training.

- (1) Persons who separated from a sworn law enforcement position during their probationary period after having completed a commission-accredited Basic Law Enforcement Training Course and who have been separated from a sworn law enforcement position for one year or less shall serve the remainder of the initial probationary period in accordance with G.S. 17E-7(b), but need not complete an additional training program.
- (2) Persons who separated from a sworn law enforcement position during their probationary period without having completed Basic Law Enforcement Training, or whose certification was suspended pursuant to 12 NCAC 10B .0204(b)(1), and who have remained separated or suspended for over one year shall complete a commission-accredited Basic Law Enforcement Training Course in its entirety and pass the State Comprehensive Examination, and shall be allowed a 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).
- (3) Persons transferring to a Sheriff's Office from another law enforcement agency who held certification and who have previously completed a commission-accredited Basic Law Enforcement Training Course beginning on or after October 1, 1984, and continuing to July 1, 2000 and who have been separated from a sworn law enforcement position for no more than one year or who have had no break in service shall be required to complete the following enumerated topics of a commission-accredited Basic Law Enforcement Training Course and pass that portion of the State Comprehensive Examination which deals with those subjects within 12 months of the date of appointment as defined in 12 NCAC 10B .0103(1).
 - (a) Civil Process 24 hours
 - (b) Sheriffs' Responsibilities: Detention Duties 4 hours
 - (c) Sheriffs' Responsibilities: Court Duties 6 hours
 - UNIT TOTAL 34 hours

- (4) Persons who have training and experience as a military law enforcement officer and are appointed as a deputy sheriff in North Carolina shall be required to complete a commission-accredited Basic Law Enforcement Training Course in its entirety regardless of previous military training and experience and pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).
- (5) Persons transferring to a sheriff's office from another law enforcement agency who have previously completed a commission accredited Basic Law Enforcement Training Course beginning on or after January 1, 1996 and continuing to July 1, 1997, and who did not complete the Commission's Driver Training curriculum, and who have been separated from a sworn law enforcement position for no more than one year or who have had no break in service shall be required to complete the following enumerated topics of a commission - accredited Basic Law Enforcement Training Course within 12 months of the date of appointment as defined in 12 NCAC 10B .0103(1):
 - Law Enforcement Driver Training 40 hours
 - North Carolina applicants shall:
 - (a) have a minimum of two years full-time sworn law enforcement experience which occurred prior to their application;
 - (b) have had a break in service exceeding one year;
 - (c) have previously received General or Grandfather certification as a sworn law enforcement officer by either the Commission or the North Carolina Criminal Justice Education and Training Standards Commission, and such certification has not been denied, revoked or suspended by either Commission; and
 - (d) have held general powers of arrest.
- (6) Out-of-state transferees shall:
 - (a) have a minimum of two years full-time sworn law enforcement experience which occurred prior to their application;
 - (b) have held certification in good standing as a sworn law enforcement officer from the appropriate Peace Officer's Standards and Training entity in the transferee's respective state;
 - (c) have had general powers of arrest; and
- (7) Out-of-state transferees shall:
 - (a) have a minimum of two years full-time sworn law enforcement experience which occurred prior to their application;
 - (b) have held certification in good standing as a sworn law enforcement officer from the appropriate Peace Officer's Standards and Training entity in the transferee's respective state;
 - (c) have had general powers of arrest; and

- (d) submit documentation verifying their qualified status.
- (8) Federal Transferees shall:
- (a) have a minimum of two years full-time sworn law enforcement ~~experience which occurred prior to their application; experience;~~
 - (b) have held certification or commissioning as a sworn law enforcement officer from the appropriate federal entity authorized to issue such sworn law enforcement officers certification or commissioning;
 - (c) have held general powers of arrest; and
 - (d) submit documentation verifying their qualified status.
- (9) North Carolina applicants; qualified out-of-state transferees; and qualified federal transferees shall be allowed to select one of the following two options for gaining North Carolina certification as a deputy sheriff:
- (a) Undertake and successfully complete Basic Law Enforcement Training in its entirety during a one year probationary period and successfully pass the State Comprehensive Examination;
 - (b) Pass the following entry criteria:
 - (i) Challenge the Basic Law Enforcement Training Comprehensive State Examination to be delivered at the end of an ongoing Basic Law Enforcement Training Course and successfully pass each unit examination of the comprehensive examination with a minimum score of 70%. Any applicant failing to pass ~~any more than two~~ any more than two unit examinations shall complete the Basic Law Enforcement Training Course in its entirety. Any applicant failing one or two unit examinations shall be required to enroll in each topic area which comprises that unit taught in a subsequent BLET course and submit to the unit examination at the end of the course and pass that unit examination;
 - (ii) Each applicant shall demonstrate proficiency in
- the following skills related activities to the satisfaction of an appropriate instructor certified by the North Carolina Criminal Justice Education and Training Standards Commission. Successful completion of the skills related activities shall be documented on a Commission approved form by the certified instructor;
- (A) First Responder;
 - (B) Firearms;
 - (C) Law Enforcement Driver Training;
 - (D) Physical Fitness; and
 - (E) Subject Control Arrest Techniques.
- (iii) Any applicant failing to pass a ~~test-unit examination after remediation as~~ test-unit examination after remediation as referenced in Rule 12 NCAC 10B .0505(9)(B)(i) ~~of a unit examination after remediation~~ shall be required to complete Basic Law Enforcement Training in its entirety; and
- (iv) All criteria referenced in 12 NCAC 10B .0505(9)(B)(i) and (ii) must be successfully completed within the one-year probationary period.
- (10) Persons transferring to a sheriff's office from another law enforcement agency who held certification and who have previously been granted a training waiver by the North Carolina Criminal Justice Commission and who have been separated from a sworn law enforcement position for no more than one year or who had no break in service shall not be required to complete the Basic Law Enforcement Training course, but shall have the waiver honored by this Commission.
- (11) Persons previously holding Grandfather law enforcement certification in accordance with G.S. 17C-10(a) or G.S. 17E-7(a) who have been separated from a sworn law enforcement position for less than one year or have had no break in service shall not be required to complete a commission-accredited Basic Law Enforcement Training Course.

Authority G.S. 17E-4; 17E-7.

SECTION .0700 – MINIMUM STANDARDS FOR JUSTICE OFFICER SCHOOLS AND TRAINING PROGRAMS OR COURSES OF INSTRUCTION

12 NCAC 10B .0703 ADMINISTRATION OF DETENTION OFFICER CERTIFICATION COURSE

(a) The executive officer or officers of the institution or agency sponsoring a Detention Officer Certification Course shall have primary responsibility for implementation of these rules and standards and for administration of the school.

(b) The executive officers shall designate a compensated staff member ~~who is certified by the Commission~~ who may apply to the Commission to be the school director. No more than two school directors shall be ~~certified~~ designated at each accredited institution/agency to deliver a Detention Officer Certification Course. The school director shall have administrative responsibility for planning scheduling, presenting, coordinating, reporting, and generally managing each sponsored detention officer certification course and shall be readily available at all times during course delivery as specified in 12 NCAC 10B .0704(b).

(c) The executive officers of the institution or agency sponsoring the Detention Officer Certification Course shall:

- (1) acquire and allocate sufficient financial resources to provide commission-certified instructors and to meet other necessary program expenses;
- (2) provide adequate secretarial, clerical, and other supportive staff assistance as required by the school director;
- (3) provide or make available suitable facilities, equipment, materials, and supplies for comprehensive and qualitative course delivery, as required in the "Detention Officer Certification Course Management Guide" and specifically including the following:
 - (A) a comfortable, well-lighted and ventilated classroom with a seating capacity sufficient to accommodate all attending trainees;
 - (B) audio-visual equipment and other instructional devices and aids necessary and beneficial to the delivery of effective training;
 - (C) a library for trainees' use covering the subject matter areas relevant to the training course, maintained in current status and having sufficient copies for convenient trainee access; and
 - (D) an area designated for instruction of subject control techniques which enables the safe execution of the basic detention officer subject control techniques topic area, with the following specifications:
 - (i) 30 square feet of floor space per student during the practical exercise portion of this topic area and while

testing trainees' proficiency in performing the required maneuvers;

- (ii) one instructor for every 10 students during the practical exercise portion of this topic area and while testing trainees' proficiency in performing the required maneuvers;
 - (iii) restrooms and drinking water within 100 yards of the training site; and
 - (iv) telephone or radio communication immediately available on site.
- (E) an area designated for use as a jail cell for performing the practical exercises in the topic area entitled "Contraband Searches". If a county jail cell is unavailable, a simulated jail cell is acceptable provided it is built to the same specifications required by the Department of Human Resources with regards to size;
- (F) an area designated for fire emergencies instruction which enables the safe execution of the lesson plan as follows:
 - (i) a well-ventilated, open area which allows for the setting and putting out of a fire;
 - (ii) restrooms and drinking water within 100 yards of the training site;
 - (iii) telephone or radio communication immediately available on site; and
 - (iv) one instructor for every 10 students during the practical exercise portion of this training.
- (G) an area designated for physical fitness for detention officer trainees to include:
 - (i) an area for running, weight lifting and other exercises performed during the physical fitness topic area which provides a minimum of 20 square feet per trainee during the performance of the exercises required in the physical fitness topic area;
 - (ii) restrooms and drinking water within 100 yards of the training site;

- (iii) telephone or radio communication immediately available on site;
 - (iv) shower facilities, if physical fitness is performed prior to classroom training; ~~and~~
 - (v) one instructor for every 10 students during the ~~physical fitness topic area.~~ Physical assessment portion of this block of instruction; and
 - (vi) sufficient instructors as needed to maintain visual contact with students while performing any physical exercise.
- (H) an area designated for instruction in first aid and CPR techniques which provides a minimum of 20 square feet per trainee during the practical exercise portion and testing for proficiency in administering CPR. There must also be one instructor for every 10 students during the practical exercise portion and proficiency testing in administering CPR.
- (4) In the event that an institution or agency does not own a facility as required in this Section, written agreements with other entities must be made to assure use of and timely access to such facilities. A copy of such agreement must accompany the originating institution or agency "Pre-Delivery Report" (Form F7-A) when submitted to the Division.

Authority G.S. 17E-4.

12 NCAC 10B .0704 RESPONSIBILITIES: SCHOOL DIRECTORS

(a) In planning, developing, coordinating, and delivering each commission accredited Detention Officer Certification Course, the school director shall:

- (1) Formalize and schedule the course curriculum in accordance with the curriculum standards established by the rules in this Chapter.
 - (A) The Detention Officer Certification Course shall be presented with a minimum of 40 hours of instruction each week during consecutive calendar weeks until course requirements are completed.
 - (B) In the event of exceptional or emergency circumstances, the Director may, upon written finding of justification, grant a waiver of the minimum hours requirement.
- (2) Select and schedule instructors who are properly certified by the Commission. The

selecting and scheduling of instructors is subject to special requirements as follows:

- (A) No single individual may be scheduled to instruct more than 35 percent of the total hours of the curriculum during any one delivery except as set forth in Part (a)(2)(B) of this Rule.
- (B) Where the school director shows exceptional or emergency circumstances and the school director documents that an instructor is properly certified to instruct more than 35 percent of the total hours of the curriculum, the Director of the Division may grant written approval for the expansion of the individual instructional limitation.
- (C) Schedule appropriate number of instructors for specific topic areas as required in 12 NCAC 10B .0703.
- (3) Provide each instructor with a commission-approved course outline and all necessary additional information concerning the instructor's duties and responsibilities.
- (4) Review each instructor's lesson plans and other instructional materials for conformance to the rules in this Chapter and to minimize repetition and duplication of subject matter.
- ~~(5) Permanently maintain records of all Detention Officer Certification Courses sponsored or delivered by the school, reflecting:~~
 - ~~(A) Course title;~~
 - ~~(B) Delivery hours of course;~~
 - ~~(C) Course delivery dates;~~
 - ~~(D) Names and addresses of instructors utilized within designated subject matter areas;~~
 - ~~(E) A roster of enrolled trainees, showing class attendance and designating whether each trainee's course participation was successful or unsuccessful including individual test scores indicating each trainee's proficiency in each topic area and methods or instruments;~~
 - ~~(F) Copies of all rules, regulations and guidelines developed by the school director;~~
 - ~~(G) Documentation of any changes in the initial course outline, including substitution of instructors; and~~
 - ~~(H) Documentation of make up work achieved by each individual trainee, including test scores and methods or instruments.~~
- ~~(6)~~(5) Arrange for the timely availability of appropriate audiovisual aids and materials, publications, facilities and equipment for

training in all topic areas as required in the "Detention Officer Certification Course Management Guide".

- (7)(6) Develop, adopt, reproduce, and distribute any supplemental rules, regulations, and requirements determined by the school to be necessary or appropriate for:
 - (A) Effective course delivery;
 - (B) Establishing responsibilities and obligations of agencies or departments employing course trainees; and
 - (C) Regulating trainee participation and demeanor and ensuring trainee attendance and maintaining performance records.

A copy of such rules, regulations and requirements shall be submitted to the Director as an attachment to the Pre-Delivery Report of Training Course Presentation, Form F-7A. A copy of such rules shall also be given to each trainee and to the sheriff of each trainee's employing agency at the time the trainee enrolls in the course.

- (8)(7) If appropriate, recommend housing and dining facilities for trainees.
- (9)(8) Not less than 30 days before commencing delivery of the course, submit to the Commission a Pre-Delivery Report of Training Course Presentation (Form F-7A) along with the following attachments:
 - (A) A comprehensive course schedule showing arrangement of topical presentations and proposed instructional assignments;
 - (B) A copy of any rules, regulations, and requirements for the school and, when appropriate, completed applications for certification of instructors. The Director shall review the submitted Pre-Delivery Report together with all attachments to ensure that the school is in compliance with all commission rules; if school's rules are found to be in violation, the Director shall notify the school director of deficiency, and approval will be withheld until all matters are in compliance with the Commissions' rules.

- (10)(9) Administer the course delivery in accordance with the rules in this Chapter and ensure that the training offered is as effective as possible.
- (11)(10) Monitor or designate a certified instructor to monitor the presentations of all probationary instructors during course delivery and prepare written evaluations on their performance and suitability for subsequent instructional assignments. These evaluations shall be

prepared on commission forms and forwarded to the Division at the conclusion of each delivery. Based on this evaluation the school director shall recommend approval or denial of requests for Detention Officer Instructor Certification, Limited Lecturer Certification or Professional Lecturer Certification.

- (12)(11) Monitor or designate a certified instructor to monitor the presentations of all other instructors during course delivery and prepare written evaluations on their performance and suitability for subsequent instructional assignments. Instructor evaluations shall be prepared on commission forms in accordance with the rules in this Chapter. These evaluations shall be kept on file by the school for a period of three years and shall be made available for inspection by a representative of the Commission upon request.
- (13)(12) Ensure that any designated certified instructor who is evaluating the instructional presentation of another shall, at a minimum, hold certification in the same instructional topic area as that being taught.
- (14)(13) Administer or designate a person to administer appropriate tests as determined necessary at various intervals during course delivery.
- (15)(14) Maintain direct supervision, direction, and control over the performance of all persons to whom any portion of the planning, development, presentation, or administration of a course has been delegated.
- (16)(15) During a delivery of the Detention Officer Certification Course, make available to authorized representatives of the Commission three hours of scheduled class time and classroom facilities for the administration of a written examination to those trainees who have satisfactorily completed all course work.
- (17)(16) Not more than ten days after receiving from the Commission's representative the Report of Examination Scores, the school director shall submit to the Commission a Post-Delivery Report of Training Course Presentation (Form 7-B).

(b) In addition to the requirements in 12 NCAC 10B .0704(a), the school director shall be readily available to students and Division staff at all times during course delivery by telephone, pager, or other means. The means, and applicable numbers, shall be filed with the accredited training delivery site and the Division prior to the beginning of a scheduled course delivery.

Authority G.S. 17E-4.

12 NCAC 10B .0709 RESPONSIBILITIES: SCHOOL DIRECTORS, TELECOMMUNICATOR CERTIFICATION COURSE

(a) In planning, developing, coordinating, and delivering each commission accredited Telecommunicator Certification Course, the school director shall:

- (1) Formalize and schedule the course curriculum in accordance with the curriculum standards established by the rules in this Chapter;
- (2) Select and schedule instructors who are properly certified by the Commission;
- (3) Provide each instructor with a commission-approved course outline and all necessary additional information concerning the instructor's duties and responsibilities;
- (4) Review each instructor's lesson plans and other instructional materials for conformance to the rules in this Chapter and to minimize repetition and duplication of subject matter;
- ~~(5) Permanently maintain records of all Telecommunicator Certification Courses sponsored or delivered by the school, reflecting:

 - ~~(A) Course title;~~
 - ~~(B) Delivery hours of course;~~
 - ~~(C) Course delivery dates;~~
 - ~~(D) Names and addresses of instructors utilized within designated subject matter areas;~~
 - ~~(E) A roster of enrolled trainees, showing class attendance and designating whether each trainee's course participation was successful or unsuccessful including individual test scores indicating each trainee's proficiency in each topic area and methods or instruments;~~
 - ~~(F) Copies of all rules, regulations and guidelines developed by the school director;~~
 - ~~(G) Documentation of any changes in the initial course outline, including substitution of instructors; and~~
 - ~~(H) Documentation of make up work achieved by each individual trainee, including test scores and methods or instruments, if applicable;~~~~
- ~~(6)(5)~~ Arrange for the timely availability of appropriate audiovisual aids and materials, publications, facilities and equipment for training in all topic areas as required in the "Telecommunicator Certification Course Management Guide";
- ~~(7)(6)~~ Develop, adopt, reproduce, and distribute any supplemental rules, regulations, and requirements determined by the school to be necessary or appropriate for:
 - (A) Effective course delivery;
 - (B) Instruction on the responsibilities and obligations of agencies or departments employing course trainees; and

(C) Regulating trainee participation and demeanor and ensuring trainee attendance and maintaining performance records.

A copy of such rules, regulations and requirements shall be submitted to the Director as an attachment to the Pre-Delivery Report of Training Course Presentation, Form F-7A-T. A copy of such rules shall also be given to each trainee and to the sheriff or agency head of each trainee's employing agency at the time the trainee enrolls in the course;

- ~~(8)(7)~~ If appropriate, recommend housing and dining facilities for trainees;
- ~~(9)(8)~~ Not less than 30 days before commencing delivery of the course, submit to the Commission a Pre-Delivery Report of Training Course Presentation (Form F-7A-T) along with the following attachments:
 - (A) A comprehensive course schedule showing arrangement of topical presentations and proposed instructional assignments;
 - (B) A copy of any rules, regulations, and requirements for the school and, when appropriate, completed applications for certification of instructors. The Director shall review the submitted Pre-Delivery Report together with all attachments to ensure that the school is in compliance with all commission rules; if school's rules are found to be in violation, the Director shall notify the school director of deficiency, and approval will be withheld until all matters are in compliance with the Commissions' rules;
- ~~(10)(9)~~ Administer the course delivery in accordance with the rules in this Chapter and ensure that the training offered is as effective as possible;
- ~~(11)(10)~~ Monitor or designate a certified instructor to monitor the presentations of all probationary instructors during course delivery and prepare written evaluations on their performance and suitability for subsequent instructional assignments. These evaluations shall be prepared on commission forms and forwarded to the Division at the conclusion of each delivery. Based on this evaluation the school director shall recommend approval or denial of requests for Telecommunicator Instructor Certification or Professional Lecturer Certification;
- ~~(12)(11)~~ Monitor or designate a certified instructor to monitor the presentations of all other instructors during course delivery and prepare written evaluations on their performance and suitability for subsequent instructional

assignments. Instructor evaluations shall be prepared on commission-approved forms in accordance with the rules in this Chapter. These evaluations shall be kept on file by the school for a period of three years and shall be made available for inspection by a representative of the Commission upon request;

- (13)(12) Ensure that any designated certified instructor who is evaluating the instructional presentation of another shall, at a minimum, hold certification in the same instructional topic area as that being taught;
- (14)(13) Administer or designate a person to administer appropriate tests as determined necessary at various intervals during course delivery;
- (15)(14) Maintain direct supervision, direction, and control over the performance of all persons to whom any portion of the planning, development, presentation, or administration of a course has been delegated;
- (16)(15) During a delivery of the Telecommunicator Certification Course, make available to authorized representatives of the Commission two hours of scheduled class time and classroom facilities for the administration of a written examination to those trainees who have satisfactorily completed all course work; and
- (17)(16) Not more than 10 days after receiving from the Commission's representative the Report of Examination Scores, the school director shall submit to the Commission a Post-Delivery Report of Training Course Presentation (Form 7-B-T).

(b) In addition to the requirements in 12 NCAC 10B .0708(a), the school director shall be readily available to students and Division staff at all times during course delivery by telephone, pager, or other means. The means, and applicable numbers, shall be filed with the accredited training delivery site and the Division prior to the beginning of a scheduled course delivery.

Authority G.S. 17E-4.

12 NCAC 10B .0713 ADMISSION OF TRAINEES

- (a) The school may not admit any individual younger than 21 years of age as a trainee in any non-academic Commission-accredited basic training course without the prior written approval of the Director of the Standards Division for those individuals who will turn 21 years of age during the course, but prior to the ending date.
- (b) The school shall give priority admission in Commission-accredited basic training courses to individuals holding full-time employment with criminal justice agencies.
- (c) The school shall administer the reading component of a standardized test which reports a grade level for each trainee participating in the Detention Officer Certification Course. The specific type of test instrument shall be determined by the school director and shall be administered no later than by the end of the first two weeks of a presentation of the Detention Officer

Certification Course. The grade level results on each trainee shall be submitted to the Commission on each trainee's Report of Student Course Completion (Form F-7d).

(d) The school shall not admit any individual as a trainee in a presentation of the Detention Officer Certification Course or the Telecommunicator Certification Course unless as a prerequisite the individual has provided to the certified school director a Medical Examination Report Form (F-2) and the Medical History Statement Form (F-1) in compliance with 12 NCAC 10B .0304. ~~.0304, properly completed by a physician licensed to practice medicine in North Carolina.~~ The Medical Examination Report Form (F-2) and the Medical History Statement Form (F-1) required by the North Carolina Criminal Justice Education and Training Standards Commission shall be recognized by the Commission for the purpose of complying with this Rule.

Authority G.S. 17E-7.

SECTION .0800 – ACCREDITATION OF JUSTICE OFFICER SCHOOLS AND TRAINING COURSES

12 NCAC 10B .0802 ACCREDITATION: DELIVERY/DETENTION OFFICER CERTIFICATION COURSE

(a) An institution or agency must be accredited to deliver a Detention Officer Certification Course.

(b) In order to obtain accreditation, an institution or agency shall meet or exceed the following minimum standards for overall course delivery:

- (1) the institution or agency shall conduct a minimum of one Detention Officer Certification Course each calendar year;
- (2) the executive officer shall comply with the requirements of 12 NCAC 10B .0703; and
- (3) the executive officer shall comply with the additional accreditation requirements as specified in the "Detention Officer Certification Course Management Guide".

(c) An institution or agency meeting the requirements of 12 NCAC 10B .0802(b) may submit a "Request for Accreditation" (Form F-7) to the Division. Upon receipt of the request, the Division staff shall:

- (1) review the application for completeness;
- (2) contact the institution or agency executive officer or designated school director to schedule an on-site visit and tour of the proposed training facilities;
- (3) during the on-site visit note any deficiencies and attempt to provide assistance and recommendations in correcting those deficiencies; and
- (4) notify the applying institution or agency, in writing, of the approval or denial of the accreditation request.

(d) In cases where the deficiencies prohibit the immediate accreditation of the institution or agency, the application shall be placed in a pending status:

- (1) applications may remain in a pending status for no more than 30 days from the date of notification of any deficiencies; and
 - (2) within or following the 30 day period, the Division shall:
 - (A) issue accreditation; or
 - (B) notify the institution or agency, in writing, that it must re-apply for accreditation.
- (e) Any existing commission-issued accreditations issued and valid on July 31, 1998 shall be automatically extended with an expiration date of December 31, 1999 at which time the previously issued accreditation shall be terminated.
- (f) All new applicants for accreditation shall meet the requirements of this Section after August 1, 1998.
- ~~(g) The Division staff shall conduct an on-site accreditation audit once each calendar year which shall include, but is not limited to:~~
- ~~(1) the review of all records maintained by the school director as required in 12 NCAC 10B .0704; and~~
 - ~~(2) the inspection of the institution or agency's training facilities to ensure continued compliance with accreditation standards as required in 12 NCAC 10B .0703 and .0802~~
- (g) The accredited institution or agency will be subject to unannounced on-site accreditation audits to ensure compliance with these Rules.
- (h) Following ~~the annual~~ an on-site accreditation audit, the Division staff shall:
- (1) notify the institution or agency of the results of the audit; and
 - (2) recommend to the Commission's Probable Cause Committee any action pursuant to 12 NCAC 10B .0802(i).
- (i) School accreditation shall remain effective until surrendered, suspended, or revoked.
- (j) The Commission may suspend or revoke the accreditation of a school when it finds that the school has failed to meet or to continuously maintain any requirement, standard or procedure for school accreditation or course delivery as required by Section .0700 of this Subchapter.

Authority G.S. 17E-4.

SECTION .0900 – MINIMUM STANDARDS FOR JUSTICE OFFICER INSTRUCTORS

12 NCAC 10B .0903 CERT: INSTRUCTORS FOR DETENTION OFFICER CERTIFICATION COURSE

- (a) Any person participating in a commission-accredited Detention Officer Certification Course as an instructor, teacher, professor, lecturer, or other participant making presentations to the class shall first be certified by the Commission as an instructor. ~~A waiver may be granted by the Director upon receipt of a written application to teach in a designated school.~~
- (b) The Commission shall certify Detention Officer Certification Course instructors under the following categories:
 - (1) Detention Officer Instructor Certification;

- (2) Professional Lecturer Certification; or
 - (3) Limited Lecturer Certification as outlined in Rules .0904, .0906 and .0908 of this Section.
- (c) In addition to all other requirements of this Section, all instructors certified by the Commission to teach in a Commission-accredited Detention Officer Certification Course shall remain knowledgeable and attend and complete any instructor training updates related to curriculum content and delivery as may be offered by the curriculum developer and within the time period as specified by the curriculum developer.

Authority G.S. 17E-4.

12 NCAC 10B .0904 DETENTION OFFICER INSTRUCTOR CERTIFICATION

- (a) An applicant for Detention Officer Instructor Certification ~~shall~~ shall present documentary evidence demonstrating that the applicant:
 - (1) not have had any type of certification issued from this Commission, from the North Carolina Criminal Justice Education and Training Standards Commission, or from any commission, agency, or board established to certify pursuant to said commission, agency or boards' standards, which was revoked, suspended or denied for cause and such period of sanction is still in effect at the time of designation;
 - ~~(1)(2)~~ has ~~have~~ attended and successfully completed the North Carolina Sheriffs' Education and Training Standards Commission-approved Detention Officer Training Course; or ~~holds~~ hold a valid general or grandfather certification as a detention officer or correctional officer; and
 - ~~(2)(3)~~ holds ~~hold~~ General Instructor certification issued by the North Carolina Criminal Justice Education and Standards Commission.
- (b) Persons holding Detention Officer Instructor Certification may teach any topical areas of instruction in the Commission-mandated course with the exception of those outlined in 12 NCAC 10B .0908(a)(1) through (5).

Authority G.S. 17E-4.

12 NCAC 10B .0905 TERMS AND CONDITIONS OF DETENTION OFFICER INSTRUCTOR CERTIFICATION

- (a) An applicant meeting the requirements for certification as a Detention Officer Instructor shall serve a probationary period. The probationary period will be set to expire concurrently with the expiration of the instructors' General Instructor Certification issued by the North Carolina Criminal Justice Education and Training Standards Commission. As of August 1, 2002, the expiration dates of any existing commission-issued Probationary General Detention Officer Instructor Certifications will be amended to expire concurrently with the expiration of the instructors' General Instructor Certification issued by the North Carolina Criminal Justice Education and Training Standards Commission. If the time-period before the expiration date is less

than one year, then the eight hours of instruction shall be waived for this shortened term and Full General Detention Officer Instructor Certification will be issued provided all other conditions for Full status as set out in Paragraph (b) of this Section are met.

(b) The probationary instructor shall be awarded full Detention Officer Instructor Certification at the end of the probationary period if ~~the instructor, instructor's certification required in 12 NCAC 10B .0904(a)(2) remains valid, and that the instructor through application, submits to the Division documentation that certification required in 12 NCAC 10B .0904(a)(2) remains valid, and either:~~

- (1) a favorable recommendation from a school director accompanied by certification on a commission Instructor Evaluation Form that the instructor satisfactorily taught a minimum of eight hours as specified in Paragraph (e) of this Rule in a commission-accredited Detention Officer Certification Course during his/her probationary year; or
- (2) an acceptable written evaluation as specified in Paragraph (e) of this Rule by a commission member or staff member based on an on-site classroom evaluation of the probationary instructor in a commission-accredited Detention Officer Certification Course. Such evaluation shall be certified on a commission Instructor Evaluation Form. In addition, instructors evaluated by a commission or staff member must also teach a minimum of eight hours in a commission-accredited Detention Officer Certification Course during his/her probationary year.

(c) As of August 1, 2002, the expiration dates of any existing commission-issued Full General Detention Officer Instructor Certifications will be amended to expire concurrently with the expiration of the instructors' General Instructor Certification issued by the North Carolina Criminal Justice Education and Training Standards Commission. If the time-period before the expiration date is less than two years, then the eight hours of instruction shall be waived for this shortened term and Full General Detention Officer Instructor Certification will be renewed. Full Detention Officer Instructor Certification is continuous so long as ~~the instructor, instructor's certification required in 12 NCAC 10B .0904(a)(2) remains valid, and that the instructor submits to the Division every two years a renewal application to include documentation that certification required in 12 NCAC 10B .0904(a)(2) remains valid, and which includes either:~~

- (1) a favorable recommendation from a school director accompanied by certification on a commission Instructor Evaluation Form that the instructor satisfactorily taught a minimum of eight hours as specified in Paragraph (e) of this Rule in a commission-accredited Detention Officer Certification Course during the previous two year period. The date full Instructor Certification is originally issued is

the anniversary date from which each two year period is figured; or

- (2) an acceptable written evaluation as specified in Paragraph (e) of this Rule by a commission member or staff member based on a minimum eight hours, on-site classroom observation of the instructor in a commission-accredited Detention Officer Certification Course.

(d) In the event a General Detention Officer Instructor Certification (either Probationary or Full) is terminated for failure to have been satisfactorily evaluated for eight hours of instruction in a Detention Officer Certification Course, the individual may re-apply for certification meeting the initial conditions for such certification, but must also provide documentation that he/she has audited eight hours of instruction in a delivery of an accredited Detention Officer Certification Course.

(e) An Instructor Evaluation Form records a rating of the instructor's qualities, organization and presentation of materials consistent with the requirements for successfully completing the Criminal Justice Instructor Training as set out in 12 NCAC 09B .0209. Instructor qualities, organization and presentation are rated on a scale of 1 (poor), 2 (fair), 3 (good), 4 (excellent) and 5 (superior). Instructor qualities include, but may not be limited to appearance, gestures, verbal pauses, grammar, pronunciation, enunciation, voice, rate (too slow or too fast), eye contact, and enthusiasm. Organization and presentation include, but may not be limited to:

- (1) Major objectives of the course made clear;
- (2) Class Presentation planned and organized;
- (3) Important ideas clearly explained;
- (4) Instructor's mastery of the course content;
- (5) Class time well used;
- (6) Encouragement of critical thinking and analysis;
- (7) Encouragement of student involvement;
- (8) Reaction to student viewpoints different from instructors;
- (9) Student's attitude toward instructor; and
- (10) Instructors use of training aids.

A rating of 1 or 2 is unacceptable or unsatisfactory; and a rating of 3, 4, or 5 is acceptable or satisfactory.

Authority G.S. 17E-4.

12 NCAC 10B .0911 SUSPENSION: REVOCATION: DENIAL OF DETENTION OFFICER INSTRUCTOR CERTIFICATION

(a) The Division may notify an applicant for instructor certification or a certified instructor that a deficiency appears to exist and attempt, in an advisory capacity, to assist the person in correcting the deficiency.

(b) When any person certified as an instructor by the Commission is found to have knowingly and willfully violated any provision or requirement of these Rules, the Commission may take action to correct the violation and to ensure that the violation does not recur, including:

- (1) issuing an oral warning and request for compliance;

- (2) issuing a written warning and request for compliance;
- (3) issuing an official written reprimand;
- (4) suspending the individual's certification for a specified period of time or until acceptable corrective action is taken by the individual;
- (5) revoking the individual's certification.

(c) The Commission may deny, suspend, or revoke an instructor's certification when the Commission finds that the person:

- (1) has failed to meet and maintain any of the requirements for qualification; or
- (2) has failed to remain currently knowledgeable in the person's areas of expertise by failing to attend and successfully complete any instructor training updates pursuant to 12 NCAC 10B .0903(c); or
- (3) has failed to deliver training in a manner consistent with the instructor lesson plans; or
- (4) has failed to follow specific guidelines outlined in the "Detention Officer Certification Course Management Guide" which is hereby incorporated by reference and shall automatically include any later amendments and editions of the referenced materials. This publication is authored by and may be obtained from the North Carolina Justice Academy, Post Office Drawer 99, Salemburg, North Carolina 28385 at no cost at the time of adoption of this Rule; or
- (5) has demonstrated unprofessional personal conduct in the delivery of commission-mandated training; or
- (6) has otherwise demonstrated instructional incompetence; or
- (7) has knowingly and willfully obtained, or attempted to obtain instructor certification by deceit, fraud, or ~~misrepresentation.~~ misrepresentation; or
- (8) has had any type of certification issued from the Commission, from the North Carolina Criminal Justice Education and Training Standards Commission, or from any commission, agency, or board established to certify pursuant to said commission, agency or boards' standards, which was revoked, suspended or denied for cause.

Authority G.S. 17E-4.

12 NCAC 10B .0913 CERT: INSTRUCTORS FOR TELECOMMUNICATOR CERTIFICATION COURSE

(a) Any person participating in a commission-accredited Telecommunicator Certification Course as an instructor, teacher, professor, lecturer, or other participant making presentations to the class shall first be certified by the Commission as an instructor. ~~A waiver may be granted by the Director upon receipt of a written application to teach in a designated school.~~

(b) As of the effective date of this Rule, the Commission shall certify Telecommunicator Certification Course instructors under the following categories:

- (1) Telecommunicator Instructor Certification; or
- (2) Professional Lecturer Certification.

(c) Individuals who have previously instructed in a commission-accredited Telecommunicator Certification Course as it existed prior to the effective date of this Rule are eligible to apply for a waiver of 12 NCAC 10B .0913(b), provided documentation is submitted showing the applicant taught a minimum of eight hours in the Telecommunicator Certification Course within the one-year period prior to the date of application.

(d) In addition to all other requirements of this Section, all instructors certified by the Commission to teach in a Commission-accredited Telecommunicator Certification Course shall remain knowledgeable and attend and complete any instructor training updates related to curriculum content and delivery as may be offered by the curriculum developer and within the time period as specified by the curriculum developer.

Authority G.S. 17E-4.

12 NCAC 10B .0914 TELECOMMUNICATOR INSTRUCTOR CERTIFICATION

(a) An applicant for Telecommunicator Instructor Certification ~~shall: shall present documentary evidence demonstrating that the applicant:~~

- (1) not have had any type of certification issued from this Commission, from the North Carolina Criminal Justice Education and Training Standards Commission, or from any commission, agency, or board established to certify pursuant to said commission, agency or boards' standards, which was revoked, suspended or denied for cause and such period of sanction is still in effect at the time of designation;
- (4)(2) has have attended and successfully completed the North Carolina Sheriffs' Education and Training Standards Commission-approved Telecommunicator Training Course, or ~~holds~~ hold a valid general or grandfather certification as a telecommunicator; and
- (2)(3) ~~holds~~ hold General Instructor certification issued by the North Carolina Criminal Justice Education and Standards Commission.

(b) Persons holding Telecommunicator Instructor Certification may teach any topical areas of instruction in the Commission-mandated course.

Authority G.S. 17E-4.

12 NCAC 10B .0915 TERMS AND CONDITIONS OF TELECOMMUNICATOR INSTRUCTOR CERTIFICATION

(a) An applicant meeting the requirements for certification as a Telecommunicator Instructor shall serve a probationary period. The Telecommunicator Instructor Certification probationary period shall be set to automatically expire concurrently with the

expiration of the instructor's General Instructor Certification issued by the North Carolina Criminal Justice Education and Training Standards Commission. As of August 1, 2002, the expiration dates of any existing commission-issued Probationary General Telecommunicator Instructor Certifications will be amended to expire concurrently with the expiration of the instructors' General Instructor Certification issued by the North Carolina Criminal Justice Education and Training Standards Commission. If the time-period before the expiration date is less than one year, then the eight hours of instruction shall be waived for this shortened term and Full General Telecommunicator Instructor Certification will be issued provided all other conditions for Full status as set out in Paragraph (b) of this Rule are met.

(b) The probationary instructor shall be awarded full Telecommunicator Instructor Certification at the end of the probationary period if ~~the instructor's certification required in 12 NCAC 10B .0914(a)(2) remains valid, and that the instructor through application, submits to the Division: Division documentation that certification required in 12 NCAC 10B .0914(a)(2) remains valid, and either:~~

- (1) a favorable recommendation from a school director accompanied by certification on a commission Instructor Evaluation Form that the instructor satisfactorily taught a minimum of eight hours as specified in Paragraph (e) of this Rule in a commission-accredited Telecommunicator Certification Course during his/her probationary year; or
- (2) an acceptable written evaluation as specified in Paragraph (e) of this Rule by a commission member or staff member based on an on-site classroom evaluation of the probationary instructor in a commission-accredited Telecommunicator Certification Course. Such evaluation shall be certified on a commission Instructor Evaluation Form. In addition, instructors evaluated by a commission or staff member must also teach a minimum of eight hours in a commission-accredited Telecommunicator Certification Course during his/her probationary year.

(c) As of August 1, 2002, the expiration dates of any existing commission-issued Full General Telecommunicator Instructor Certifications will be amended to expire concurrently with the expiration of the instructors' General Instructor Certification issued by the North Carolina Criminal Justice Education and Training Standards Commission. If the time-period before the expiration date is less than two years, then the eight hours of instruction shall be waived for this shortened term and Full General Telecommunicator Instructor Certification will be renewed. Full Telecommunicator Instructor Certification is continuous so long as ~~the instructor, instructor's certification required in 12 NCAC 10B .0904(a)(2) remains valid, and that the instructor submits to the Division every two years a renewal application to include documentation that certification required in 12 NCAC 10B .0914(a)(2) remains valid, and either:~~

- (1) a favorable recommendation from a school director accompanied by certification on a

commission Instructor Evaluation Form that the instructor satisfactorily taught a minimum of eight hours as specified in Paragraph (e) of this Rule in a commission-accredited Telecommunicator Certification Course during the previous two year period. The date full Instructor Certification is originally issued is the anniversary date from which each two year period is figured; or

- (2) an acceptable written evaluation as specified in Paragraph (e) of this Rule by a commission member or staff member based on a minimum eight hours, on-site classroom observation of the instructor in a commission-accredited Telecommunicator Certification Course.

(d) In the event a General Telecommunicator Instructor Certification (either Probationary or Full) is terminated for failure to have been evaluated for eight hours of instruction in a Telecommunicator Certification Course, the individual may re-apply for certification meeting the initial conditions for such certification, but must also provide documentation that he/she has audited 8-hours of instruction in a delivery of an accredited Telecommunicator Certification Course.

(e) An Instructor Evaluation Form records a rating of the instructor's qualities, organization and presentation of materials consistent with the requirements for successfully completing the Criminal Justice Instructor Training as set out in 12 NCAC 09B .0209. Instructor qualities, organization and presentation are rated on a scale of 1 (poor), 2 (fair), 3 (good), 4 (excellent) and 5 (superior). Instructor qualities include, but may not be limited to appearance, gestures, verbal pauses, grammar, pronunciation, enunciation, voice, rate (too slow or too fast), eye contact, and enthusiasm. Organization and presentation include, but may not be limited to:

- (1) Major objectives of the course made clear;
- (2) Class presentation planned and organized;
- (3) Important ideas clearly explained;
- (4) Instructor's mastery of the course content;
- (6) Encouragement of critical thinking and analysis;
- (7) Encouragement of student involvement;
- (8) Reaction to student viewpoints different from instructors;
- (9) Students attitude toward instructor; and
- (10) Instructor's use of training aids.

A rating of 1 or 2 is unacceptable or unsatisfactory; and a rating of 3, 4, or 5 are acceptable or satisfactory.

Authority G.S. 17E-4.

12 NCAC 10B .0919 SUSPENSION: REVOCATION: DENIAL OF TELECOMMUNICATOR INSTRUCTOR CERTIFICATION

(a) The Division may notify an applicant for instructor certification or a certified instructor that a deficiency appears to exist and attempt, in an advisory capacity, to assist the person in correcting the deficiency.

(b) When any person certified as an instructor by the Commission is found to have knowingly and willfully violated

any provision or requirement of these Rules, the Commission may take action to correct the violation and to ensure that the violation does not recur, including:

- (1) issuing an oral warning and request for compliance;
- (2) issuing a written warning and request for compliance;
- (3) issuing an official written reprimand;
- (4) suspending the individual's certification for a specified period of time or until acceptable corrective action is taken by the individual; or
- (5) revoking the individual's certification.

(c) The Commission may deny, suspend, or revoke an instructor's certification when the Commission finds that the person:

- (1) has failed to meet and maintain any of the requirements for qualification; or
- (2) has failed to remain currently knowledgeable in the person's areas of expertise by failing to attend and successfully complete any instructor training updates pursuant to 12 NCAC 10B .0913(d); or
- (3) has failed to deliver training in a manner consistent with the instructor lesson plans; or
- (4) has failed to follow specific guidelines outlined in the "Telecommunicator Certification Course Management Guide" which shall be used and shall automatically include any later amendments and editions of the referenced materials. This publication is authored by and may be obtained from the North Carolina Justice Academy, Post Office Drawer 99, Salemburg, North Carolina 28385 at no cost at the time of adoption of this Rule; or
- (5) has demonstrated unprofessional personal conduct in the delivery of commission-mandated training; or
- (6) has otherwise demonstrated instructional incompetence; or
- (7) has knowingly and willfully obtained, or attempted to obtain instructor certification by deceit, fraud, or ~~misrepresentation~~ misrepresentation; or
- (8) has had any type of certification issued from this Commission, from the North Carolina Criminal Justice Education and Training Standards Commission, or from any commission, agency, or board established to certify pursuant to said commission, agency or boards' standards, which was revoked, suspended or denied for cause.

Authority G.S. 17E-4.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to amend the rule cited as 15A NCAC 18A .1969.

Proposed Effective Date: January 1, 2005

Public Hearing:

Date: October 6, 2004

Time: 10:00 a.m.

Location: Room 1A244, Parker-Lincoln Building, 2728 Capital Blvd, Raleigh, NC

Reason for Proposed Action: *This Rule amendment provides clarifying procedures for the approval and permitting of "Accepted" wastewater systems that are a new category established by Session Law 2001-505.*

Procedure by which a person can object to the agency on a proposed rule: *Written objections concerning these Rule changes may be submitted to Steve Steinbeck, 1642 Mail Service Center, Raleigh, NC 27699-1642, 919-715-3273, fax 919-715-3227, and email steve.steinbeck@ncmail.net.*

Written comments may be submitted to: *Steve Steinbeck, 1642 Mail Service Center, Raleigh, NC 27699-1642, 919-715-3273, fax 919-715-3227, and email steve.steinbeck@ncmail.net.*

Comment period ends: November 15, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
- Local
- Substantive (≥\$3,000,000)
- None

CHAPTER 18 – ENVIRONMENTAL HEALTH

SUBCHAPTER 18A – SANITATION

SECTION .1900 - SEWAGE TREATMENT AND DISPOSAL SYSTEMS

15A NCAC 18A .1969 APPROVAL AND PERMITTING

OF ON-SITE SUBSURFACE WASTEWATER SYSTEMS, TECHNOLOGIES, COMPONENTS, OR DEVICES

Experimental, controlled demonstration, ~~and innovative~~innovative, ~~and accepted~~ wastewater systems (hereinafter referred to as E & I systems) are any wastewater systems, system components, or devices that are not specifically described in Rules .1955, .1956, .1957, or .1958 of this Section, including any system for which reductions are proposed in the minimum horizontal or vertical separation requirements or increases are proposed to the maximum long-term acceptance rates of this Section; or any E & I systems as defined by G.S. 130A-343(a) and approved pursuant to applicable Laws and this Rule. Accepted systems are as defined by G.S. 130A-343(a). This Rule shall provide for the approval and permitting of E & I ~~and accepted~~ systems.

(1) APPLICATION: An application shall be submitted in writing to the State for an E & I system. The application shall include the information required by G.S. 130A-343 ~~(d)~~, (e), (f), and (g), and the following, as applicable:

- (a) specification of the type of approval requested as either innovative, controlled demonstration, experimental, ~~accepted~~—or a combination;
- (b) description of the system, including materials used in construction, and its proposed use;
- (c) summary of pertinent literature, published research, and previous experience and performance with the system;
- (d) results of any available testing, research or monitoring of pilot systems or full-scale operational systems conducted by a third party research or testing organization;
- (e) evaluation protocols shall be specified as either an approved and listed protocol by the State or submit an alternative protocol for the evaluation of the performance of the manufacturer's system;
- ~~(e)~~(f) identity and qualifications of any proposed research or testing organization and the principal investigators, and an affidavit certifying that the organization and principal investigators have no conflict of interest and do not stand to gain financially from the sale of the E & I system;
- ~~(f)~~(g) objectives, methodology, and duration of any proposed research or testing;
- ~~(g)~~(h) specification of the number of systems proposed to be installed, the

criteria for site selection, and system monitoring and reporting procedures; operation and maintenance procedures, system classification, proposed management entity and system operator;

- ~~(h)~~(i) procedure to address system malfunction and replacement or premature termination of any proposed research or testing;
 - ~~(i)~~(j) notification of any proprietary or trade secret information, system, component, or device; ~~and~~
 - (l) a request for innovative system approval intended by the applicant to be reclassified from an innovative to an accepted system shall include monitoring, reporting and evaluation protocols to be followed by the manufacturer, the results of which shall be submitted in its future petition for accepted status; and
 - ~~(k)~~(m) ~~Fee~~ fee payment as required by G.S. 130A-343(k), by corporate check, money order or cashier's check made payable to: North Carolina On-Site Wastewater System Account or NC OSWW System Account, and mailed to the On-Site Wastewater Section, 1642 Mail Service Center, Raleigh, NC 27699-1642 or hand delivered to Rm. 1A-245, Parker Lincoln Building, 2728 Capital Blvd., Raleigh, NC.
- (2) REVIEW: The State shall review all applications submitted and evaluate at least the following:
- (a) the completeness of the application, and whether additional information is needed to continue the review;
 - (b) whether the system meets the standards of an innovative system under G.S. 130A-343(a)(5), G.S. 130A-343(g), and Item (3) of this Rule, or whether the system meets the standards of an experimental or controlled demonstration system under G.S. 130A-343(e) or (f) and Item (4) of this Rule, as applicable.
- (3) INNOVATIVE SYSTEMS: Innovative systems, technologies, components, or devices shall be reviewed and approved by the State, and the local health department shall permit innovative systems in accordance with the following:
- (a) The State shall approve the system as an innovative system if the following standards have been met;

- (i) The system, shall have been demonstrated to perform equal or superior to a system, which is described in Rules .1955, .1956, .1957, or .1958, of this Section, based upon controlled pilot-scale research studies or statistically-valid monitoring of full-scale operational systems.
- (ii) Materials used in construction shall be equal or superior in physical properties and chemical durability, compared to materials used for similar proposed systems, specifically described in Rules .1955, .1956, .1957, or .1958 of this Section.
- (b) When a system is approved as innovative by the State, the applicant shall be notified in writing. Such notice shall include any conditions for permitting, siting, installation, use, monitoring, and operation. Approved innovative systems shall be assigned a unique code for tracking purposes. Prior to making a request for reclassification of a system from innovative to accepted, the manufacturer shall have a system in place to keep track of the number and location of new system installations, and of any system installations it becomes aware of which were required to be repaired, and to provide this information to the State upon request and in any subsequent petition for accepted status.
- (c) A local health department shall issue an Improvement Permit and a Construction Authorization for any innovative system approved by the State upon a finding that the provisions of this Section including any conditions of the approval are met. Use of an innovative system and any conditions shall be described on the Improvement Permit, Construction Authorization, or Operation Permit.
- (4) **EXPERIMENTAL AND CONTROLLED DEMONSTRATION SYSTEMS:** A system may be approved for use as an experimental or controlled demonstration system as part of a research or testing program which has been approved by the State. The research or testing program shall be conducted by a third party research or testing organization which has knowledge and experience relevant to the proposed research or testing and has no conflict of interest and does not stand to gain financially from the sale of the proposed system.
 - (a) To be approved by the State, the proposed research or testing program shall include the following:
 - (i) The research program shall be designed such that, if the objectives were met, the system would satisfy the standards for approval as an innovative system under Item (3) of this Rule.
 - (ii) Research design and testing methodology shall have a reasonable likelihood of meeting the objectives.
 - (b) The State shall notify the applicant and the applicable local health departments when the proposed research or testing program has been approved for an experimental or controlled demonstration system. Such notice shall include, but not be limited to, conditions for permitting, siting, operation, monitoring and maintenance, and number of systems which can be installed.
 - (c) A local health department shall issue an Improvement Permit and Construction Authorization for an experimental or controlled demonstration system when the following conditions are met:
 - (i) There is an application for an Improvement Permit in accordance with Rule .1937(c) of this Section, with the proposed use of an experimental system specified.
 - (ii) The proposed site is included as part of an approved research or testing program and any conditions specified for use of the system have been met.
 - ~~(iii) When an experimental or controlled demonstration system is proposed to serve a residence, place of business or place of public assembly, there shall be a repair area using a non-experimental or non-controlled~~

demonstration — backup system in accordance with the provisions of Rule .1945(b) or an accepted system of this Rule, except:

- (A) When an existing and properly functioning wastewater system is available for immediate use, including connection to a public or community wastewater system;
- (B) When the experimental or controlled demonstration system is used as a repair to an existing malfunctioning system; or
- (C) When for a controlled demonstration system sufficient available space shall be reserved for the installation of a replacement system at least equal to the initial controlled demonstration system, or the State or Local Health Department otherwise determines that the manufacturer can provide an acceptable alternative method for collection, treatment, and disposal of the wastewater.

(iv)(iii) When an experimental or controlled demonstration system is proposed to serve a residence, place of business or place of public assembly, there shall be a repair system in accordance with the provisions of Rule .1945(b)

or an innovative or accepted system of this Rule, except:

- (A) When an existing and properly functioning wastewater system is available for immediate use, including connection to a public or community wastewater system;
- (B) When the experimental or controlled demonstration system is used as a repair to an existing malfunctioning system when there are no other approved or accepted repair options; or
- (C) As provided in G.S. 130A-343(f) for Controlled Demonstration Systems.
- (v)(iv) When an experimental or controlled demonstration system is proposed which shall not serve a residence, place of business, or place of public assembly, a repair area or backup system shall not be required.
- (vi)(v) The application for an experimental system shall include statements that the property owner is aware of its experimental nature, that the local health department and State do not guarantee or warrant that these systems will function in a satisfactory manner for any period of time, and that use of the system may need to be discontinued if the system research or testing program is prematurely terminated. Such statements shall be signed by the owner.
- (vii)(vi) The owner of the site on which an experimental system is proposed shall

execute an easement granting rights of access to the system at reasonable hours for monitoring and evaluation to the research or testing organization. This easement shall specify that it is granted for the purposes of researching and testing an experimental wastewater system and shall remain valid as long as the system is to be part of the proposed research or testing program. The easement shall be recorded with the county register of deeds.

~~(viii)~~(vii) Provisions shall be made for operation and maintenance of the system.

~~(ix)~~(viii) Any special conditions required for the installation of the experimental or controlled demonstration system shall be specified in the Improvement Permit and the Construction Authorization. Use of an experimental or controlled demonstration system and any conditions shall be described on the Improvement Permit, Construction Authorization and any subsequent operation permits, with provisions for a repair area and backup system specified. A condition of the Improvement Permit and Construction Authorization shall be that the installation be under the direct field supervision of the research or testing organization.

~~(x)~~(ix) The proposed Improvement Permit, Construction Authorization and any subsequent operation permits for experimental or controlled demonstration systems shall be reviewed by the State and found to be consistent with the approved research or testing program prior to issuance by the local health department.

(d) Upon completion of the installation and prior to use, an Experimental or

Controlled Demonstration System Operation Permit (ESOP or CDSOP) shall be issued by the local health department. The ESOP (CDSOP) shall be valid for a specified period of time not to exceed five years. Special maintenance, monitoring and testing requirements shall be specified as permit conditions, in accordance with the approved research or testing program. Failure to carry out these conditions shall be grounds for permit suspension or revocation.

(e) Prior to expiration of the ESOP (CDSOP) and based upon satisfactory system performance as determined during the research or testing program, the local health department shall issue an Operation Permit. Premature termination of the research or testing program shall be grounds for ESOP (CDSOP) suspension or revocation.

(f) Upon completion of monitoring, research and testing, the research or testing organization shall prepare a final report including recommendations on future use of the system. If the State determines that the results indicate that the standards of Item (3) of this Rule are met, the State shall approve the use as an innovative system.

~~(g) Any proposed changes or modifications in the E & I system shall be submitted for review and approval by the State.~~

(5) ACCEPTED SYSTEMS: A petition to the Commission (CHS) for reclassification of a proprietary innovative system to an accepted system shall be submitted by the manufacturer for review to the State, accompanied by the fee payment as required by G.S. 130A-343(k) and as stipulated in Item (l) of this Rule. The State shall review all petitions submitted and evaluate the following: the completeness of the petition, and whether additional information is needed to continue the review; and whether the system meets the standards of an accepted system under G.S. 130A-343(a)(l), G.S. 130A-343(h), and this Section. The State may also initiate a review of a nonproprietary innovative system pursuant to G.S. 130A-343(i)(2). The State shall submit to the CHS findings and recommendations based upon its review for final Commission action on system designation. The Commission shall designate a wastewater system technology, component or device as an accepted system when it finds

that the standards set forth by G.S. 130A-343(a)(1) and G.S. 130A-343(h) have been met. The following factors shall be considered prior to granting accepted system status:

- (a) documentation provided that there are at least 300 systems installed statewide and the system has been in use as an approved innovative system for more than five years;
- (b) data and findings of all prior evaluations of the system performance shall be provided by the manufacturer;
- (c) results of prior performance surveys of innovative systems in use in North Carolina for at least the five year period immediately preceding the petition;
- (d) review(s) of records on system use and performance reported by local health departments and other information documenting the experiences with performance of the system in North Carolina, including information collected and reported pursuant to Items (3)(b) and (12) of this Rule;
- (e) for proprietary nitrification trench systems, a statistically valid survey of system performance shall be performed. The manufacturer shall provide a proposed survey plan pursuant to Sub-Items (5)(e)(i) or (5)(e)(ii) of this Rule for State concurrence prior to carrying out the survey. This plan shall specify number of systems to be evaluated, period of evaluation, method to randomly select systems to be evaluated, methods of field and data evaluation, and proposed survey team members, including proposed cooperative arrangements to be made with State and local health department on-site wastewater program staff. The State shall facilitate local health department participation with any performance review or survey. The State shall utilize the Division of Public Health's State Center for Health Statistics for assistance in evaluating the statistical validity of proposed evaluation protocols.
 - (i) The survey shall include the field evaluation of at least 250 randomly selected innovative systems compared with 250

comparably-aged randomly selected conventional systems, with at least 100 of each type of surveyed system currently in use and in operation for at least five years. Systems surveyed shall be distributed throughout the three physiographic regions of the state in approximate proportion to the irrelative usage in the three regions. The survey shall determine comparative system failure rates, with field evaluations completed during a typical wet-weather season (February through early April), with matched innovative and conventional systems sampled during similar time periods in each region. The petitioner shall provide a statistical analysis of the survey results showing a "one-sided" test where, if the failure rate in the sample of 250 innovative systems is at least five percentage points higher than the failure rate in the sample of 250 conventional systems, there is only a five percent chance that a difference this large would occur by chance (95% confidence level). If a statistically significant higher failure rate in the innovative system is not detected, the Commission shall find that the innovative system performs the same as or better than the conventional system.

- (ii) Other surveys, including evaluations of different numbers of innovative and conventional systems, designed to verify equal or superior performance of the innovative system compared to a conventional system under actual field conditions in North Carolina may be proposed by the manufacturer for approval by the state when they are

- demonstrated to have comparable statistical validity as described in Sub-Item (5)(e)(i) of this Rule.
- (f) The Commission may grant accepted status to an innovative system based upon a showing by the manufacturer that there have been at least 10,000 operational systems installed in the state, in more than one county of the state, over at least an eight year period with a total reported failure rate statewide based on records provided by the manufacturer and local health departments of less than one percent. However, the granting of accepted status based upon this criteria shall be conditioned on the manufacturer successfully completing an approved field survey pursuant to Items (5)(e)(i) or (5)(e)(ii) of this Rule within no more than 24 months of being granted accepted status;
- (g) Proprietary innovative systems which include an advanced pretreatment component designed to achieve specific effluent quality standards, the field survey shall be designed to verify effluent is in compliance with these established performance standards. Data evaluated shall be from sites where influent wastewater characteristics and flow meet design parameters. Compliance shall be achieved for all parameters by the arithmetic mean of all samples (geometric mean for fecal coliforms, where applicable). The percent of all samples exceeding performance standards shall not exceed 20% for any parameter. The percent of sites in violation of performance standards for one or more parameters shall not exceed 10%.
- (h) When a petition or recommendation for an accepted wastewater system designation is approved by the CHS, the State shall notify local health departments and publish a listing of accepted systems. The CHS shall impose any use, design, installation, operation, maintenance, monitoring, and management conditions it determines to be appropriate.
- (i) The local health department shall permit systems designated as accepted nitrification trench systems that meet the requirements of this Section, Laws, and conditions of its
- accepted system approval in an equivalent manner as a conventional system. The Owner may choose to substitute an accepted system for a conventional system or another accepted system without prior approval of the health department as long as no changes are necessary in the location of each nitrification line, trench depth, or effluent distribution method. The type of system installed shall be indicated on the Operation Permit, including designation of the manufacturer and model or unique code.
- (6) MODIFICATION OF APPROVED SYSTEMS: Where a manufacturer of an approved E & I or accepted system seeks to modify such system or its conditions of approval (including siting or sizing criteria) and retain it approved status, the manufacturer shall submit to the State a request for approval of the proposed modification. If the manufacturer demonstrates that the modified system will perform in a manner equal or superior to the approved system in terms of structural integrity, chemical durability, hydraulic performance and wastewater treatment, the state shall approve the modified system with the same status as the previously approved system. In the case of modifications to accepted systems, the demonstration required by this subsection shall be made by clear, convincing, and cogent evidence. Approvals of the proposed modifications pursuant to this subsection shall be made by the State in the case of E & I systems and by the Commission, on the recommendation of the State, in the case of accepted systems. In order to confirm the satisfactory performance of an approved modified accepted system, the manufacturer shall conduct a survey of installed modified systems in accordance with Sub-Item (5)(e) of this Rule within one year of the fifth anniversary of the State's approval of the modified system and shall submit the results of the survey to the State. The State may modify, suspend, or revoke its approval of the modified system based on the survey results or any other information that supports a finding that the modified system does not perform in a manner equal or superior to the previously approved system.
- (5)(7) The State may modify, suspend or revoke the approval of an E & I-system as provided for in G.S. 130A-343(c).
- (a) The E & I-system approval shall be modified as necessary to comply with

- (b) The approval of a ~~an E & I~~ system may be modified, suspended or revoked upon a finding as follows:
 - (i) subsequent experience with the system results in altered conclusions about system performance, reliability, or design;
 - (ii) the system or component fails to perform in compliance with performance standards established for the system; or
 - (iii) the system or component or the ~~E & I~~ system applicant fails to comply with wastewater system Laws, Rules or conditions of the approval.
- (c) The State shall notify the CHS of any action required for CHS approval of any modifications to the status of an accepted system.
- ~~(6)(8)~~ Modification, suspension or revocation of a ~~an E & I~~ System approval shall not affect systems previously installed pursuant to the approval.
- ~~(7)(9)~~ Reductions in total nitrification trench length allowed for ~~E & I~~ systems, as compared to the system sizing requirements delineated in Rule .1955 of this Section for conventional systems based upon excavated trench width, apply only to drainfields receiving septic tank effluent of domestic strength or better quality. The system may be used for facilities producing higher strength wastewater with nitrification trench length and trench bottom area determined based upon excavated trench width equal to what is required by Rule .1955 of this Section for a conventional gravel trench system, with no reduction or application of an equivalency factor. However, reductions up to 25 percent when allowed for approved innovative or accepted system models may be applied for facilities producing higher strength wastewater following a specifically approved pretreatment system designed to assure effluent strength equal to or better than domestic septic tank effluent, with a BOD less than 150 mg/l, TSS less than 100 mg/l and FOG less than 30 mg/l.
- ~~(8)(10)~~ A Performance Warranty shall be provided by the manufacturer of any approved innovative or accepted wastewater system (warranty system) handling untreated septic tank effluent which allows for a reduction in the total nitrification trench length of more than 25% as

compared to the total nitrification trench length required for a 36-inch wide conventional wastewater system, pursuant to G.S. 130A-343(j). The Department shall approve the warranty when found in compliance with the applicable Laws and these Rules. When a warranty system is proposed to serve a residence, place of business, or place of public assembly, the site shall include a repair or replacement area in accordance with Rule .1945(b) of this Section or an innovative or accepted system approved under this Rule with no more than a 25 percent reduction in excavated trench bottom area.

- (a) The Manufacturer shall provide the approved Performance Warranty in effect on the date of the Operation Permit issuance to the owner or purchaser of the system. The warranty shall be valid for a minimum of five-years from the date the warranty system is placed into operation.
- (b) The Manufacturer shall issue the Performance Warranty to the property owner through its authorized installer who shall sign the Performance Warranty indicating the system has been installed in accordance with the manufacturer's specifications, any conditions of the system approval granted by the Department, and all conditions of the Authorization to Construct a Wastewater System by the local health department. The installer or contractor shall promptly return a copy of the signed Performance Warranty to the Manufacturer indicating the physical address or location of the facility served by the warranty system, date the system was installed or placed into use, and type and model of system installed.
- (c) The Performance Warranty shall provide that the manufacturer furnishes all materials and labor necessary to repair or replace a malfunctioning warranty system as defined in Rule .1961(a) of this Section or a warranty system that failed to meet any performance conditions of the approval with a fully functional wastewater system at no cost to the Owner, in accordance with this Section and applicable Laws.
- (d) Performance Warranty repairs such as full replacement of the nitrification

system, extension of the nitrification system or other repairs shall be completed pursuant to a repair Authorization to Construct that is issued by the local health department in accordance with this Section.

- (e) The Performance Warranty shall be attached to the Operation Permit issued by the Health Department for the wastewater system. The Performance Warranty remains in effect, notwithstanding change in ownership, to the end of the five-year warranty period.

(11) Manufacturers of proprietary systems approved under this Rule shall provide a list of manufacturer's authorized installers to the Department and applicable local health departments, and update this list whenever there are additions or deletions. No Operation Permit shall be issued for a proprietary system installed by a person not authorized by the Manufacturer, unless the Manufacturer of the proprietary system specifically approves the installation in writing.

(12) The local health department shall include in its monthly activity report submitted to the State the number of new system Operation Permits issued for E & I and accepted systems. Additionally, the number of Operation Permits issued for repairs of E & I and accepted systems, and repair system type shall be reported to the State as part of the monthly activity report. The State shall accumulate and store this installation data for future reference and surveys, including site locations.

Procedure by which a person can object to the agency on a proposed rule: *If you have any objection(s) to the proposed rule, please forward a typed or handwritten letter indicating your specific reason(s) for your objection(s) to Souk Rios, NC Board of Cosmetic Art Examiners, 1201 Front St., Suite 110, Raleigh, NC 27609.*

Written comments may be submitted to: *Souk Rios, NC Board of Cosmetic Art Examiners, 1201 Front St., Suite 110, Raleigh, NC 27609, (919) 733-4117, ext. 222, fax (919) 733-4127, and email srios@intrex.net.*

Comment period ends: *November 15, 2004*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
- Local
- Substantive (\geq \$3,000,000)
- None

Authority G.S. 130A-335(e),(f); 130A-343.

SUBCHAPTER 14A – DEPARTMENTAL RULES

SECTION .0100 – ORGANIZATION RULES

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Cosmetic Art Examiners intends to amend the rule cited as 21 NCAC 14A .0101.

Proposed Effective Date: *January 1, 2005*

Public Hearing:

Date: *October 4, 2004*

Time: *10:00 a.m.*

Location: *North Carolina State Board of Cosmetic Art, 1201-110 Front St., Raleigh, NC*

Reason for Proposed Action: *Rule updates for Departmental rules.*

21 NCAC 14A .0101 DEFINITIONS

The following definitions apply in this Chapter:

- (1) "Beauty Establishment" refers to both cosmetic art schools and cosmetic art shops.
- (2) "Cosmetology School" is any cosmetic art school that teaches cosmetic art as defined by, G.S. 88B-2(5), but is not a manicurist or an esthetics school.
- (3) "Cosmetology Student" is a student in any cosmetic art school whose study is the full curriculum.
- (4) "Manicurist School" is a cosmetic art school that teaches only the cosmetic arts of manicuring.
- (5) "Manicurist Student" is a student in any cosmetic art school whose study is limited to the manicurist curriculum set forth in 21 NCAC 14K .0102.

- (6) "Successful Completion" is the completion of an approved cosmetic art curriculum with a minimum grade of "C" or 70%, whichever is deemed as passing by the cosmetic art school.
- (7) "Esthetician School" is any cosmetic art school that teaches only the cosmetic arts of skin care.
- (8) "Esthetician Student" is a student in any cosmetic art school whose study is limited to the esthetician curriculum set forth in 21 NCAC 14O. 0102.
- (9) "Esthetics" refers to any of the following practices: giving facials, applying makeup, performing skin care, removing superfluous hair from the body of any person by the use of depilatories, tweezers or waxing, or applying eyelashes to any person (this is to include brow and lash color), beautifying the face, neck, arms or upper part of the human body, by use of cosmetic preparations, antiseptics, tonic, lotions or creams, ~~massaging~~, massaging (skin care only), cleaning, or stimulating the face, neck, ears, arms, hands, bust, torso, legs or feet, by means of the hands, devices, apparatus, or appliances, with the use of cosmetic preparations, antiseptics, tonics, lotions or creams.
- (10) "Natural hair braiding" is a service that results intension on hair strands or roots by twisting, wrapping, weaving, extending, locking, or braiding by hand or mechanical device, provided that the service does not include hair cutting or the application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair.
- (11) "Natural hair styling" is the provision of natural hair braiding services together with any of the services or procedures defined within the regulated practice of cosmetic art, and is subject to regulation pursuant to G.S. 88B, and those persons practicing natural hair styling shall obtain and maintain a cosmetologist license as applicable to the services offered or performed. Establishments offering natural hair styling services shall be licensed as cosmetic art shops.
- (12) "Licensing cycle" for cosmetologists, is the three-year period beginning on the first day of October 2004 and ending on the 30th day of September 2007, and continuing thereafter in three year intervals. For estheticians and manicurists the licensing cycle is one year in length beginning on the first day of October and ending on the 30th day of September. For teachers, the licensing cycle is the two-year period beginning on the first day of October of an even-numbered year and ending on the 30th day of September of an even-numbered year.

- (13) "Provider" is a nonprofit professional cosmetic art association, community college, high school, vocational school, postsecondary proprietary school of cosmetic art licensed by the Board, manufacturer of supplies or equipment used in the practice of cosmetic art, the State Board or an agent of the State Board, or any individual or entity that owns and operates five or more licensed salons or that employs at least 50 licensees.

Authority G.S. 88B-2; 88B-4.

CHAPTER 20 – BOARD OF REGISTRATION FOR FORESTORS

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Board of Registration for Foresters intends to amend the rule cited as 21 NCAC 20 .0106.

Proposed Effective Date: January 1, 2005

Public Hearing:

Date: September 30, 2004

Time: 1:00 p.m. to 3:00 p.m.

Location: N.C. Forest Service Region 2, 3490 Big Woods Road, Chapel Hill, NC

Reason for Proposed Action: *To increase registration fee and annual renewal fee to provide additional revenue to Board of Registration for Foresters to balance annual revenues with expenditures. Fee increases are within amounts authorized in G.S. 89B-10 and G.S. 89B-11.*

Procedure by which a person can object to the agency on a proposed rule: *Objections to the rule change and reasons for objections can be made in writing to the following address: State Board of Registration for Foresters, P.O. Box 27393, Raleigh, NC 27611, Attn: Sara Koch.*

Written comments may be submitted to: *Sara Koch, State Board of Registration for Foresters, P.O. Box 27393, Raleigh, NC 27611, Fax (919)847-5441, email NCBRF@aol.com.*

Comment period ends: November 15, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: *If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive*

those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
- Local
- Substantive (\geq \$3,000,000)
- None

SECTION .0100 – PURPOSE

21 NCAC 20 .0106 REGISTRATION FEES

Fees sent to the Board for any segment of the registration process may be in the form of money orders, bank drafts, or checks payable to the Secretary, Board of Registration for Foresters. The application fee for registration is ~~thirty five dollars (\$35.00)~~ fifty dollars (\$50.00), which shall be submitted by the applicant at the time of application. An approved applicant shall submit an additional fee of forty dollars (\$40.00) to receive a certificate of registration. Annual renewal fee is ~~thirty dollars (\$30.00)~~ forty dollars (\$40.00).

Authority G.S. 89B-6; 89B-10; 89B-11.

CHAPTER 29 – LOCKSMITH LICENSING BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Locksmith Licensing Board intends to adopt the rules cited as 21 NCAC 29 .0701-.0704, .0801-.0806.

Proposed Effective Date: February 1, 2005

Public Hearing:

Date: October 4, 2004

Time: 11:00 a.m.

Location: 1004 Dresser Ct., Raleigh, NC

Reason for Proposed Action: *New Occupational Licensing Board with first license renewal applications due late 2005.*

Procedure by which a person can object to the agency on a proposed rule: *Write to the Board office, attend public hearing or any Board meeting.*

Written comments may be submitted to: *Laura J. Busse, P.O. Box 10972, Raleigh, NC 27605.*

Comment period ends: November 15, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting

review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
- Local
- Substantive (\geq \$3,000,000)
- None

SECTION .0700 – LICENSE RENEWAL REQUIREMENTS

21 NCAC 29 .0701 APPLICATION FORM

All applications for license renewal shall be submitted on the form specified by the Board for this purpose and shall be accompanied by the following required items:

- (1) Two frontal photos of the applicant's face, taken within the preceding three months, size one inch by one inch;
- (2) a criminal history report, certified by the law enforcement agency or clerk of court in the applicant's county of residence;
- (3) a criminal history report, certified by the law enforcement agency or clerk of court in the applicant's county of employment, if different from the county of residence;
- (4) complete and truthful explanations of affirmative responses to questions on the application regarding employment history, criminal history and military service, if applicable;
- (5) payment in full of all applicable fees, by check or money order;
- (6) a copy of the applicant's military discharge document (DD-214 or equivalent) if the applicant has actively served in the military since applying for his previously granted license;
- (7) a log, in a format specified by the Board, of Continuing Education hours earned during the previous license period, including the sponsor of the program or course, the name of the instructor or lecturer, the date, the number of hours and a brief description of the subject matter included in the course or program.

Authority G.S. 74F-6; 74F-10.

21 NCAC 29 .0702 DUE DATE

Applications for license renewal shall be submitted at least 90 days prior to the date of license expiration. Applications submitted after the due date but before the license expiration

date shall be subject to a late fee as specified in GS 74F-9. Applications shall be deemed submitted on the date of their postmark or upon receipt by staff at the Board's offices, whichever is earlier.

Authority G.S. 74F-6; 74F-9; 74F-10.

21 NCAC 29 .0703 REINSTATEMENT OF EXPIRED LICENSE

A former licensee may apply for reinstatement of an expired license only if he has completed at least eight contact-hours of continuing education within one year preceding the application. Applicants for reinstatement must pay license renewal, reinstatement and late fees in accordance with G.S. 74F-9 along with the application.

Authority G.S. 74F-6; 74F-9; 74F-10.

21 NCAC 29 .0704 ESTABLISHMENT OF MORAL AND ETHICAL CHARACTER

(a) The Board shall apply the same standards specified in Rule .0402 of this Chapter to determine each licensee's fitness for license renewal or reinstatement.

(b) Applicants must disclose all criminal convictions not included on previous applications for licensure. Failure to disclose any criminal conviction may be grounds for denial of license renewal or reinstatement.

(c) The Board may deny a request for license renewal or reinstatement when it determines that the applicant has violated the Code of Ethics in Section .0500 of this Chapter.

Authority G.S. 74F-6; 74F-7; 74F-10.

SECTION .0800 - CONTINUING EDUCATION

21 NCAC 29 .0801 DEFINITIONS

The following definition shall apply to the rules of this Section: "Contact Hour" means a minimum of 50 minutes of contact.

Authority G.S. 74F-6.

21 NCAC 29 .0802 REQUIREMENTS

(a) Every licensee shall obtain 24 contact hours during each three year renewal cycle, with the following exceptions:

- (1) Persons exempted from eight contact hours in Rule .0805 of this Section;
- (2) Persons applying for renewal of licenses which expire on or before June 30, 2006 shall have at least eight contact hours of continuing education;
- (3) Persons applying for renewal of licenses which expire between July 1, 2006 and June 30, 2007 shall have at least 16 contact hours of continuing education.

(b) The contact hours shall be in technical and professional subjects directly related to the practice of locksmithing.

(c) Licensees shall not carry forward any contact hours into the subsequent renewal period.

(d) Licensees shall verify completion of the contact hours for the previous license period with their application for license renewal.

Authority G.S. 74F-6.

21 NCAC 29 .0803 DETERMINATION OF CREDIT

(a) The Board has final authority with respect to approval of course sponsors, courses, programs and contact hours.

(b) The Board shall not pre-approve individual courses or programs. The Board may enter into agreements with course and program sponsors in which the sponsor agrees to offer courses and programs that comply with the subject matter requirements of this Section and agrees to maintain for a period of four years the records of course content and attendance, and agrees to permit a representative of the Board to monitor or review any course or program the sponsor offers to North Carolina Licensed Locksmiths for credit. Provided the sponsor complies with the sponsor agreement, the Board shall accept as presumptively valid contact hours earned by licensees from approved sponsors.

(c) Credit for teaching or instructing qualifying courses shall earn continuing education credit for the instructor at the same rate as for participants.

(d) Licensees may claim credit for contact hours for courses or programs that have not been presented by approved sponsors but only credit from approved sponsors shall be presumptively valid. The Board may audit the compliance of individual licensees and may require proof of participation in courses or programs that conform with the content and contact hour calculation contained in the Rules of this Section. Such proof shall be in the form of records maintained pursuant to Rule .0804 of this Section.

Authority G.S. 74F-6.

21 NCAC 29 .0804 RECORD KEEPING

The licensee shall maintain records to support credits claimed and supply such records to the Board upon request. The Board requires:

- (1) A log showing the type of activity claimed, sponsoring organization, location, duration, the name of the instructor or speaker and the contact hours earned; or
- (2) Attendance certificates or other evidence of participation; or
- (3) A transcript from an approved sponsor detailing the licensee's attendance.

Authority G.S. 74F-6.

21 NCAC 29 .0805 EXCEPTIONS

A licensee shall be exempt from the continuing education requirement for one calendar year per renewal cycle for any of the following reasons:

- (1) A licensee serving on temporary active duty in the armed forces of the United States for a period exceeding 120 consecutive days within the year.

(2) A licensee experiencing physical disability or illness if supporting documentation is approved by the Board. Such documentation shall be in the form of a statement from a physician, or medical records which show that the disability or illness prevented the licensee's participation in a course which the licensee had enrolled, or prevented the licensee's participation in the continuing education program for at least 120 consecutive days in a year.

Authority G.S. 74F-6.

21 NCAC 29 .0806 NON COMPLIANCE

If the Board disallows any credits claimed by an applicant, then the licensee shall have 90 calendar days after notification to substantiate the original claim or obtain other contact hours to meet the minimum requirements. Upon failure to meet this requirement, the applicant's license shall expire effective immediately.

Authority G.S. 74F-6.

TITLE 25 – OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to amend the rules cited as 25 NCAC 01D .1924-.1925, .1928-.1929, .1945 and repeal the rules cited as 25 NCAC 01D .1930, .1932-.1934, .1936, .1938-.1944, .1946-.1951.

Proposed Effective Date: January 1, 2005

Public Hearing:

Date: October 6, 2004

Time: 10:00 a.m.

Location: Third Floor Conference Room, Administration Building, 116 West Jones St., Raleigh, NC

Reason for Proposed Action: *The Fair Labor Standards Act was amended by Congress, which necessitated a change to the rules on Hours of Work and Overtime Compensation. We are proposing to repeal all rules that mirror the Federal statute since it is not necessary to repeat rules that are in the statutes. The only rules that remain are those specific to North Carolina state government employees.*

Procedure by which a person can object to the agency on a proposed rule: *Persons may object to these Rules by contacting Peggy Oliver at (919) 733-7108 or in writing at 1331 Mail Service Center, Raleigh, NC 27699-1331.*

Written comments may be submitted to: *Peggy Oliver, 1331 Mail Service Center, Raleigh, NC 27699-1331, phone (919) 733-7108, fax (919) 733-9750, and email peggy.oliver@ncmail.net.*

Comment period ends: November 15, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
- Local
- Substantive (≥\$3,000,000)
- None

CHAPTER 01 – OFFICE OF STATE PERSONNEL

SUBCHAPTER 01D – COMPENSATION

SECTION .1900 - HOURS OF WORK AND OVERTIME COMPENSATION

25 NCAC 01D .1924 STATE EMPLOYEES SUBJECT TO THE FAIR LABOR STANDARDS ACT

- (a) State government shall follow the provisions of the Fair Labor Standards Act.
- (b) The State Personnel Commission may, in addition, approve special provisions where work situations dictate a need.
- (c) Employees ~~must~~ shall be paid not less than ~~three dollars and thirty five cents (\$3.35) per hour~~ the Federal minimum wage. A review of all payrolls should be made to assure that all employees are receiving at least the statutorily required rate.

Authority G.S. 126-4.

25 NCAC 01D .1925 OVERTIME COMPENSATION

- (a) The payment of premium time and one-half rates in form of monetary compensation or time off is required for hours worked in excess of 40 within a work week, with exception of those considered exempt as ~~Executive, Administrative, or Professional employees by the Fair Labor Standards Act.~~
- (b) Agency heads and supervisors shall hold hours worked by the employee to the state's established 40-hour workweek standard except in those cases where excess hours of work are necessary because of weather conditions, necessary seasonal activity or emergencies. It shall be a responsibility of each agency or executive head to determine that the provisions of the state's policy on overtime pay are administered in the best interest of the state.
- (e) ~~Although each agency head is responsible for the manner in which overtime is authorized, it is equally important to control~~

~~unauthorized overtime. Unauthorized work shall be counted as hours worked if the employer should have stopped it but did not, or if the employer knows or has reason to know of this practice. Each agency is responsible for internal controls which will provide a means of reviewing and evaluating the use of overtime.~~

~~(4)(c)~~ (c) The practice of overtime work will be subject to review by the Office of State Personnel. Such review will take into consideration organizational structure, scheduling of work, position complement, and personnel classifications.

Authority G.S. 126-4.

25 NCAC 01D .1928 COMPENSATION – NON-EXEMPT

(a) The non-exempt employee shall receive straight-time pay for a standard 40-hour workweek, with the provision that an additional amount equal to time and one-half the employee's regular hourly rate multiplied by the number of hours worked in excess of 40 shall be added to the base pay. Such payment must be made in form of monetary compensation or compensable time off. It is the policy of the State of North Carolina, whenever possible, to give compensatory time off, in lieu of monetary compensation for hours worked in excess of 40 hours per work week. The decision as to whether to give compensatory time off, rather than monetary compensation, for overtime worked is solely within the discretion of management. Compensatory time off shall be scheduled by management, although reasonable effort shall be made to accommodate the employee as to such scheduling.

(b) An employee shall be given compensatory time off on the basis of one and one-half times the amount of time worked beyond 40 hours during a week. Compensatory time may be accumulated up to a maximum of 240 hours (160 hours straight time) and shall be taken within 12 months from the date the overtime is performed. If compensatory time off is not given by the end of the 12-month period, the overtime pay shall be included in the employee's next regular paycheck. Any overtime worked above this amount shall be paid in the employee's next regular paycheck. Overtime worked shall be recorded and compensated in units of one-tenth of an hour.

NOTE: The preceding provisions are not applicable to persons in law enforcement or fire protection activities and in residence employees.

(c) Prior to employment, each successful candidate for state employment in a position subject to hours of work and overtime pay standards must sign a form acknowledging that it has been explained to him that it is the state's policy to give time off in lieu of monetary compensation, wherever possible, for hours worked beyond 40 in a work week. Agreement to this is a condition of employment with the state; failure or refusal to sign such agreement will prevent employment of that person. This signed form shall be a part of the employee's personnel file; it must be kept for at least three years following that person's separation from state employment.

(d) Upon transfer to another agency or termination of employment, an employee shall be paid for unused compensatory time off at a rate of compensation not less than either the average regular rate received by such employee during

the last three years of the employee's employment or the final regular rate received by such employee, whichever is higher.

Authority G.S. 126-4.

25 NCAC 01D .1929 HOURLY RATE OF PAY

(a) The hourly rate of pay is the rate published by the Office of State Personnel and is obtained by dividing the annual salary by 2080 hours (52 weeks multiplied by 40 hours per week).

(b) The rate that must be used in computing overtime is referred to as the regular hourly rate. The regular hourly rate must include all remuneration for employment paid to, or on behalf of, the employee, except payments specifically excluded by the Act. ~~Payments that are not excluded and must be included in the hourly rate are:~~

- ~~(1) Shift Premium Pay;~~
- ~~(2) Longevity Pay;~~
- ~~(3) On Call Compensation.~~

~~These payments must be included in order to comply with the provisions of the Fair Labor Standards Act (FLSA).~~

~~(c) Longevity pay must be included in the regular rate when computing overtime. However, to avoid recomputations when overtime is due, the following procedure may be used: At the end of each calendar year, the total dollar amount of overtime paid is determined and this amount is multiplied by the percent of the employee's longevity pay rate.~~

~~(d) Overtime for an employee working in two positions with different rates of pay is paid at the average of the two rates of pay for each position.~~

Authority G.S. 126-4.

25 NCAC 01D .1930 NON-OVERTIME WORKWEEKS

~~When an employee works 40 hours or less during a workweek because of vacation, holidays, or sick leave, the regular weekly salary is paid in accordance with established personnel policies.~~

Authority G.S. 126-4.

25 NCAC 01D .1932 HOURS WORKED

~~Generally, all time during which an employee is required, suffered, or permitted to be on the employer's premises on duty or at a prescribed work place, except for meals or other periods when the employee is free from duty, is considered as hours worked. This is so even if the duties are pleasurable rather than burdensome and even if no productive work is actually performed. In the large majority of cases, the determination of an employee's working hours will be easily calculable under this formula and will include, in the ordinary case, all hours from the beginning of the work day to the end, with the exception of periods when the employee is relieved of all duties for the purpose of eating meals.~~

Authority G.S. 126-4.

25 NCAC 01D .1933 UNAUTHORIZED WORK

~~Hours worked by an employee without the employer's permission or contrary to instructions may or may not be~~

considered as hours worked. Unrecorded hours worked during a workweek by an employee at the job site or at home must be counted as hours worked if the employer knows or has reasons to know of such practice. The employer must enforce the no work rule and may not unjustly benefit from worked performed without knowledge of this Rule.

Authority G.S. 126-4.

25 NCAC 01D .1934 ON CALL

(a) Time spent by an employee who is required to remain on call on the employer's premises or so close thereto that the time cannot be used for the employee's own purposes is considered working time. Employees who are merely required to leave word as to where they may be reached are not on call in this sense.

(b) The fact that an employee lives on the employer's premises and is on call for 24 hours a day does not mean that the employee is entitled to pay for all those hours. Such an employee has regular duties to perform, but is subject to work at any time in the event of an emergency. Ordinarily, employees have a normal nights sleep, ample eating time and may, during certain periods, come and go as the employee pleases.

(c) An agreement should be reached with an employee in this category as to the extent of duty which will make clear the time that should be considered as hours not worked. As a rule, allowance for eight hours sleep and three hours for meal periods would be reasonable, plus any other hours that the employee may be free of unnecessary restrictions of use of the time.

Authority G.S. 126-4.

25 NCAC 01D .1936 MEAL PERIOD

A bona fide meal period is a span of at least 30 consecutive minutes (never less) during which an employee is completely relieved of duty and free to use the time for his own purposes. It is not counted as hours worked or paid time. Any so called "meal period" of less than 30 consecutive minutes must be paid as hours worked.

Authority G.S. 126-4.

25 NCAC 01D .1938 TRAINING TIME

Required attendance at training sessions, workshops and other meetings, whether before, during or after the employee's regular work schedule, is work time. Voluntary attendance at training sessions, workshops and other meetings is not work time. Attendance is voluntary only if the employee is not led to believe that working conditions or continued employment would be adversely affected by nonattendance.

Authority G.S. 126-4.

25 NCAC 01D .1939 TRAVEL TIME

(a) Whether travel time is considered as hours worked depends on the circumstances and should be determined on a case by case basis.

(b) Home to Work. An employee who travels from home before the regular workday and returns home at the end of the

workday is engaged in ordinary home to work travel which is a normal incident of employment. This is true whether the employee works at a fixed location or at different job sites. Normal travel from home to work is not work time.

(c) Home To Work On Special One Day Assignments in Another City. When an employee who regularly works at a fixed location in one city is given a special one day assignment in another city, such travel cannot be regarded as home to work travel.

(d) Travel That Is All In The Day's Work. Time spent by an employee in travel as part of the employee's principal activity, such as travel from job site to job site during the workday, must be counted as hours worked. When an employee is required to report at the employer's premises, or at a meeting place, to receive instructions or to perform other work there, the travel time from this designated place to the work place is part of the day's work and must be counted as hours worked.

(e) Travel Away From Home Community. Travel that keeps an employee away from home overnight is travel away from home. Travel time away from home community is work time when it cuts across the employee's regular scheduled workdays. The time is not only hours worked on regular working days during normal working hours but also during the corresponding hours on nonworking days. Therefore, if an employee regularly works from 8:30 a.m. to 5:30 p.m., from Monday through Friday, the travel time during these hours is work time on Saturday and Sunday as well as on the other days. Regular meal period time is not counted. That time spent in travel away from home outside of regular working hours (8:30-5:30) as a passenger on airplane, train, bus, or automobile is not considered as work time.

(f) Administrative, Executive, and Professional employees may be granted hour for hour time off as a result of travel in accordance with the agency leave policy.

Authority G.S. 126-4.

25 NCAC 01D .1940 RECORDKEEPING

Records of hours worked and wages paid are required to be kept for each employee subject to this policy. Records must be preserved for at least three years. Each agency head is responsible for making available the following information for review by Federal and State auditors and the Office of State Personnel:

- (1) Name;
- (2) Home address;
- (3) Date of birth, if under 19;
- (4) Sex and position classification in which employed (sex may be indicated by use of prefixes Mr., Mrs. or Ms.);
- (5) Time and day of week the workweek or work period begins;
- (6) Total wages paid each pay period;
- (7) Date of payment and pay period covered;
- (8) Basis on which wages are paid [such four dollars (\$4.00) hr., three hundred dollars (\$300) wk., or nine hundred fifty dollars (\$950) a month];

- (9) Regular hourly rate of pay for any work week or work period in which overtime is worked;
- (10) Amount and nature of each payment excluded from regular rate;
- (11) Hours worked each workday and total hours worked each workweek or work period;
- (12) Total daily or weekly straight-time earnings or wages;
- (13) Total overtime earnings for the workweek;
- (14) Total additions to or deductions from wages paid each pay period plus the dates, amounts and nature of the items which make up the total additions and deductions;
- (15) Compensatory time accrued, used or paid.

Authority G.S. 126-4.

25 NCAC 01D .1941 EXECUTIVE: ADMINISTRATIVE AND PROFESSIONAL EMPLOYEES
 The exempt or non-exempt status of any particular employee must be determined on the basis of whether duties, responsibilities and salary meet the requirements for exemption. The employee's title or classification is of no significance in determining whether the criteria for exemption under the executive, professional or administrative exemptions are met. It shall be the responsibility of the agency head to decide whether the exemption is applicable to particular employees. The Office of State Personnel shall review, for each state agency and university, a list of the exempt and non-exempt employees by name and classification title and make recommendations to the agency head for any changes to that list. However, the agency head has the final decision as to the exempt or non-exempt status of any employee or position in that particular agency.

Authority G.S. 126-4.

25 NCAC 01D .1942 EXECUTIVE EMPLOYEES
 Following is an outline of the terms and conditions to be followed in determining those employees exempt from this Section under the Executive exemption.

- (1) An employee is exempt as an executive, if these conditions are met:
 - (a) His primary duty is managing or directing operation of an agency, institution or school, or a customarily recognized department or subdivision thereof;
 - (b) He customarily and regularly directs the work of two or more full time employees, if equal to 80 hours total;
 - (c) He has authority to hire and fire, or suggestions on hiring, firing, promotions, or changes of employees status carry particular weight;
 - (d) He customarily and regularly exercises discretionary powers in carrying out the position responsibilities;

- (c) He does not devote more than 20 percent of the hours worked during a workweek in non-exempt work;
- (f) He is paid on salary or fee basis of at least one hundred fifty five dollars (\$155) a week, exclusive of board, lodging, or other purposes.

Exception: An executive employee who is paid at least two hundred fifty dollars (\$250) a week thirteen thousand dollars (\$13,000) annual rate on a salary or fee basis and who meets the first two conditions above is exempt. The percentage tests set out in Paragraph (10) for non-exempt work do not apply to such employees.

All these conditions must be met in order for the exemption to be granted; if any one of the conditions is not met, the exemption must fail.

- (2) Primary Duty and Management — The executive exemption requires that the primary duty of an employee or position exempted as executive must be management.
- (3) Managerial duties take into consideration the frequency of the employee's use of discretion and relative freedom from supervision. This rule does not define management. However, these functions come within the scope of management: Interviewing, selecting and training of employees; setting and adjusting rates of pay and hours of work; directing work; maintaining production records for use in supervision or control; appraising productivity and efficiency for recommending promotions or other changes in status; handling complaints, disciplining employees; planning work; determining work techniques; controlling the flow and distribution of materials and supplies, and providing for the safety of workers and property.
- (4) If the executive employee is in charge of a division, rather than of the entire department, the division must be formally established, not simply a group of employees assigned to a job. Usually, the division has a specific title, like Shipping Division or Accounting Division.
- (5) Supervision of Other Workers — An executive employee must direct the work of two or more employees, that is, the employee must direct at least two full-time workers or the equivalent. For example, the test would be met if the employee directs:
 - (a) one full-time and two part-time workers, if total is 80 hours, one of whom works mornings and the other afternoons; or,
 - (b) four part-time workers, two of whom work mornings and the others afternoons, if the total hours worked for all four positions is 80 hours or more. The workers who are supervised must be employed in the

- department or sub-division that the executive employee is managing.
- (6) ~~An executive employee must be directly concerned either with the hiring or the firing and other change of status of the employees under the employee's supervision, whether by direct action or by recommendation to those delegated to hire and fire.~~
- (7) ~~Use of Discretion The policy requires that an executive employee customarily and regularly exercises discretionary powers. "Customarily and regularly" is interpreted to mean a frequency that must be greater than occasional, but may be less than constant. The requirement is met by the employee who normally and recurrently is called upon to use and does use discretion in the day to day performance of duties. Of course, an employee whose work is so routine that there is no discretion does not qualify for the executive exemption.~~
- (8) ~~Salary Requirement Salaries paid monthly or semi monthly which are equivalent to one hundred fifty five dollars (\$155) a week three hundred ten dollars [(\$310) bi weekly, three hundred thirty five dollars and eighty three cents (\$335.83) semi monthly, or six hundred seventy one dollars and sixty seven cents (\$671.67) monthly] are within the requirement. However, the shortest period of payment which will meet the requirement of pay on a salary basis is a week. Employees paid by the hour are not included in this exemption regardless of the fact that the amount paid them weekly far exceeds one hundred fifty five dollars (\$155); they are not paid on a salary basis. But a guarantee of one hundred fifty five dollars (\$155) a week in any week in which any work is performed will meet the salary requirement even though additional wages are paid on an hourly basis.~~
- (9) ~~Salary Basis Executive employees have to be paid on a salary basis to be exempt. The meaning of salary basis is most important. Salary basis means that an employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the compensation and the amount is not subject to reduction because of variations in the number of hours worked in the workweek or in the quality or quantity of the work performed.~~
- (10) ~~Non exempt Work/Percentage Rule If an employee with executive duties works for more than 20 percent of the workweek on non exempt work the exemption fails.~~
- (11) ~~Work which tends to destroy the executive exemption is work which does not contribute to the executive's supervisory status, regardless~~
- of whether the same type of work is done by employees under their supervision or by other employees of the employer. For example, in an operation not large enough to employ a timekeeper or in which the timekeeping function has been decentralized, the supervisor of each department can keep basic time records of the supervisor's subordinates and count the work as exempt. However, the preparation of the payroll by a supervisor even of the employees under the employee's supervision would be non exempt work. The reason for this is that the preparation of a payroll does not aid in the supervision of employees or the management of the department.
- (12) ~~The mere fact that certain work may be too difficult to be performed by anyone in the department other than the employee who heads the department does not prevent work from being non exempt. Regardless of importance or degree of difficulty, if work is not part of the supervisory duties and does not directly affect the continued operation of the department it must be counted as non exempt work.~~
- (13) ~~An executive employee may perform non exempt duties for the purpose of instructing new employees without losing the exemption. Such work is considered a part of the supervisory duties and is exempt. But if the employee performs non exempt duties to fill in time between supervisory duties or to assist other employees, such work is non exempt and subject to the percentage limitation set out above.~~
- (14) ~~Emergencies If an executive employee does non exempt work during an emergency, this particular work does not have to be counted in computing the percent limit on non exempt work.~~
- (a) ~~Example 1: The occasional performance of repair work in case of a breakdown of machinery can be considered exempt work if the breakdown is one that the employer cannot reasonably anticipate.~~
- (b) ~~Example 2: Relieving subordinates during rest or vacation periods cannot be considered exempt emergency work since the need for replacements can be anticipated.~~
- (15) ~~Exceptions The 20 percent limit on non exempt work does not apply to executive employees in sole charge of an independent establishment or a physically separated branch establishment. The term independent establishment has to be given full weight. The establishment must have a fixed location and~~

must be geographically separated from other company property. The management of operations within one or among several buildings located on a single or adjoining tracts of company property does not qualify for the executive exemption. In the case of a branch, there must be a true and complete physical separation from the main office.

Authority G.S. 126-4.

25 NCAC 01D .1943 ADMINISTRATIVE EMPLOYEES

(a) An employee is exempt as an administrative employee, if all of these conditions are met:

- (1) primary duty consists of performing office or non manual work directly related to management policies or general business operations of agency, institution, school, or any department or sub division thereof;
- (2) customarily and regularly exercises discretion and independent judgement, as distinguished from using skills or following procedures;
- (3) regularly and directly assists an agency head, or an executive, administrative, or professional employee, or performs under only general supervision work along specialized and technical lines requiring special training, experience or knowledge, or in the performance of functions in administration of a school system or educational institution in work directly related to academic instruction or training;
- (4) does not devote more than 20 percent of the hours worked during a workweek in non-exempt work;
- (5) is paid on salary or fee basis of at least one hundred fifty five dollars (\$155) a week, exclusive of board, lodging, or other purposes.

Exception: An administrative employee who is paid on salary or fee basis of at least two hundred fifty dollars (\$250) a week [thirteen thousand (\$13,000) dollars annual rate] and who meets first two conditions above is exempt. The percentage tests for non-exempt work do not apply.

(b) Types of Administrative Employees — There are three types of employees who are exempt as administrative employees if they meet all the other conditions. These employees are:

- (1) Executive and administrative assistants. This first type is the assistant to a proprietor or to an executive or administrative employee. Typical of this group are executive assistant to the president, confidential assistant, executive secretary, assistant to the general manager, and administrative assistant. These assistants are usually found in large establishments where the official assisted has so many duties that some must be delegated.
- (2) Staff employees. Employees in the second group are staff rather than line employees

(functional, rather than departmental heads). They include employees who act as advisory specialists to the management. Examples are tax experts, insurance experts, research experts, wage rate analysts, investment consultants, foreign exchange consultants, and statisticians. Also included are those in charge of a so called functional department that may frequently be a one person department. Examples are purchasing agents, buyers, safety directors, and personnel directors.

- (3) Special assignment employees. The third group consists of persons who perform special assignments. Among them are persons who work away from their employer's place of business. Examples are traveling auditors, buyers, and traveling inventory employees. The group also includes employees whose special assignments are performed entirely or partly inside their employer's place of business.

(c) Employees possibly qualifying for the administrative employee exemption have extremely diverse functions and a wide variety of titles. A title alone is of little or no assistance in determining an employee's exempt or non-exempt status. The status of the employee should be determined on the basis of whether duties, responsibilities and salary meet all the requirements of the rules.

(d) Primary Duty — To qualify for exemption as an administrative employee, an employee must have as a primary duty office or non manual work directly related to management policies or general business operations of the employer or the employer's programs. This condition is met only by employees who participate in the formulation of management policies or in the operation of the business as a whole — it is also met by employees whose work affects policy or who execute policy and by employees whose work affects business operations to a substantial degree even though their assignments are only for a particular segment of the business.

(e) Discretion and Independent Judgement — These terms are interpreted to mean the authority to make an independent choice, free from immediate supervision, in significant matters. They should not be confused with the use of skill in applying techniques, procedures, or specific standards.

- (1) Example 1: Inspectors normally do specialized work along standardized lines involving well established techniques and procedures that may have been catalogued and described in manuals or other sources. These inspectors use skill rather than discretion and judgement.
- (2) Example 2: A shipping clerk is normally permitted to decide the method of packing and the mode of shipment of small orders, and a bookkeeper may usually decide whether the employee will post first to one ledger rather than another. These decisions do not deal with significant matters.

(f) Decisions by an employee need not have a finality that goes with unlimited authority and a complete absence of review. It is acceptable for the decisions to consist of recommendations for action or to be subject to review.

(g) ~~Salary Requirement~~—The one hundred fifty five dollars (\$155) weekly salary requirement for administrative exemption is met if the employee is compensated bi-weekly on a salary basis of three hundred ten dollars (\$310), semi-monthly on a salary basis of three hundred thirty five dollars and eighty three cents (\$335.83) or monthly on a salary basis of six hundred seventy one dollars and sixty seven cents (\$671.67).

(h) ~~Non exempt Work/Percentage Rule~~—If an employee with some administrative duties works for more than 20 percent of the workweek on non exempt work, the exemption fails.

Authority G.S. 126-4.

25 NCAC 01D .1944 PROFESSIONAL EMPLOYEES

(a) ~~An employee is exempt as a professional employee, if these conditions are met:~~

- (1) ~~The primary duty must consist of performance of: work requiring knowledge of an advanced type in the field of science or learning, customarily acquired by prolonged specialized instructions and study, as distinguished from general academic education (such as doctors, lawyers, engineers, chemists, nurses, etc.); or work that is creative and original (such artists, writers, architects, designers, musicians, actors, certain radio and television announcers, etc.); or activities of imparting knowledge such as teaching, tutoring, instructing, lecturing, etc.;~~
- (2) ~~work requires the consistent exercise of discretion and judgement in its performance;~~
- (3) ~~does not devote more than 20 percent of hours worked during workweek in performance of duties which are not an essential part of and necessarily incident to work described in (a)(1) of this Rule;~~
- (4) ~~is paid on salary or fee basis of not less than one hundred seventy dollars (\$170) a week. (This salary or fee requirement does not apply to an employee who is the holder of valid license or certificate permitting practice of law or medicine, or in the case of interns or resident physicians, or employees employed and engaged as teachers in activities referred to in (a)(1) in this Rule).~~

Exception: ~~An employee employed in a bona fide professional capacity under above terms who is paid salary or fee of at least two hundred fifty dollars (\$250) a week thirteen thousand dollars (\$13,000) annual rate is exempt. The percentage test for non-exempt work does not apply to such an employee.~~

(b) ~~Learned Professions~~—The learned professions are described as those requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study. These points should be noted:

(1) ~~The knowledge has to be a type that must be attained at least at or above the collegiate level.~~

(2) ~~The word customarily implies that in the vast majority of cases, specific academic training is necessary for entrance into the profession. However, the exemption is available to employees who have gained their knowledge by home study and experience such as lawyers who have not gone to law school.~~

(3) ~~The exemption does not apply to entire occupational groups regardless of the specific duties of the particular individual. For example, exemption of accountants must be determined on the basis of the individual accountant's duties and other qualifications.~~

(e) ~~Artistic Professions~~—The requirements for the artistic type of professional work are that the work has to be original and creative in character in a recognized artistic field and the result of which must depend primarily on the invention, imagination, or talent of the employee. This exemption includes such fields as music, writing, the theater, and the plastic and graphic arts. In addition, the requirements of (a)(2) through (4) must also be met.

Authority G.S. 126-4.

25 NCAC 01D .1945 SPECIAL PROVISIONS

(a) ~~Child Labor:~~

(1) ~~Age limitations shall be in accordance with 25 NCAC 01H .0605(a)(c).~~

(2) ~~Exceptions to the 18 year age limitation shall conform to the Federal child labor standards.~~

(b)(a) ~~Agricultural Workers:~~

(1) Hours worked by agricultural workers may be averaged over a 12-month period. The number of hours worked shall not exceed 2,080 hours. Upon leaving state service, an agricultural worker shall be paid for any accumulated overtime.

(2) Agricultural workers are defined as workers who cultivate the soil or grow or harvest crops, engage in dairying, or who raise livestock, bees or poultry, or perform closely related research.

(e)(b) ~~Student Workers:~~ A student shall be considered an employee subject to the State Personnel Act only if the student-employee is employed by the institution on a full-time permanent basis (as defined by rules of the State Personnel Commission) in a permanent position established and governed pursuant to requirements of the State Personnel Commission.

(d)(c) ~~In-Resident Employment:~~

(1) In-Resident employment includes employees such as Cottage Parents and Dormitory Directors who reside on the employer's premises, or who are usually on duty or subject to call at all times except when the facility is closed. It is necessary that these employees be required to work irregular

schedules. The employing agency shall arrive at an agreement with the employee as to what constitutes the normal number of hours worked during a given workweek, taking into consideration the time that the employee engages in private pursuits such as eating, sleeping, entertaining and the time they are able to be away from the facility for personal reasons. The following basis of pay may be adopted for employees in such categories:

- (2) Salary - The annual salary and monthly salary rates of an employee shall be established under current personnel policy. With the employee's agreement, this salary is to represent the employee's straight-time pay for the agreed upon normal number hours on duty per week.
- (3) Overtime Compensation - It is anticipated that weekly schedules will fluctuate. When it is necessary to work in excess of the agreed upon workweek hours, the employees will be paid time and one-half the hourly rate for all hours worked in excess of the normal workweek.

~~(e)~~(d) Registered Nurses:

- (1) When possible, the compensation shall be in the form of time off. When the employee normally has 24 hours responsibility, (as in the case of some supervisors and most directors), overtime compensation provisions shall not be applicable.
- (2) Where an employee is assigned duties at a lower classification level; the base rate of pay may not exceed the maximum rate of the lower level assignment.

~~(f)~~ Law Enforcement Activities:

- ~~(1) The requirements for law enforcement activities are outlined in the Fair Labor Standards Act, Code of Federal Regulations, Title 29, Part 553.200-553.233.~~
- ~~(2) Under Section 7(k) of the Act, agencies may choose to pay law enforcement personnel overtime compensation in work periods of 28 consecutive days after 171 hours of work.~~

Authority G.S. 126-4.

25 NCAC 01D .1946 OT/COMP TIME OFF OPT/LAW ENF: FIRE PROT/EMGCY RESP PERS

The following provisions are applicable only to agencies who employ persons in nonexempt law enforcement/fire protection/emergency response positions. Such agencies may, by letter to the State Personnel Director, choose to utilize the following overtime compensation provisions in lieu of the customary overtime compensation provisions elsewhere in this Section:

- ~~(1) Under these provisions, nonexempt persons in law enforcement positions who work more than 171 hours (or 212 hours for nonexempt persons in fire protection or emergency response positions) in a 28 consecutive day~~

~~work period may be given compensatory time off in lieu of cash payment for those overtime hours worked.~~

- ~~(2) Compensatory time off earned must be used no later than 180 days from the date the compensatory time off was earned.~~
- ~~(3) Compensatory time off earned, but not used within 180 days from its being earned must be paid for in cash in the first pay period following the expiration of the 180 days.~~
- ~~(4) Overtime earned under these provisions must be compensated at the rate of one and one half time the regular hourly rate or one and one half hours of compensatory time off for each hour of overtime earned.~~
- ~~(5) If an employee under these provisions has a positive balance of earned compensatory time off and is promoted to an exempt position, the accumulation of earned compensatory time off must be paid in cash before the employee goes into the exempt position.~~
- ~~(6) Employees cannot accumulate more than 320 overtime hours (480 straight time hours). Any overtime earned in excess of 320 hours must be paid in cash as earned.~~

Authority G.S. 126-4.

25 NCAC 01D .1947 TOUR OF DUTY AND COMPENSABLE HOURS OF WORK

~~The term "tour of duty" is a unique concept applicable only to employees in law enforcement and fire protection activities. This term means the period of time during which an employee is considered to be on duty for purposes of determining compensable hours. It may be a scheduled or unscheduled period. Scheduled periods also include time spent in work outside the "shift" which the public agency employer assigns to the employee. Unscheduled periods include time spent in court by officers, time spent handling emergency situations and time spent working after a shift to complete an assignment. Such time must be included in the compensable tour of duty even though the specific work performed may not have been assigned in advance. The tour of duty does not include time spent working on an occasional or sporadic and part time basis in a different capacity from the regular work. Neither does it include time spent substituting for other employees by mutual agreement. The tour of duty also does not include time spent in volunteer law enforcement and fire protection activities performed for a different jurisdiction.~~

Authority G.S. 126-4.

25 NCAC 01D .1948 OCCASIONAL OR SPORADIC EMPLOYMENT//DIFFERENT CAPACITY

~~(a) Where employees, solely at their option, work occasionally or sporadically on a part time basis for the same public agency in a different capacity from their regular employment, the hours worked in the different jobs shall not be combined for the~~

purpose of determining overtime compensation under this Section.

(b) ~~"Occasional or Sporadic"~~—The term "occasional or sporadic" means infrequent, irregular or occurring in scattered instances. There may be an occasional need for additional resources in the delivery of certain types of services which is at times best met by the part-time employment of an individual who is already employed by the state. Where employees freely and solely at their own option enter into such activity, the total hours worked will not be combined for purposes of determining any overtime compensation due on the regular, primary job. However, in order to prevent overtime abuse, such hours worked are to be excluded from computing overtime compensation due only where the occasional or sporadic assignments are not within the same general occupational category as the employee's regular work.

(c) ~~In order for hours of such work not to be combined with hours worked on the primary, regular job, the employee's decision to work in a different capacity must be made freely and without coercion. The employee's decision to perform such work will be considered to have been made at his sole option when it has been made without fear of reprisal or promise of reward.~~

(d) Typically, recreation and park facilities, university athletic facilities or other public events may need to utilize employees in occasional or sporadic work. Employment in such activity may be considered occasional or sporadic for regular state employees even when the need for such work can be anticipated because it recurs seasonally (the State Fair, for example).

(e) ~~In order to be "occasional or sporadic" it is essential that the character of the activity be intermittent and irregular, rather than continuous or regular.~~

(f) ~~In order for employment in these occasional or sporadic activities not be considered subject to the overtime provisions of this Section, the regular state employment of the individual must also be in a different capacity; that is, it must not fall within the same general occupational category.~~

Authority G.S. 126-4.

25 NCAC 01D .1949 SUBSTITUTION

(a) ~~Two persons employed by the same agency may agree, solely at their option and with the approval of the agency, to substitute for one another during scheduled work hours in performance of work in the same capacity. The hours worked in a substituting capacity shall be excluded from the calculation of hours for which the substituting employee is entitled to overtime compensation under this policy. This provision will apply only if the employees' decisions to substitute for one another are made freely and without coercion, direct or implied. An agency may suggest that an employee substitute or "trade time" with another employee working in the same capacity during regularly scheduled hours, but each employee must be free to refuse to perform such work without sanction, and without being required~~

~~to explain or justify that decision. Such a decision will be considered voluntary when it has been made without fear of reprisal or promise of reward and for the employee's convenience, rather than the convenience of the agency's operations.~~

(b) ~~Agencies whose employees engage in substitute work under this provision are not required to keep a record of the hours of the substitute work. However, it is strongly recommended that records of this type of arrangement be kept as a matter of good personnel practice. There is also no limit on the period of time during which hours worked may be traded or paid back among employees. Any agreement between employees to substitute for one another at their own option must be approved by the agency; this approval must be prior to the substitution and the agency must know what work is being done, who is doing the work, and when and where the work is being done. The type of approval (formal, informal, oral, written or otherwise) is left to the decision of the agency.~~

Authority G.S. 126-4.

25 NCAC 01D .1950 VOLUNTEERS

(a) ~~Volunteer work does not create an employer-employee relationship so as require coverage under wage and hour and overtime compensation standards. This rule is intended to provide guidance to agencies in determining whether service performed is voluntary, and thus exempt from treatment under this Section.~~

(b) ~~A volunteer is one who performs hours of service for a state agency for civic, charitable or humanitarian reasons without promise or expectation of compensation for services provided. Service provided by a volunteer is not subject to the provisions of this Section. However, an individual shall not be considered a volunteer if the person is otherwise employed by the same agency to perform the same type of services as those for which the person proposes to volunteer. Volunteers may receive expenses, reasonable benefits, a nominal fee or any combination thereof without losing their status as volunteers.~~

Authority G.S. 126-4.

25 NCAC 01D .1951 OVERTIME COMPENSATION PROHIBITED: EXEMPT EMPLOYEES

~~No employee whose position is designated as exempt from overtime compensation provisions of this Section shall be paid in any way for hours worked in excess of 40 in a work week except as noted in 25 NCAC 01D.1945. This Rule shall not be construed to prohibit any agency from adopting and using a compensatory leave ("comp time") policy for executive, administrative or professional employees in accordance with 25 NCAC 01E .1006.~~

Authority G.S. 126-4(5), (10).

Note from the Codifier: The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th day.

This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: NC Marine Fisheries Commission

Rule Citation: 15A NCAC 03M .0503

Effective Date: September 1, 2004

Date Approved by the Rules Review Commission: August 19, 2004

Reason for Action: Based on the 2004 stock assessment, the southern flounder stock is overfished. The Southern Flounder Fishery Management Plan (FMP) is scheduled for final adoption by the Marine Fisheries Commission by December 2004. Therefore, permanent rules based on the FMP would be effective no sooner than mid-2005, which is after the fall 2004 southern flounder fishing season. Proclamation authority is proposed in the temporary rule to allow the Fisheries Director to implement provisional management measures to ensure the sustainability of the southern flounder resource in North Carolina until the Southern Flounder FMP is effective. The proclamation authority would provide the Director the ability to impose harvest limits, seasons, and area restrictions to prevent further deterioration of the stock.

CHAPTER 03 – MARINE FISHERIES

SUBCHAPTER 03M – FINFISH

SECTION .0500 - OTHER FINFISH

15A NCAC 03M .0503 FLOUNDER

(a) It is unlawful to possess ~~flounder~~ flounder less than 14 inches total length taken from the Atlantic Ocean in a commercial fishing operation.

- (1) ~~Less than 13 inches total length taken from internal waters;~~
- (2) ~~Less than 14 inches total length taken from the Atlantic Ocean in a commercial fishing operation;~~
- (3) ~~Less than 15 inches total length taken from the Atlantic Ocean for recreational purposes.~~

(b) From October 1 through April 30, it shall be unlawful to use a trawl in the Atlantic Ocean within three miles of the ocean beach from the North Carolina/Virginia state line (35° 33'N) to Cape Lookout (34° 36'N) unless each trawl has a mesh length of 5 1/2 inches or larger diamond mesh (stretched) or 6 inches or larger square mesh (stretched) applied throughout the body, extension(s) and the cod end (tailbag) of the net except as provided in Paragraphs ~~(h)(g)~~ and ~~(i)(h)~~ of this Rule.

(c) License to Land Flounder from the Atlantic Ocean:

- (1) It is unlawful to land more than 100 pounds per trip of flounder taken from the Atlantic Ocean unless the owner of the vessel or in the case of Land or Sell Licenses, the responsible party, has been issued a License to Land Flounder from the Atlantic Ocean and the vessel in use is the vessel specified on the License to Land Flounder from the Atlantic Ocean.
- (2) It is unlawful for a fish dealer to purchase or offload more than 100 pounds of flounder taken from the Atlantic Ocean by a vessel whose owner, or in the case of Land or Sell Licenses, the responsible party, has not first procured a valid North Carolina License to Land Flounder from the Atlantic Ocean and the vessel in use is the vessel specified on the License to Land Flounder from the Atlantic Ocean.
- (3) It is unlawful for any person to land flounder from the Atlantic Ocean under a License to Land Flounder from the Atlantic Ocean unless that person is the holder of the license or the master designated on the license.
- (4) It is unlawful for any individual to land flounder from the Atlantic Ocean without having ready at hand for inspection a valid License to Land Flounder from the Atlantic Ocean, except as specified in Subparagraph (c)(1) of this Rule.

(d) All fish dealer transactions in flounder landed from the Atlantic Ocean must be conducted in accordance with the Atlantic Ocean Flounder Dealer Permits in 15A NCAC 03O .0503 and related rules in 15A NCAC 03O .0500.

(e) It is unlawful to transfer flounder taken from the Atlantic Ocean from one vessel to another.

~~(f) It is unlawful to possess more than eight flounder per person per day taken for recreational purposes from the Atlantic Ocean.~~

~~(g)(f)~~ Tailbag liners of any mesh size, the multiple use of two or more cod ends, or other netting material that in any way could restrict the legal size mesh shall not be used or possessed on the deck of a vessel in the Atlantic Ocean from October 1 through April 30 from the North Carolina/Virginia state line (36° 33'N) to Cape Lookout (34° 36'N).

~~(h)(g)~~ Trawls with a cod end mesh size smaller than described in Paragraph (b) of this Rule may be used or possessed on the deck of a vessel provided not more than 100 pounds of flounder per trip from May 1 through October 31 or more than 200 pounds from November 1 through April 30 is possessed aboard or landed from that vessel.

~~(i)(h)~~ Flynets are exempt from the flounder trawl mesh requirements if they meet the following definition:

- (1) The net has large mesh in the wings that measure 8 inches to 64 inches;
- (2) The first body section (belly) of the net has 35 or more meshes that are at least 8 inches; and
- (3) The mesh decreases in size throughout the body of the net to as small as 2 inches or smaller towards the terminus of the net.

Eff. January 1, 1991;
Amended Eff. March 1, 1996; February 1, 1992;
Temporary Amendment Eff. November 1, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Temporary Amendment Eff. December 23, 1996;
Amended Eff. April 1, 1997;
Temporary Amendment Eff. June 1, 1998; August 18, 1997;
Amended Eff. April 1, 1999;
Temporary Amendment Eff. May 1, 2000; July 1, 1999;
Amended Eff. April 1, 2001; August 1, 2000;
Temporary Amendment Eff. September 1, 2004.

~~(i)~~ Commercial Season.

- (1) The North Carolina season for landing ocean-caught flounder shall open January 1 each year. If 70 percent of the quota allocated to North Carolina in accordance with the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Fishery Management Plan for Summer Flounder is projected to be taken, the Fisheries Director shall, by proclamation, close North Carolina ports to landing of flounder taken from the ocean.
- (2) The season for landing flounder taken in the Atlantic Ocean shall reopen November 1 if any of the quota allocated to North Carolina in accordance with the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Fishery Management Plan for Summer Flounder remains. If after reopening, 100 percent of the quota allocated to North Carolina in accordance with the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Fishery Management Plan for Summer Flounder is projected to be taken prior to the end of the calendar year, the Fisheries Director shall, by proclamation, close North Carolina ports to landing of flounder taken from the ocean.
- (3) During any closed season prior to November 1, vessels may land up to 100 pounds of flounder per trip taken from the Atlantic Ocean.

~~(j)~~ The Fisheries Director may, by proclamation, establish trip limits for the taking of flounder from the Atlantic Ocean to assure that the individual state quota allocated to North Carolina in the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Fishery Management Plan for Summer Flounder is not exceeded.

(k) The Fisheries Director may, by proclamation, based on variability in environmental and local stock conditions, take any or all of the following actions in the flounder fishery:

- (1) Specify size;
- (2) Specify season;
- (3) Specify area;
- (4) Specify quantity;
- (5) Specify means/methods; and
- (6) Require submission of statistical and biological data.

History Note: Authority G.S. 113-134; 113-169.5; 113-182; 113-221; 143B-289.52;

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 50 - BOARD OF EXAMINERS OF PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS

Rule-making Agency: *State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors*

Rule Citation: *21 NCAC 50 .0306*

Effective Date: *August 31, 2004*

Date Approved by the Rules Review Commission: *August 19, 2004*

Reason for Action: *The Board proposes to amend this Rule to delay until April 1, 2005 (now July 1, 2004) the requirement that new applicants for Limited Fire Sprinkler Maintenance license obtain both 2000 hours experience and 18 hours classroom instruction, so as to continue to issue license based on 4000 hours experience. The reason for the proposed delay is that the private sector has been unable to generate and make available the classes and coursework contemplated by the present rule, which took effect January 1, 2004. At the time of public hearing and adoption of the permanent rule which created the July 1, 2004 change in license prerequisites, the Board, private industry and trade associations expected the coursework to become available prior to the July 1, 2004 deadline. In the absence of available coursework, the effect of the rule is to require denial of all applications for Limited Fire Sprinkler Maintenance license, an unintended and surprising consequence no within the control of the Board.*

SECTION .0300 – EXAMINATIONS

21 NCAC 50 .0306 APPLICATIONS: ISSUANCE OF LICENSE

- (a) All applicants for examinations shall file an application in the Board office on a form provided by the Board.
- (b) Applicants for each plumbing or heating examination shall present evidence at the time of application on forms provided by the Board to establish the equivalent of two years on-site full-time experience in the design and installation of plumbing or heating systems related to the category for which license is

sought, whether or not license was required for the work performed. One year of experience in the design or installation of fuel piping is required for fuel piping license. Practical experience shall directly involve plumbing, heating or fuel piping and may include work as a field superintendent, project manager, journeyman, mechanic or plant stationary operator directly involved in the installation, maintenance, service or repair of such systems. Service, maintenance or repair activity work as a local government inspector of plumbing or heating systems while qualified by the Code Officials Qualification Board, work as a field representative of this Board or work by a graduate of an ABET accredited engineering or engineering technology program with direct on-site involvement with plumbing or heating system construction, construction supervision, plant engineering or operation may be used as evidence of one-half the practical experience required; provided that Board members and employees may not sit for examination during their tenure with the Board. After review, the Board may request additional evidence. No more than one-half the experience may be in academic or technical training, maintenance service or repair directly related to the field of endeavor for which examination is requested. The Board shall pro rate experience which involves the kind of work set out above less than 40 hours per week or part-time academic work of less than 15 semester or quarter hours.

(c) The Board shall issue a license certificate bearing the license number assigned to the qualifying individual.

(d) Fire Sprinkler contractors in the unlimited classification shall meet experience requirements in accordance with NICET examination criteria.

(e) Applicants for licensure in the Limited Fire Sprinkler Inspection Technician classification shall submit evidence adequate to establish that the applicant has either:

- (1) 4000 hours experience involved in inspection and testing of previously installed fire sprinkler systems, consistent with NFPA-25, as a full-time employee of an Unlimited Fire Sprinkler Contractor or fire insurance underwriting organization; or
- (2) 4000 hours experience involved in inspection and testing of previously installed fire sprinkler systems, consistent with NFPA-25 as a full time employee of a hospital, manufacturing, government or university facility which provides training consistent with NFPA-25 in fire sprinkler inspections by a

recognized fire sprinkler organization or institution of higher education with fire suppression curriculum.

(f) Applicants for licensure in the Limited Fire Sprinkler Inspection Contractor classification must submit evidence adequate to establish that the applicant was engaged in business in North Carolina as an independent fire sprinkler inspection company full-time, during three of the five years immediately preceding December 31, 2003, or held license as an unlimited fire sprinkler contractor from this board and was actively and regularly engaged in carrying out fire sprinkler system inspections in North Carolina.

(g) Applicants for licensure in the Limited Fire Sprinkler Maintenance classification prior to April 1, 2005 ~~July 1, 2004~~, must submit evidence of 4000 hours experience as a full-time maintenance employee in facility maintenance with exposure to periodic maintenance of fire protection systems consisting of minor repairs, replacing activated or damaged sprinklers, lubricating control valves, and resetting dry pipe valves. Applicants for initial licensure in the Limited Fire Sprinkler Maintenance classification after April 1, 2005 ~~July 1, 2004~~, must submit evidence of 2000 hours experience as a full-time maintenance employee in facility maintenance with exposure to periodic maintenance of fire protection systems consisting of replacing activated or damaged sprinkler heads, lubricating control valves, and resetting dry pipe valves, or other tasks itemized as maintenance in NFPA-25, together with 18 hours classroom instruction in courses approved by the Board consisting entirely of training in fire system maintenance, repair and restoration to service. Applicants who have held Maintenance license previously are not required to demonstrate experience in addition to the experience at the time of initial licensure but ~~will~~must present evidence of six hours classroom instruction in courses approved by the Board consisting entirely of training in fire system maintenance, repair and restoration to service relevant to the systems in the new place of employment.

History Note: Authority G.S. 87-18; 87-21(b); Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. January 1, 2004; July 1, 2003; August 1, 2002; July 1, 1998; September 1, 1994; November 1, 1993; April 1, 1991; May 1, 1990; Temporary Amendment Eff. August 31, 2004.

*This Section includes the Register Notice citation to rules approved by the Rules Review Commission (RRC) at its meeting August 18, 2004, and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules are 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 have been entered into the North Carolina Administrative Code

APPROVED RULE CITATION	REGISTER CITATION TO THE NOTICE OF TEXT
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01 NCAC 41C .0101*	18:19 NCR
01 NCAC 41C .0201-.0202*	18:19 NCR
01 NCAC 41C .0209*	18:19 NCR
01 NCAC 41C .0301-.0303*	18:19 NCR
04 NCAC 03B .0103*	18:20 NCR
11 NCAC 01 .0425*	18:20 NCR
15A NCAC 02B .0304	18:18 NCR
15A NCAC 18D .0102*	18:19 NCR
15A NCAC 18D .0201*	18:19 NCR
21 NCAC 14H .0107*	18:19 NCR
25 NCAC 01C .1006 (was 01D .0518)*	18:08 NCR
25 NCAC 01D .1402*	18:08 NCR
25 NCAC 01I .2005*	18:08 NCR

TITLE 1 - DEPARTMENT OF ADMINISTRATION

01 NCAC 41C .0101 DEFINITIONS

For the purposes of this Chapter, the following definitions apply:

- (1) "Allowable Costs," origination cost, up front cost, letter of credit fee (first year), engineering design fee, and implementation of eligible energy conservation measure. All allowable costs to be included in the loan must be incurred after the execution date of the Letter of Intent;
- (2) "Applicant," any commercial or industrial business applying for a loan under the Program;
- (3) "Btu," British thermal unit; the amount of heat required to raise the temperature of one pound of water one degree Fahrenheit at or near 39.2 degrees F;
- (4) "Btu/sq. ft/yr.," Btu per square foot per year; an index of building energy use, calculated by dividing the total annual energy use of a building by its square foot area;
- (5) "Commercial or industrial business," a commercial or industrial concern which provides goods or services for profit from a location in North Carolina;
- (6) "Credit worthiness", ability of applicant to meet lending institution's standard lending criteria;

- (7) "DOA Fiscal Department," the Fiscal Management Department, N. C. Department of Administration;
- (8) "Energy conservation measure," a commercially available energy efficient device, technique or technology, designed to reduce energy consumption, peak demand, or as utility costs at an existing or proposed commercial or industrial business;
- (9) "Letter of Intent," written notification of the intent of the Department to originate the Loan, subject to the conditions and limitations of the Program;
- (10) "Payback," the total energy conservation measure costs (including installation, equipment and engineering design) divided by the annual estimated utility cost savings;
- (11) "Program," the Energy Improvement Loan Program;
- (12) "Recycling Projects," projects which extract and reprocess energy, water and materials for reuse in buildings, transportation systems, environmental management, consumer products and/or outreach;
- (13) "Renewables," solar, wind, biomass or hydropower resources;
- (14) "Repayment Schedule," a schedule of periodic payments based upon simple payback as projected in the Technical Analysis rounded to the next quarter. Prepayments shall reduce the

- (15) term of the loan with periodic payments remaining unchanged;
- (15) "State Energy Office," the State Energy Office, N. C. Department of Administration;
- (16) "Technical Analysis ("TA")", a report that identifies and analyzes cost-effective capital energy conservation improvements that the applicant wishes to implement. The Technical Analysis need address only the specific energy conservation measures for which the loan is being requested. Each energy conservation measure analyzed shall be the subject of a single recommendation incorporating technical and economic analyses of the measure, considering building, process and equipment characteristics and energy use patterns pertinent to the improvement. The Technical Analysis must include the estimated cost of the implementation, a construction schedule, and expected energy savings;
- (17) "Technical analyst," a person with experience in energy conservation to conduct technical analysis for the purposes of this article;
- (18) "Third Party Technical Analyst", a technical analysis performed by an agency or someone who has neither financial interest in the commercial business, non-profit institution, local government institution, or industrial business nor in the sale and installation of any proposed energy conservation measure; however, the Technical Analyst is permitted to provide construction management services to an approved applicant;
- (19) "Unallowable costs," costs associated with Technical Analysis preparation, costs associated with pre-application conference, costs incurred prior to execution date of Letter of Intent, costs associated with loan application (i.e., consultation fees, Technical Analysis modifications); and
- (20) "Up front cost," the prepaid charge, if any, at a rate to be determined by the DOA Fiscal Department sufficient to cover the costs of administering and servicing the program.

History Note: Authority G.S. 143-345.18(b)(2a); 143-345.18(b)(3); Eff. September 1, 2004.

01 NCAC 41C .0201 ELIGIBILITY

The following classes of applicants are eligible to apply for loans:

- (1) A local government organization, nonprofit organization, commercial or industrial business located in North Carolina that owns the existing building or site of planned construction where the energy conservation measures will be made, or which has a lease or management agreement for such proposed

building site or building extending beyond the term of the loan; provided, however, that where the owner of the building authorizes the approved energy conservation measures, the lease or management agreement need not extend beyond the term of the loan.

- (2) A Nonprofit organization, commercial or industrial business relocating to North Carolina that owns the site of planned construction where the energy conservation measures will be made, or which has a lease or management agreement for such proposed building or building site extending beyond the term of the loan; provided, however, that where the owner of the building or building site authorizes the approved energy conservation measures, the lease or management agreement need not extend beyond the term of the loan.

History Note: Authority G.S. 143-345.18(b)(2a); 143-345.18(b)(3); Eff. September 1, 2004.

01 NCAC 41C .0202 CRITERIA FOR ENERGY CONSERVATION LOANS

Energy conservation projects for which the loans are desired must meet the following criteria:

- (1) The building site where the measures are to be installed must be in North Carolina;
- (2) The project must demonstrate the ability to conserve energy through efficient energy use or the utilization of renewable energy resources which results in energy savings based upon a net reduction in the use of nonrenewable resources;
- (3) A maximum total loan indebtedness of five hundred thousand dollars (\$500,000) for a single local government organization, nonprofit organizations, commercial business or industrial business at any given time;
- (4) The project must utilize commercially available technologies.
- (5) Experimental or research-related technologies are not eligible for funding;
- (6) Each energy conservation measure shall address energy efficiency;
- (7) The installation of the energy conservation measure may, at the discretion of the applicant, commence after DOA Fiscal Office issues the Letter of Intent; however, the applicant places itself at risk and is reminded that origination of the Loan is subject to the conditions and limitations of the Program;
- (8) The energy conservation measure must demonstrate a simple payback period of 10 years or less;

- (9) Each energy conservation measure must have a useful life at least equal to its estimated simple payback;
- (10) Eligible energy conservation measures shall fall under one of the following categories:
 - (a) lighting systems;
 - (b) heating, ventilation, and air conditioning systems;
 - (c) electrical distribution systems (motors, variable speed drives, fans, etc.);
 - (d) energy management systems;
 - (e) boiler efficiency systems;
 - (f) energy recovery systems, including on-site generation of electricity;
 - (g) alternate/renewable energy systems;
 - (h) building envelope (doors, windows, roofs, etc.);
 - (i) industrial process or fabrication systems;
 - (j) load management systems;
 - (k) fuel conversion projects provided that the simple payback calculations shall be based on the cost of the current fuel;
 - (l) other cost-effective demand or rate-based improvements; and
 - (m) recycling projects;
- (11) The energy conservation measure shall meet applicable state air and water quality standards; and
- (12) The energy conservation measure shall be based on a current Technical Analysis report as defined in Rule .0101 of this Subchapter.

History Note: Authority G.S. 143-345.18(b)(2a); 143-345.18(b)(3); Eff. September 1, 2004.

01 NCAC 41C .0209 REPORTS

Reports must be submitted as follows:

- (1) Progress reports must be submitted quarterly to the State Energy Office during the period implementation or construction is in progress and must include a description of the current status, any problems, and forecast of expectations or deviations from the planned schedule; and
- (2) A final report certified by the technical analyst must be submitted to the State Energy Office upon completion of the project. The report must include a description of the measures implemented; the actual cost of each measure, and the adjusted estimated payback, based on the actual cost.

History Note: Authority G.S. 143-345.18(b)(2a); 143-345.18(b)(3); Eff. September 1, 2004.

01 NCAC 41C .0301 TECHNICAL ANALYSIS REQUIRED

An application for an energy conservation loan must be accompanied by a Technical Analysis that has been conducted by a third party technical analyst and certified by the State Energy Office as fulfilling the energy aspects of the Program.

History Note: Authority G.S. 143-345.18(b)(2a); 143-345.18(b)(3); Eff. September 1, 2004.

01 NCAC 41C .0302 TECHNICAL ANALYST QUALIFICATIONS

To be qualified to conduct the Technical Analysis required by this article, a technical analyst must meet the following requirements:

- (1) Have experience in energy conservation in building construction, mechanical systems or manufacturing processes;
- (2) Have neither financial interest in the commercial business, non-profit institution, local government institution, or industrial business nor in the sale and installation of any proposed energy conservation measure; however, the Technical Analyst is permitted to provide construction management services to an approved applicant.

History Note: Authority G.S. 143-345.18(b)(2a); 143-345.18(b)(3); Eff. September 1, 2004.

01 NCAC 41C .0303 REPORT REQUIRED

A qualified third party technical analyst shall submit three copies of the results of a Technical Analysis in writing on a form provided by the State Energy Office. The report must include the following:

- (1) A description of facility characteristics and energy data, including the operational characteristics of the energy-using systems;
- (2) A description and engineering analysis of each identified energy conservation measure, including the following:
 - (a) An estimate of the cost of design, acquisition, and installation, including monitoring equipment to assess the performance of the measure discussing assumptions as necessary;
 - (b) An estimate of the annual energy and energy cost savings by fuel type using generally accepted engineering standards and practices, including all formulae, data and assumptions clearly presented in arriving at the estimate;
 - (c) The results of a combustion efficiency test, if furnace or boiler

- modifications or replacements are being implemented;
 - (d) The simple payback period of each energy conservation measure, calculated by dividing the estimated total cost of the measure by the estimated annual energy cost saving;
 - (e) A proposed construction schedule for each energy conservation measure; and
 - (f) The payback period of each energy conservation measure;
- (3) The energy use and cost data for each fuel type used for the prior 12-month period, by month or in accordance with the usual billing cycle;
- (4) An outline of qualifications of the analyst documenting previous experience in energy conservation in building construction, mechanical systems, and/or manufacturing processes.

History Note: Authority G.S. 143-345.18(b)(2a); 143-345.18(b)(3); Eff. September 1, 2004.

TITLE 4 – DEPARTMENT OF COMMERCE

04 NCAC 03B .0103 HEARINGS

(a) Unless otherwise stated in a particular rule-making notice, hearings before the Banking Commission shall be held in Raleigh, North Carolina, at regular scheduled or special called meetings of the Banking Commission.

(b) Any person desiring to present oral data, views, or arguments on the proposed rule must, before the hearing, file a notice with:

Office of The Commissioner of Banks
4309 Mail Service Center
Raleigh, North Carolina 27699-4309.
Attention: Rule-making Coordinator

Any person permitted to make an oral presentation may submit a written copy of the presentation to the above-named person prior to or at the hearing.

(c) A request to make an oral presentation must contain a brief summary of the individual's views with respect thereto, and a statement of the length of time the individual wants to speak. Presentations may not exceed 15 minutes unless, upon request, either before or at the hearing, the Commissioner of Banks or the presiding officer determines that fundamental fairness and procedural due process require an extension of time.

(d) Upon receipt of a request to make an oral presentation the Commissioner of Banks shall acknowledge receipt of the request, and inform the person requesting of the imposition of any limitations deemed necessary to the end of a full and effective public hearing on the proposed rule.

(e) Upon receipt of such written comments prompt acknowledgment shall be made including a statement that the comments therein shall be considered fully by the Banking Commission.

(f) The presiding officer at the hearing shall have complete control of the proceedings, including: extensions of any time requirements, recognition of speakers, time allotments for presentations, direction of the flow of the discussion, and the management of the hearing. The presiding officer, at all times, shall take care that each person participating in the hearing is given a fair opportunity to present views, data, and comments.

History Note: Authority G.S. 53-92; 150B-21.2; Eff. February 1, 1976; Amended Eff. September 1, 2004; April 1, 1999; August 1, 1988.

TITLE 11 - DEPARTMENT OF INSURANCE

11 NCAC 01 .0425 INTERVENTION

(a) Any person not named in the notice of hearing who desires to intervene in a contested case as a party shall file a motion to intervene and shall serve the motion upon all existing parties. The motion shall show how the movant's rights, duties, or privileges may be determined or affected by the contested case; shall show how the movant may be directly affected by the outcome or show that the movant's participation is authorized by statute, rule, or court decision; shall set forth the grounds and purposes for which intervention is sought; and shall indicate movant's statutory right to intervene if one exists.

(b) Any party may object to the motion for intervention by filing a written notice of objections with the hearing officer within five days after service of the motion if there is sufficient time before the hearing. The notice of objection shall state the party's reasons for objection and shall be served upon all parties. If there is insufficient time before the hearing for a written objection, the objection may be made at the hearing.

(c) When the hearing officer deems it to be necessary to develop a full record on the question of intervention, he may conduct a hearing on the motion to determine specific standards that will apply to each intervenor and to define the extent of allowed intervention.

(d) Pursuant to the powers granted in G.S. 150B-40(c), the hearing officer may allow intervention upon a proper showing under this Rule, unless he finds that the movant's interest is adequately represented by one or more parties participating in the case or unless intervention is mandated by statute, rule, or court decision. An order allowing intervention shall specify the extent of participation permitted the intervenor and shall state the hearing officer's reason. An intervenor may be allowed to:

- (1) File a written brief without acquiring the status of a party;
- (2) Intervene as a party with all the rights of a party; or
- (3) Intervene as a party with all the rights of a party but limited to specific issues and to the means necessary to present and develop those issues.

History Note: Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h); Eff. July 1, 1992; Amended Eff. September 1, 2004.

**TITLE 15A - DEPARTMENT OF ENVIRONMENT
& NATURAL RESOURCES**

15A NCAC 18D .0102 ORGANIZATION

*History Note: Authority G.S. 90A-21;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979;
Repealed Eff. September 1, 2004.*

15A NCAC 18D .0201 GRADES OF CERTIFICATION

Applicants for the various grades of certification shall be at least 18 years old and meet the following educational and experience requirements:

- (1) GRADE A-SURFACE shall have one year acceptable experience at a surface water facility while holding a Grade B-Surface certificate and have satisfactorily completed an A-Surface school conducted by the Board.
- (2) GRADE B-SURFACE shall:
 - (a) Be a college graduate with a bachelor's degree in the physical or natural sciences or be a graduate of a two year technical program with a diploma in water and wastewater technology, have six months of acceptable experience at a surface water facility and have satisfactorily completed an B-Surface school conducted by the Board, or
 - (b) Have one year of acceptable experience at a surface water facility while holding a Grade C-Surface certificate and have satisfactorily completed a B-Surface school conducted by the Board.
- (3) GRADE C-SURFACE shall:
 - (a) Be a college graduate with a bachelor's degree in the physical or natural sciences or be a graduate of a two year technical program with a diploma in water and wastewater technology, have six months of acceptable experience at a surface water facility and have satisfactorily completed an C-Surface school conducted by the Board, or
 - (b) Be a high school graduate or equivalent, have six months acceptable experience at a surface water facility and have satisfactorily completed a C-Surface school conducted by the Board.
- (4) GRADE A-WELL shall have one year of acceptable experience at a well water facility while holding a Grade B-Well certificate and

- (5) GRADE B-WELL shall:
 - (a) Be a college graduate with a bachelor's degree in the physical or natural sciences or be a graduate of a two year technical program with a diploma in water and wastewater technology, have six months of acceptable experience at a well water facility and have satisfactorily completed an B-Well school conducted by the Board, or
 - (b) Have one year of acceptable experience at a well water facility while holding a Grade C-Well certificate and have satisfactorily completed a B-Well school conducted by the Board.
- (6) GRADE C-WELL shall:
 - (a) Be a college graduate with a bachelor's degree in the physical or natural sciences or be a graduate of a two year technical program with a diploma in water and wastewater technology, have three months of acceptable experience at a well water facility and have satisfactorily completed an C-Well school conducted by the Board, or
 - (b) Be a high school graduate or equivalent, have six months of acceptable experience at a well water facility, and have satisfactorily completed a C-Well school conducted by the Board, or
 - (c) Hold a Grade A-Surface certification and have satisfactorily completed a C-Well school conducted by the Board.
- (7) GRADE D-WELL shall be a high school graduate or equivalent, have three months of acceptable experience at a well water facility, and have satisfactorily completed a C-Well or D-Well school conducted by the Board.
- (8) GRADE A-DISTRIBUTION shall have one year of acceptable experience at Class B or higher distribution system while holding a Grade B-Distribution certificate and have satisfactorily completed an A-Distribution school conducted by the Board.
- (9) GRADE B-DISTRIBUTION shall:
 - (a) Be a college graduate with a bachelor's degree in the physical or natural sciences or be a graduate of a two year technical program with a diploma in water and wastewater technology, have six months of acceptable experience at a Class B or

- higher distribution system and have satisfactorily completed an B-Distribution school conducted by the Board and shall hold a certificate of completion of trench shoring training conducted by the Board; or
- (b) Have one year of acceptable experience at a Class C or higher distribution system while holding a Grade C-Distribution certificate and have satisfactorily completed a B-Distribution school conducted by the Board.
- (10) **GRADE C-DISTRIBUTION** shall hold a certificate of completion of trench shoring training conducted by the Board and shall:
- (a) Be a college graduate with a bachelor's degree in the physical or natural sciences, or be a graduate of a two year technical program with a diploma in water and wastewater technology, have three months of acceptable experience at a Class C or higher distribution system and have satisfactorily completed an C-Distribution school conducted by the Board, or
- (b) Be a high school graduate or equivalent, have six months of acceptable experience at a Class D or higher distribution system and have satisfactorily completed a C-Distribution school conducted by the Board.
- (11) **GRADE D-DISTRIBUTION** shall be a high school graduate or equivalent, have three months of acceptable experience at a distribution system, and have satisfactorily completed a D-Distribution school conducted by the Board.
- (12) **GRADE CROSS-CONNECTION-CONTROL** shall:
- (a) Be a college graduate with a bachelor's degree in the physical or natural sciences, or be a graduate of a two-year technical program with a degree in water and wastewater or civil engineering technology, and have satisfactorily completed a cross connection control school conducted by the Board, or
- (b) Be a high school graduate or equivalent, have six months of acceptable experience at Class D - Distribution or higher system or have one year experience in the operations of cross connection control devices and have satisfactorily completed a

- (c) cross connection control school conducted by the Board, or
- Be a plumbing contractor licensed by the State of North Carolina and have satisfactorily completed a cross connection control school conducted by the Board.

History Note: Authority G.S. 90A-21(c); 90A-22; 90A-23; 90A-24;
Eff. February 1, 1976;
Amended Eff. September 1, 1977;
Readopted Eff. March 1, 1979;
Amended Eff. September 1, 2004; August 1, 2000; August 1, 1998; May 3, 1993; August 3, 1992; July 1, 1991;
December 31, 1980.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

21 NCAC 14H .0107 WATER SUPPLY

A beauty establishment shall have a supply of running hot and cold water in the clinic area, approved by the local health department.

History Note: Authority G.S. 88B-4;
Eff. February 1, 1976;
Amended Eff. September 1, 2004; January 1, 1989.

TITLE 25 – OFFICE OF STATE PERSONNEL

25 NCAC 01C .1006 VOLUNTARY RESIGNATION WITHOUT NOTICE

An employee who is absent from work and does not contact the employer for three consecutive scheduled workdays may be separated from employment as a voluntary resignation. The separation creates no right of grievance or appeal pursuant to the State Personnel Act (G.S. Chapter 126). A factor to be considered when determining whether the employee should be deemed to have voluntarily resigned is the employee's culpability in failing to contact his or her employer.

History Note: Authority G.S. 126-4(7a);
Eff. November 1, 1989;
Recodified from 25 NCAC 01D .0518 Eff. December 29, 2003;
Amended Eff. September 1, 2004.

25 NCAC 01D .1402 APPLICATION

An employee with a permanent, probationary, trainee or time-limited appointment, who works on a regular recurring basis in a class that is approved for shift premium pay, shall receive premium pay for all hours designated as eligible.

History Note: Authority G.S. 126-4;
Eff. February 1, 1976;
Amended Eff. September 1, 2004; October 1, 1979.

25 NCAC 01I .2005 SEPARATION

Separation occurs when an employee leaves the payroll for reasons indicated in this Rule or because of death. Employees who have acquired permanent status will not be subject to involuntary separation or suspension except for cause or reduction-in-force. The following are types of separation:

- (1) **Resignation or Retirement.** An employee may terminate his services with the agency by submitting a resignation or request for retirement to the appointing authority at least two weeks prior to his last day of work.
- (2) **Dismissal.** Dismissal is involuntary separation for cause, and shall be made in accordance with the provisions of 25 NCAC 1I.2300 Disciplinary Action: Suspension, Dismissal and Appeals.
- (3) **Reduction-in-Force.** For reasons of curtailment of work, reorganization, or lack of funds the appointing authority may separate employees. Retention of employees in classes affected shall be based on systematic consideration of type of appointment, length of service, and relative efficiency. No permanent employee shall be separated while there are emergency, intermittent, temporary, probationary, or trainee employees in their first six months of the trainee progression serving in the same or related class, unless the permanent employee is not willing to transfer to the position held by the non-permanent employee, or the permanent employee does not have the knowledge and skills required to perform the work of the alternate position within a reasonable period of orientation and training given any new employee. A permanent employee who was separated by reduction-in-force may be reinstated at any time in the future that suitable employment becomes available. The employer may choose to offer employment with a probationary appointment. The employee must meet the current minimum education and experience standard for the class to which he is being appointed.
- (4) **Voluntary Resignation Without Notice.** An employee who is absent from work and does not contact the employer for three consecutive workdays may be separated from employment as a voluntary resignation. Such separations create no right of grievance or appeal pursuant to the State Personnel Act (G.S. Chapter 126). A factor to be considered when determining whether the employee should be deemed to have voluntarily resigned is the employee's culpability in failing to contact his or her employer.

- (5) **Separation Due to Unavailability When Leave is Exhausted.** An employee may be separated on the basis of unavailability when the employee becomes or remains unavailable for work after all applicable leave credits and benefits have been exhausted and agency management does not grant a leave without pay for reasons deemed sufficient by the agency. Such reasons include but are not limited to, lack of suitable temporary assistance, criticality of the position, budgetary constraints. Such a separation is an involuntary separation, and not a disciplinary dismissal as described in G.S. 126-35, and may be grieved or appealed. Prior to separation the employing agency shall meet notify the employee in writing of the proposed separation, the efforts undertaken to avoid separation and why the efforts were unsuccessful. The employee shall have the opportunity in writing to propose alternative methods of accommodation. If the proposed accommodations are not possible, the agency must notify the employee of that fact and the proposed date of separation. If the proposed accommodations or alternative accommodations are being reviewed, the agency must notify the employee that such accommodations are under review and give the employee a projected date for a decision on this. Involuntary separation pursuant to this policy may be grieved or appealed. The employing agency must also give the employee a letter of separation stating the specific reasons for the separation and setting forth the employee's right of appeal. The burden of proof on the agency in the event of a grievance is not just cause as that term exists in G.S. 126-35. Rather, the agency's burden is to prove that the employee was unavailable and that the agency considered the employee's proposed accommodations for his unavailability and was unable to make the proposed accommodations or other reasonable accommodations. Agencies shall make efforts to place an employee so separated pursuant to this Rule when the employee becomes available, if the employee desires, consistent with other employment priorities and rights. However, there is no mandatory requirement placed on an agency to secure an employee, separated under this Rule, a position in any agency.

*History Note: Authority G.S. 126-4;
Eff. August 3, 1992;
Amended Eff. September 1, 2004; December 1, 1994.*

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday, August 19, 2004, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments by Monday, September 13, 2004 to the RRC staff, the agency, and the individual Commissioners. 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

Jim R. Funderburke - 1st Vice Chair
David Twiddy - 2nd Vice Chair
Thomas Hilliard, III
Robert Saunders
Jeffrey P. Gray

Appointed by House

Jennie J. Hayman - Chairman
Graham Bell
Lee Settle
Dana E. Simpson
Dr. John Tart

RULES REVIEW COMMISSION MEETING DATES

September 16, 2004
October 21, 2004 November 18, 2004
December 16, 2004

RULES REVIEW COMMISSION JULY 22, 2004 MINUTES

The Rules Review Commission met on Thursday, July 22, 2004, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Graham Bell, Jim Funderburk, Thomas Hilliard, Robert Saunders, Lee Settle, Dana Simpson, and John Tart.

Staff members present were: Joseph DeLuca, Staff Director; Bobby Bryan, Rules Review Specialist; and Lisa Johnson, Administrative Assistant.

The following people attended:

Tony Arnold	DENR
Lonnie Christopher	Banking Commission
Ha Nguyen	Banking Commission
Steve Dirksen	Board of Funeral Services
Cynthia Temoshenko	Building Code
Walter James	Department of Insurance
McNeil Chestnut	Attorney/Banking Commission
Kerry Adams	Department of Justice
Ellie Sprenkel	Department of Insurance
Bill Hale	Attorney
Dana Sholes	Office of Administrative Hearings
Julie Brincefield	Office of Administrative Hearings
Sid Harrell	DENR
Rondra McMillan	Department of Administration
Sharon Stroud	Department of Administration
Cynthia Moseley	Department of Administration
Nadine Pfeiffer	DHHS/Division of Facility Services
Mercidee Benton	DHHS/Division of Facility Services
David Mickey	Blue Ridge Environmental Defense League
Melissa Fiffer	Blue Ridge Environmental Defense League
Craig Smith	DHHS/DFS/CON
Preston Howard	Manufacturers and Chemical Industry Council

Steve Wall	DENR
Souk Rios	Cosmetic Art Examiners
Gretchen Aycock	Department of Administration
Thomas Allen	DENR/DAQ
Lisa Martin	NC Home Builders Association
David McLeod	Agriculture
Dedra Alston	DENR
Denise Stanford	Attorney/Board of Pharmacy
Kris Horton	DHHS/Division Medical Assistance
Sarah Meacham	Attorney General's Office

APPROVAL OF MINUTES

The meeting was called to order at 10:00 a.m. with Commissioner Jim Funderburk presiding. Commissioner Funderburk asked for any discussion, comments, or corrections concerning the minutes of the June 17, 2004, meeting. The minutes were approved as written.

FOLLOW-UP MATTERS

1 NCAC 41B .0301; .0306; .0401; .0402; .0502; .0504: Department of Administration - The Commission approved the rewritten rules submitted by the agency.

2 NCAC 34 .0605: NC Structural Pest Control Committee – The Commission approved the rewritten rule submitted by the agency.

15A NCAC 02D .0543: Environmental Management Commission – The Commission returned this rule for failure to comply with the Administrative Procedures Act. This is based on the fact that the rule has a substantial economic impact as determined by the Office of State Budget and Management. However, the agency in its notice of text stated that the rule had no fiscal impact.

15A NCAC 02D .0902: Environmental Management Commission – The Commission approved the rewritten rules submitted by the agency.

15A NCAC 02D .1104: Environmental Management Commission – The Commission received at least ten letters requesting that this rule be subject to legislative review. The Commission approved this rule.

15A NCAC 02D .1904: Environmental Management Commission – The Commission approved the rewritten rule submitted by the agency.

15A NCAC 02Q .0706; .0714: Environmental Management Commission – The Commission received at least ten letters requesting that this rule be subject to legislative review. The Commission approved these rewritten rules.

21 NCAC 10 .0202: NC State Board of Chiropractic Examiners – The Commission approved the rewritten rule submitted by the agency.

21 NCAC 34A .0102-.0104; .0117; .0118; .0122; .0123: NC Board of Funeral Services – The Commission approved the rewritten rules submitted by the agency.

21 NCAC 34C .0103-.0105; .0302; .0303: NC Board of Funeral Services – The Commission approved the rewritten rules submitted by the agency.

LOG OF FILINGS

Commissioner Funderburk presided over the review of the log of permanent rules and log of temporary rules and all rules were approved unanimously with the following exceptions:

1 NCAC 41C .0101-.0103: Department of Administration – The Commission objected to these rules. They are unnecessary. They neither require nor forbid any action on anyone's part. They do not allow something to take place that was previously forbidden. For the most part they simply repeat the statute.

1 NCAC 41C .0104: Department of Administration - The Commission objected to the rule based on lack of authority for the rule. In items (17) and (18) there is a requirement that a person be a licensed professional engineer or architect to be a “technical analyst” or to perform a “technical analysis.” There is no authority cited to require such a job qualification. It is unknown, for the purpose of this analysis, whether such work would be classified as the practice of engineering or architecture such that an occupational license would be required to perform the work. Even if it were, then it is the responsibility and authority of the licensing board to enforce that occupational license. There is no authority cited here for the Department of Administration to enforce either of those occupational licenses.

1 NCAC 41C .0201: Department of Administration - The Commission objected to the rule based on ambiguity. The first sentence of this rule provides that the eligibility within this rule is “in descending order of priority.” There are two problems with this. The first problem is that it may be unclear whether the order is simply the two separate numbered classes listed in the rule and that order within those numbered classes does not affect priority. One would assume that it is only the numbered classes that are first and second priority and that there are no further ordering. But that is not stated and may be a source of confusion. However the more difficult problem is that neither this rule nor any other rule appears to set the standards for how the priority is applied. In other words do all the applicants in the first group get their loans (if they meet the qualifications) before any of the applicants in the second group, or are other standards at work also? The rules do not seem to set any standard for determining how the priority is to be applied. It is also unclear how a “local government organization” in item (2) can “translocate” to North Carolina. Presumably all local governments that this rule would apply to are already located within the state. Partly because of that lack of clarity, this part of the rule then becomes unclear in whether the emphasis of the rule is on the fact that some entity is “translocating” or whether the emphasis is on the fact that this item applies to planned construction only and not to a building already in existence, or both aspects together.

1 NCAC 41C .0202: Department of Administration - The Commission objected to the rule based on lack of authority and ambiguity. In (3) it is unclear what is meant by the apparent rule criteria “to keep interest rates low.” It is unclear what is meant or required by this criteria and it is unclear what is the relationship between keeping interest rates low and the other part of this rule specifying a maximum total loan indebtedness. In item (4) it is unclear what constitutes or is meant by “proven reliable commercially available technologies.” It is unclear what standards are to be used by the State Energy Office in “recognizing” such technologies. To the extent that such recognition is based on standards set outside rulemaking, there is no authority for that method of setting standards.

1 NCAC 41C .0209; .0302; .0303: Department of Administration - The Commission objected to these rules based on lack of authority. The Commission has objected to rule .0104 because the agency has not cited any authority to require that only certain licensed persons perform the “technical analysis” work. By requiring, in .0209(2), .0302(2), and .0303(4), that the final technical analysis report must include the “professional registration seal affixed” to the report, this rule continues that requirement. There is no authority cited for requiring the work to be done by certain licensed professionals. The agency does have the authority to require that it be sealed if it is prepared by one of those professionals or to require that the qualifications of the person preparing the report be listed. But that is not the same as requiring that a certain professional prepare it.

1 NCAC 41C .0301: Department of Administration - The Commission objected to the rule based on ambiguity. It is unclear who or what constitutes a “qualified third party technical analyst.”

4 NCAC 03B .0103: NC Banking Commission – The Commission objected to this rule based on lack of authority. The last sentence in paragraph (b), lines 12 and 13, requires anyone making an oral presentation before the Banking Commission, including a presentation at public hearings, to “submit a written copy of the presentation” to the rulemaking coordinator. It does not seem that the Banking Commission has the authority to require that any oral comments made at a public hearing be reduced to writing. They certainly have not cited any. It seems to the RRC that the point of a public hearing is to give people the opportunity to appear before the rulemaker without having to reduce that appearance to writing. It would also appear to limit a person’s oral comments to whatever was prepared in writing ahead of time. It is unclear how a person would be able to submit written comments contemporaneously with having just spoken them, if they varied from the written submission. The statutory authority cited includes the Administrative Procedure Act. That portion of the APA requires the rulemaker to “consider fully all written and oral comments received.” [Emphasis supplied.] If they failed to consider oral comments because they were not accompanied by written ones, they would be violating this provision. The same would apply if they did not allow someone to speak because they did not have written copies of their comments.

11 NCAC 01 .0425: Department of Insurance – The Commission objected to the rule due to ambiguity. In (a), it is not clear what standards the hearing officer will use to determine “timeliness”. The objection applies to existing language in the rule.

12 NCAC 07D .0903: NC Private Protective Services Board –The Commission objected to the rule due to lack of statutory authority. There is no authority cited to charge a new certified trainer a certification fee as well as an application fee. G.S. 74C-9(e)(9) and (10) authorize the fees. Item 9 allows the application fee of up to \$50. Item 10 allows a renewal or replacement fee of up to \$25. There does not appear to be authority to charge the second fee for a new certificate. This objection applies to existing language in the rule.

12 NCAC 07D .0909: NC Private Protective Services Board – The Commission objected to the rule due to lack of statutory authority and ambiguity. The formatting of (3)(f) makes it impossible to tell exactly what is required or allowed. Is the student performance requirement part of the principles of instruction requirement or in addition to it? Is possessing a certificate from the Criminal Justice Education and Training Standards Commission an alternative to the student performance requirement, the principles of instruction requirement or everything in (3) etc.? It cannot be told by reading the rule. In addition, it is not clear what standards the director will use in approving other training certification. There is also no authority cited for the Board to require additional training without any kind of standards being in the rules. In (4), it is not clear who the licensee who must give a favorable recommendation is. It would appear to be anyone licensed by this Board, but that is not clear.

12 NCAC 07D .0910: NC Private Protective Services Board – The Commission objected to the rule due to ambiguity. In (2), it is not clear what other certification is acceptable.

15A NCAC 18D .0102: NC Water Treatment Facility Operators Certification Board – The Commission objected to the rule due to lack of necessity. This rule serves no purpose and is thus unnecessary. It merely says the statute creating the Board applies. The objection applies to existing language in the rule.

15A NCAC 18D .0105: NC Water Treatment Facility Operators Certification Board – This rule was withdrawn at the agency’s request.

15A NCAC 18D .0201: NC Water Treatment Facility Operators Certification Board – The Commission objected to the rule due to ambiguity. Throughout this rule, there are references to schools and training “approved by the Board” but there do not appear to be any standards in the rules for the approval of schools or training. It is not clear what the approval standards are.

21 NCAC 14H .0107: Board of Cosmetic Art Examiners – The Commission objected to the rule due to ambiguity. It is not clear what constitutes an “adequate” supply of hot and cold water. It is also not clear who or what it must be “convenient” to. The objection applies to existing language in the rule.

COMMISSION PROCEDURES AND OTHER BUSINESS

Mr. DeLuca updated Commission members on lawsuits.

Mr. DeLuca also announced that the General Assembly transferred the Rules Review Commission to the Office of Administrative Hearings as of October 1, 2004.

The meeting adjourned at 12:03 p.m.

The next meeting of the Commission is Thursday, August 19, 2004, at 10:00 a.m.

Respectfully submitted,
Lisa Johnson

**Commission Review/Permanent Rules
Log of Filings
July 23, 2004 through August 24, 2004**

DOMESTIC VIOLENCE COMMISSION

<u>Purpose</u>	01	NCAC	17	.0701
Adopt/*				
<u>Authority</u>	01	NCAC	17	.0702
Adopt/*				
<u>Procedure for Abuser Treatment Program Approval</u>	01	NCAC	17	.0703
Adopt/*				
<u>Intake and Assessment</u>	01	NCAC	17	.0704
Adopt/*				

RULES REVIEW COMMISSION

<u>Victim Safety</u> Adopt/*	01	NCAC	17	.0705
<u>Program Structure</u> Adopt/*	01	NCAC	17	.0706
<u>Abuser Treatment Program Curriculum</u> Adopt/*	01	NCAC	17	.0707
<u>Prohibited Activities</u> Adopt/*	01	NCAC	17	.0708
<u>Participant Termination</u> Adopt/*	01	NCAC	17	.0709
<u>Program Assessment</u> Adopt/*	01	NCAC	17	.0710
<u>Provision of Direct Services</u> Adopt/*	01	NCAC	17	.0711
<u>Continuing Education</u> Adopt/*	01	NCAC	17	.0712
<u>Participant Confidentiality</u> Adopt/*	01	NCAC	17	.0713
<u>Victim Confidentiality</u> Adopt/*	01	NCAC	17	.0714
<u>Abuser Treatment Program Investigations</u> Adopt/*	01	NCAC	17	.0715
<u>Right to Access</u> Adopt/*	01	NCAC	17	.0716
<u>Recordkeeping, Documentation and Reports</u> Adopt/*	01	NCAC	17	.0717
<u>Equal Opportunity</u> Adopt/*	01	NCAC	17	.0718

AGRICULTURE, BOARD OF

<u>Test Required</u> Amend/*	02	NCAC	52B	.0406
<u>Records; Animal Shelters, Etc.</u> Amend/*	02	NCAC	52J	.0101
<u>Records; Boarding Kennels</u> Amend/*	02	NCAC	52J	.0102
<u>Inspection of Records</u> Amend/*	02	NCAC	52J	.0103
<u>Definitions</u> Adopt/*	02	NCAC	52J	.0104
<u>General</u> Amend/*	02	NCAC	52J	.0201
<u>Indoor Facilities</u> Amend/*	02	NCAC	52J	.0202
<u>Outdoor Facilities</u> Amend/*	02	NCAC	52J	.0203
<u>Primary Enclosures</u> Amend/*	02	NCAC	52J	.0204
<u>Feeding</u> Amend/*	02	NCAC	52J	.0205
<u>Watering</u>	02	NCAC	52J	.0206

Amend/*				
<u>Sanitation</u>	02	NCAC	52J	.0207
Amend/*				
<u>Classification and Separation</u>	02	NCAC	52J	.0209
Amend/*				
<u>Veterinary Care</u>	02	NCAC	52J	.0210
Amend/*				
<u>Primary Enclosures Used in Transporting Dogs and Cats</u>	02	NCAC	52J	.0302
Amend/*				

MENTAL HEALTH, COMMISSION OF

<u>Staff Definitions</u>	10A	NCAC	27G	.0104
Amend/*				
<u>Staff</u>	10A	NCAC	27G	.4202
Amend/*				
<u>Scope</u>	10A	NCAC	28A	.0101
Amend/*				
<u>Interventions Requiring Additional Safeguards</u>	10A	NCAC	28D	.0208
Amend/*				

INSURANCE, DEPARTMENT OF

<u>Deviations from Rates of the NC Rate Bureau</u>	11	NCAC	10	.1106
Amend/*				

CRIME CONTROL & PUBLIC SAFETY, DEPARTMENT OF

<u>Purpose, Applicability and Scope of the Rules</u>	14A	NCAC	12	.0101
Amend/*				
<u>Definitions</u>	14A	NCAC	12	.0102
Amend/*				
<u>NC State Boxing Commission</u>	14A	NCAC	12	.0103
Amend/*				
<u>Conduct of Boxing Matches</u>	14A	NCAC	12	.0104
Amend/*				
<u>Physical Examination</u>	14A	NCAC	12	.0105
Amend/*				
<u>Equipment-Boxing</u>	14A	NCAC	12	.0106
Amend/*				
<u>Scoring-Boxing</u>	14A	NCAC	12	.0107
Amend/*				
<u>Fouls-Boxing</u>	14A	NCAC	12	.0108
Amend/*				
<u>Drugs and Foreign Substances</u>	14A	NCAC	12	.0109
Amend/*				
<u>Permits</u>	14A	NCAC	12	.0110
Amend/*				
<u>Licensing Requirements and Duties of Licensees</u>	14A	NCAC	12	.0111
Amend/*				
<u>Contacts and Financial Arrangements</u>	14A	NCAC	12	.0112
Amend/*				
<u>Kickboxing</u>	14A	NCAC	12	.0113

Amend/*				
<u>Equipment-Kickboxing</u>	14A	NCAC	12	.0114
Amend/*				
<u>Scoring-Kickboxing</u>	14A	NCAC	12	.0115
Amend/*				
<u>Fouls-Kickboxing</u>	14A	NCAC	12	.0116
Amend/*				
<u>Toughman Match</u>	14A	NCAC	12	.0117
Amend/*				

MARINE FISHERIES COMMISSION

<u>Fishing Gear Restrictions</u>	15A	NCAC	03J	.0402
Amend/*				
<u>General (Striped Bass)</u>	15A	NCAC	03M	.0201
Amend/*				
<u>Permit Conditions Specific (Striped Bass)</u>	15A	NCAC	03O	.0503
Amend/*				
<u>Management Responsibilities for Estuarine Striped Bass</u>	15A	NCAC	03Q	.0108
Amend/*				
<u>Implementation of Estuarine Striped Bass Management Plans</u>	15A	NCAC	03Q	.0109
Amend/*				
<u>Mechanical Methods Prohibited</u>	15A	NCAC	03R	.0108
Amend/*				
<u>Striped Bass Management Areas</u>	15A	NCAC	03R	.0201
Adopt/*				
<u>General Economic Assistance Programs</u>	15A	NCAC	03S	.0101
Adopt/*				
<u>Grants to Commercial Shrimping Industry for Economic</u>	15A	NCAC	03S	.0102
Adopt/*				
<u>Grants to Commercial Blue Crabbing Industry</u>	15A	NCAC	03S	.0103
Adopt/*				

COASTAL RESOURCES COMMISSION

<u>AECS Within Ocean Hazard Areas</u>	15A	NCAC	07H	.0304
Amend/*				
<u>General Use Standards for Ocean Hazard Areas</u>	15A	NCAC	07H	.0306
Amend/*				

WILDLIFE RESOURCES COMMISSION

<u>Waiver</u>	15A	NCAC	10A	.1100
Adopt/*				
<u>Wild Birds Defined</u>	15A	NCAC	10B	.0121
Amend/*				
<u>Bear</u>	15A	NCAC	10B	.0202
Amend/*				
<u>Hunting on Gamelands</u>	15A	NCAC	10D	.0103
Amend/*				
<u>Town of Swansboro</u>	15A	NCAC	10F	.0369
Adopt/*				

HEALTH SERVICES, COMMISSION OF

<u>Definitions</u> Amend/*	15A	NCAC	18A	.2601
<u>Public Display of Grade Card</u> Amend/*	15A	NCAC	18A	.2603
<u>Inspections and Reinspections</u> Amend/*	15A	NCAC	18A	.2604
<u>Grading</u> Amend/*	15A	NCAC	18A	.2606
<u>Sources of Food</u> Amend/*	15A	NCAC	18A	.2608
<u>Refrigeration Thawing and Preparation of Food</u> Amend/*	15A	NCAC	18A	.2609
<u>Storage Handling and Display of Food</u> Amend/*	15A	NCAC	18A	.2610
<u>Milk and Milk Products</u> Amend/*	15A	NCAC	18A	.2615
<u>Utensils and Equipment</u> Amend/*	15A	NCAC	18A	.2617
<u>Cleaning of Equipment and Utensils</u> Amend/*	15A	NCAC	18A	.2618
<u>Storage and Handling of Utensils and Equipment</u> Amend/*	15A	NCAC	18A	.2620
<u>Drinking Water Fountains</u> Amend/*	15A	NCAC	18A	.2621
<u>Storage Handling and Use of Ice</u> Amend/*	15A	NCAC	18A	.2622
<u>Toilet Facilities</u> Amend/*	15A	NCAC	18A	.2624
<u>Disposal of Wastes and By-Products</u> Amend/*	15A	NCAC	18A	.2626
<u>Floors</u> Amend/*	15A	NCAC	18A	.2627
<u>Doors and Windows</u> Repeal/*	15A	NCAC	18A	.2629
<u>Premises Miscellaneous Vermin Control</u> Amend/*	15A	NCAC	18A	.2633
<u>Definitions</u> Repeal/*	15A	NCAC	18A	.2701
<u>Permits</u> Repeal/*	15A	NCAC	18A	.2702
<u>Public Display of Grade Card</u> Repeal/*	15A	NCAC	18A	.2703
<u>Re-inspections</u> Repeal/*	15A	NCAC	18A	.2704
<u>Approval of Plans</u> Repeal/*	15A	NCAC	18A	.2705
<u>Inspection Forms</u> Repeal/*	15A	NCAC	18A	.2706
<u>Grading</u>	15A	NCAC	18A	.2707

Repeal/*				
<u>Floors</u>	15A	NCAC	18A	.2708
Repeal/*				
<u>Walls and Ceilings</u>	15A	NCAC	18A	.2709
Repeal/*				
<u>Lighting</u>	15A	NCAC	18A	.2710
Repeal/*				
<u>Toilet Facilities</u>	15A	NCAC	18A	.2711
Repeal/*				
<u>Lavatory Facilities</u>	15A	NCAC	18A	.2712
Repeal/*				
<u>Storage Spaces</u>	15A	NCAC	18A	.2713
Repeal/*				
<u>Water Supply</u>	15A	NCAC	18A	.2714
Repeal/*				
<u>Liquid Wastes</u>	15A	NCAC	18A	.2715
Repeal/*				
<u>Solid Wastes and By-Products</u>	15A	NCAC	18A	.2716
Repeal/*				
<u>Vermin Control Premises</u>	15A	NCAC	18A	.2717
Repeal/*				
<u>Miscellaneous</u>	15A	NCAC	18A	.2718
Repeal/*				
<u>Employees</u>	15A	NCAC	18A	.2719
Repeal/*				
<u>Utensils and Equipment Cleaning and Storage</u>	15A	NCAC	18A	.2720
Repeal/*				
<u>Utensils and Equipment Installation</u>	15A	NCAC	18A	.2721
Repeal/*				
<u>Barbecue Machines</u>	15A	NCAC	18A	.2722
Repeal/*				
<u>Refrigeration</u>	15A	NCAC	18A	.2723
Repeal/*				
<u>Handling and Storage of Meat and Other Food Products</u>	15A	NCAC	18A	.2724
Repeal/*				
<u>Appeals Procedure</u>	15A	NCAC	18A	.2725
Repeal/*				

INTERPRETER AND TRANSLITERATOR LICENSING BOARD

<u>Definitions</u>	21	NCAC	25	.0101
Adopt/*				
<u>Mailing List</u>	21	NCAC	25	.0102
Adopt/*				
<u>The Application</u>	21	NCAC	25	.0201
Adopt/*				
<u>The Application Package</u>	21	NCAC	25	.0202
Adopt/*				
<u>Application Fees</u>	21	NCAC	25	.0203
Adopt/*				
<u>Renewal of a Full License</u>	21	NCAC	25	.0204
Adopt/*				

RULES REVIEW COMMISSION

<u>Renewal of a Provisional License</u> Adopt/*	21	NCAC	25	.0205
<u>Reciprocity</u> Adopt/*	21	NCAC	25	.0206
<u>Mentoring and Training Exemption</u> Adopt/*	21	NCAC	25	.0207
<u>Grounds for Suspension or Revocation of a License</u> Adopt/*	21	NCAC	25	.0208
<u>Persons Who Are Ineligible to Apply for a License</u> Adopt/*	21	NCAC	25	.0209
<u>Code of Ethics</u> Adopt/*	21	NCAC	25	.0301
<u>Criminal Convictions</u> Adopt/*	21	NCAC	25	.0302
<u>Duty to Report Changes in Personal Information</u> Adopt/*	21	NCAC	25	.0401
<u>Duty to Report Consumer Complaints</u> Adopt/*	21	NCAC	25	.0402
<u>Duty to Report Civil Suits</u> Adopt/*	21	NCAC	25	.0403
<u>Duty to Report Criminal Prosecutions</u> Adopt/*	21	NCAC	25	.0404
<u>Mandatory Disclosures</u> Adopt/*	21	NCAC	25	.0405
<u>Continuing Education Requirements</u> Adopt/*	21	NCAC	25	.0501
<u>Petitions for Adoption, amendment, or Repeal of Rules</u> Adopt/*	21	NCAC	25	.0601
<u>Declaratory Rulings</u> Adopt/*	21	NCAC	25	.0602
<u>Filing</u> Adopt/*	21	NCAC	25	.0603
 MASSAGE AND BODYWORK THERAPY, BOARD OF				
<u>Definitions</u> Amend/*	21	NCAC	30	.0102
<u>Exemptions from Licensure</u> Amend/*	21	NCAC	30	.0203
<u>Fees</u> Amend/*	21	NCAC	30	.0204
<u>Term of License</u> Adopt/*	21	NCAC	30	.0205
<u>Background Investigation Required for Applicant</u> Adopt/*	21	NCAC	30	.0206
<u>Professional Designations</u> Amend/*	21	NCAC	30	.0301
<u>Display of License</u> Amend/*	21	NCAC	30	.0302
<u>License Renewal</u> Amend/*	21	NCAC	30	.0303
<u>Change of Address or Trade Name</u>	21	NCAC	30	.0403

Amend/*				
<u>Advertising</u>	21	NCAC	30	.0404
Amend/*				
<u>Purpose</u>	21	NCAC	30	.0501
Amend/*				
<u>General Requirements</u>	21	NCAC	30	.0502
Amend/*				
<u>Client Assessment and Informed Consent</u>	21	NCAC	30	.0503
Amend/*				
<u>Documentation Referrals</u>	21	NCAC	30	.0504
Amend/*				
<u>Confidentiality Roles and Boundaries</u>	21	NCAC	30	.0505
Amend/*				
<u>Draping Requirements</u>	21	NCAC	30	.0506
Amend/*				
<u>Hygiene</u>	21	NCAC	30	.0507
Adopt/*				
<u>Sexual Activity Defined</u>	21	NCAC	30	.0508
Adopt/*				
<u>Sexual Activity Prohibited</u>	21	NCAC	30	.0509
Adopt/*				
<u>Providing or Termination Services</u>	21	NCAC	30	.0510
Adopt/*				
<u>Business and Ethical Requirements</u>	21	NCAC	30	.0511
Adopt/*				
<u>Impairment</u>	21	NCAC	30	.0512
Adopt/*				
<u>Facility Requirements</u>	21	NCAC	30	.0513
Adopt/*				
<u>Informing Board of Violations</u>	21	NCAC	30	.0514
Adopt/*				
<u>Continuing Duty to Report Certain Crimes and Civil Suits</u>	21	NCAC	30	.0515
Adopt/*				
<u>Board Approval</u>	21	NCAC	30	.0601
Amend/*				
<u>Definitions</u>	21	NCAC	30	.0602
Amend/*				
<u>Documentation of Successful</u>	21	NCAC	30	.0603
Amend/*				
<u>Approval Designation</u>	21	NCAC	30	.0604
Amend/*				
<u>Verification of Compliance</u>	21	NCAC	30	.0605
Adopt/*				
<u>Approval Fees</u>	21	NCAC	30	.0606
Adopt/*				
<u>Disciplinary Sanctions Reporting Requirements</u>	21	NCAC	30	.0607
Adopt/*				
<u>Authority to Operate</u>	21	NCAC	30	.0608
Adopt/*				
<u>Instructional Staff Qualifications</u>	21	NCAC	30	.0610
Adopt/*				
<u>Approval Process for Key Administrative and Instructional...</u>	21	NCAC	30	.0611

Adopt/*				
<u>Management of Staff</u>	21	NCAC	30	.0612
Adopt/*				
<u>School Plant and Equipment</u>	21	NCAC	30	.0613
Adopt/*				
<u>Financial Management Systems and Economic Stability</u>	21	NCAC	30	.0614
Adopt/*				
<u>Student Recruitment</u>	21	NCAC	30	.0615
Adopt/*				
<u>Admissions</u>	21	NCAC	30	.0616
Adopt/*				
<u>Tuition Refunds and Financial Aid</u>	21	NCAC	30	.0617
Adopt/*				
<u>Program Requirements</u>	21	NCAC	30	.0618
Adopt/*				
<u>Student Records and Academic Progress</u>	21	NCAC	30	.0619
Adopt/*				
<u>Educational Credential Issued Graduates" Pass Rate</u>	21	NCAC	30	.0620
Adopt/*				
<u>Learning Resources</u>	21	NCAC	30	.0621
Adopt/*				
<u>Standards of Professional Behavior</u>	21	NCAC	30	.0622
Adopt/*				
<u>School Complaint Policy</u>	21	NCAC	30	.0623
Adopt/*				
<u>Student Compensation Prohibited</u>	21	NCAC	30	.0624
Adopt/*				
<u>Transfer of Credit; Advance Placement</u>	21	NCAC	30	.0625
Adopt/*				
<u>Ethical Requirements in Advertising</u>	21	NCAC	30	.0626
Adopt/*				
<u>Student Enrollment Agreement</u>	21	NCAC	30	.0627
Adopt/*				
<u>School Catalog</u>	21	NCAC	30	.0628
Adopt/*				
<u>Board Approval Not Transferable</u>	21	NCAC	30	.0629
Adopt/*				
<u>Initial application for Board Approval</u>	21	NCAC	30	.0630
Adopt/*				
<u>Application for Board Approval of Additional Programs</u>	21	NCAC	30	.0631
Adopt/*				
<u>Closure of School Termination of Program</u>	21	NCAC	30	.0632
Adopt/*				
<u>School Staff Members as Students</u>	21	NCAC	30	.0633
Adopt/*				
<u>Continuing Education Requirements</u>	21	NCAC	30	.0701
Amend/*				
<u>Continuing Education Definitions</u>	21	NCAC	30	.0702
Amend/*				
<u>Purpose and Scope</u>	21	NCAC	30	.0901
Amend/*				
<u>Complaints</u>	21	NCAC	30	.0902

RULES REVIEW COMMISSION

Amend/*				
<u>Action on a Complaint</u>	21	NCAC	30	.0903
Amend/*				
<u>Formal Hearing</u>	21	NCAC	30	.0904
Amend/*				
<u>Disciplinary Sanctions</u>	21	NCAC	30	.0905
Amend/*				

BUILDING CODE COUNCIL

<u>Elevation Of Ignition Sources</u>				305.2
Amend/*				
<u>Habitable Room Doors</u>				R311.4
Amend/*				
<u>Condensate Drain Size</u>				307.2.2
Amend/*				
<u>Fabric Air Distribution Device</u>				603.1.1
Amend/*				
<u>Fastener Schedule</u>				602.3(1)
Amend/*				
<u>Flashing Standard</u>				703.8
Amend/*				
<u>Explosion Control Requirements</u>				911.1 (7B)
Amend/*				
<u>Explosion Control Requirements</u>				911.1 (7C)
Amend/*				
<u>Gas Distribution Facilities</u>				911.5
Amend/*				
<u>Gas Motor-Vehicle Fuel</u>				2207
Amend/*				
<u>Scope Compressed Gases</u>				3001.1
Amend/*				
<u>Inspection Schedules</u>				106
Amend/*				
<u>Seismic Design Category</u>				1616.3
Amend/*				
<u>Sprinkler System Requirements</u>				903.3.3.1.1
Amend/*				
<u>Weather-Resistant Siding, Sheathing Paper</u>				R703.4
Amend/*				
<u>Air Space Sheathing Paper</u>				R703.4.2
Amend/*				
<u>Note</u>				R301.2(4)
Amend/*				

AGENDA
RULES REVIEW COMMISSION
September 16, 2004

I. Call to Order and Opening Remarks

- II. Review of minutes of last meeting
- III. Follow Up Matters
 - A. N.C. Private Protective Services Board 12 NCAC 7D .0903; .0909; .0910 (Bryan)
 - B. Coastal Resources Commission – 15A NCAC 7H .2602 (DeLuca)
 - C. NC State Board of Community Colleges – 23 NCAC 2D .0202 (DeLuca)
 - D. State Personnel Commission - 25 NCAC 1C .0301; .0801; .0804; .1009 (Objection Bryan)
 - E. State Personnel Commission - 25 NCAC 1C .0202-.0204; .0209; .0212; .0213; .0302-.0305; .0310; .0402; .0403; .0503; .0504; .0506; .0509; .0701-.0703 ; .0803; .1002; .1007; .1008 (Extend Period of Review Bryan)
 - F. State Personnel Commission – 25 NCAC 1E .0203; .0205; .0207; .0211; .0301; .0315; .0707; .1004; .1302; .1306 (Objection Bryan)
 - G. State Personnel Commission – 25 NCAC 1E .0102; .0201; .0202; .0206; .0208; .0209; .0212; .0216; .0311; .0313; .0314; .0705; .0706; .0708; .0709; .0804; .0902-.0904; .0909; .1001; .1007; .1008; .1101; .1102; .1104; .1105; .1107; .1108; .1111; .1112; .1301; .1304; .1401-.1411; .1601 (Extend Period of Review Bryan)
 - H. State Personnel Commission – 25 NCAC 1L .0401 (Extend Period of Review Bryan)
- IV. Review of Rules (Log Report #213)
- V. Review of Temporary Rules (if any)
- VI. Commission Business

Next meeting: October 21, 2004

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 <http://www.ncoah.com/hearings>.

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
Beryl E. Wade
A. B. Elkins II*

RULES DECLARED VOID

04 NCAC 02S .0212 CONSUMPTION: INTOXICATION BY PERMITTEE PROHIBITED
Pursuant to G.S. 150B-33(b)(9), Administrative Law Judge James L. Conner, II declared 04 NCAC 02S .0212(b) void as applied in NC Alcoholic Beverage Control Commission v. Midnight Sun Investments, Inc. t/a Tiki Cabaret (03 ABC 1732).

20 NCAC 02B .0508 FAILURE TO RESPOND
Pursuant to G.S. 150B-33(b)(9), Administrative Law Judge Melissa Owens Lassiter declared 20 NCAC 02B .0508 void as applied in Burton L. Russell v. Department of State Treasurer, Retirement Systems Division (03 DST 1715).

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ABC COMMISSION</u>				
ABC Commission v. Richard Martin Falls, Jr., T/A Falls Quick Stop	04 ABC 0341	Mann	07/16/04	
ABC Commission v. Red Lion Manestream, Inc., T/A Red Lion Manestream	04 ABC 0695	Wade	07/20/04	
<u>VICTIMS COMPENSATION</u>				
Lonnie Jones v. Dept. Crime Control & Public Safety, Victims Compensation	03 CPS 2320	Conner	07/23/04	
Angelique M. Jones on behalf of a juvenile victim, her son, Jaquial Jones v. Victims Compensation Commission	03 CPS 2353	Conner	07/12/04	
<u>DEPARTMENT OF AGRICULTURE</u>				
NC Spring Water Assoc, Inc., Wiley Fogleman (President) v. DOA, David McLeod and Table Rock Spring Water Co.	04 DAG 0110	Gray	07/21/04	
<u>DEPARTMENT OF ADMINISTRATION</u>				
Larry Yancey v. GACPD, DOA	04 DOA 0896	Morrison	07/28/04	
<u>HEALTH AND HUMAN SERVICES</u>				
Margaret Bollo v. DHHS, Broughton Hospital	03 DHR 0444	Gray	07/21/04	
Walter Ray Nelson, Jr., Karen Marie Nelson v. DHHS	03 DHR 0884	Lassiter	05/18/04	
Olufemi Augustine Ohome v. DHHS, Div. of Facility Services	03 DHR 1062	Lassiter	05/24/04	
Charles Crawford Cox v. DHHS	03 DHR 1546	Lassiter	07/07/04	
Bio-Medical Applications of North Carolina, Inc v. DHHS, Div of Facility Services, CON Section and Total Renal Care of NC, LLC	03 DHR 1553	Chess	06/02/04	
Lativia L. Gibbs v. DHHS, Div. of Child Development	03 DHR 1746	Smith	07/23/04	
Rebecca Stephens Short v. DHHS, Div of Facility Services	03 DHR 1806	Conner	06/11/04	
Loretta Kaye Dulakis v. DHHS, Div. of Facility Services	03 DHR 1848	Wade	08/20/04	
Pamela Narron (Legal Guardian for) Benjamin Chad Pierce v. DHHS, Div of Mental Health – DD-SA	03 DHR 2377	Conner	07/19/04	
Mooresville Hospital Management Assoc, Inc d/b/a Lake Norman Reg. Medical Center v. DHHS, Div of Facility Services, CON Section and Novant Health, Inc. (Lessor) and Forsyth Memorial Hospital (Lessee) d/b/a Forsyth Medical Center	03 DHR 2404	Conner	06/08/04	
Louvenia Jones, Sheryl Willie – General Power of Attorney v. DHHS, Div of Child Development	03 DHR 2445	Gray	06/15/04	
John Michael Thompson v. DHHS, DFS	04 DHR 0046	Lassiter	07/27/04	

CONTESTED CASE DECISIONS

Alisa Hodges Yarborough v. DHHS, DFS	04 DHR 0176	Elkins	07/19/04
LaDunna K. Brewington v. DHHS, Div of Medical Assistance	04 DHR 0192	Mann	06/09/04
Martha Williams, Kidtz Town v Div of Child Development	04 DHR 0200	Elkins	06/11/04
Mary P. Daniels v. DHHS	04 DHR 0232	Gray	08/09/04
Eula P. Street v. DHHS, DFS	04 DHR 0332	Elkins	07/14/04
Donnell Williams v. Harnet County DSS	04 DHR 0334	Conner	06/28/04
Terry William Waddell v. Medicaid/NC Health Choice	04 DHR 0335	Mann	06/04/04
Nathan E. Lang vs DHHS	04 DHR 0439	Conner	06/23/04
Phyllis S. Weaver v. DHHS	04 DHR 0457	Conner	07/19/04
Ray J. Bobbitt v. Nash County Dept. of Social Services	04 DHR 0529	Elkins	07/13/04
Connie Watt Redice v. DHHS	04 DHR 0546	Lassiter	06/29/04
Emelie Kashangura v. DHHS, DFS	04 DHR 0602	Elkins	07/14/04
Sabrina Betts v. NC Health Personnel Registry	04 DHR 0644	Lassiter	06/02/04
Tanisha Mitchell v. DHHS, Div. of Facility Services	04 DHR 0787	Mann	06/23/04
Fox's Tot, Inc., Connie Fox v. DHHS	04 DHR 0881	Elkins	07/20/04
Kids Kingdon Christian Learning Center, Inc., v. Div. of Child Development, Regulatory Services Section	04 DHR 0974	Conner	08/10/04
New Beginnings Childcare v. Div. of Child Dev. & Lee Co. DSS	04 DHR 1112	Lassiter	08/18/04

A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions.

DEPARTMENT OF JUSTICE

Larry Mitchel Batton, Jr. v. Crimianl Justice Educ. & Training Stds. Comm	03 DOJ 1067	Lassiter	06/15/04
Steve A. Matthews v. Sheriff's Educ. & Traning Stds. Comm	03 DOJ 1702	Conner	05/10/04
Tony M. Evans and Kristopher D. Harris v. Criminal Justice Educ. & Training Standards Commission	03 DOJ 2354	Mann	07/19/04
Tony M. Evans and Kristopher D. Harris v. Criminal Justice Educ. & Training Standards Commission	03 DOJ 2355	Mann	07/19/04
Charles Robert Branham v. Criminal Justice Educ & Training Stds. Comm	03 DOJ 2431	Conner	06/22/04
Bernard Cotton v. DOJ	04 DOJ 0063	Chess	06/03/04
Linnell Davis, Jr. v. Private Protective Services Board	04 DOJ 0299	Elkins	08/26/04
Jason Oneil Rice v. Sheriffs' Education & Training Standards Commission	04 DOJ 0318	Mann	06/24/04
Guy Wesly Prevette v. Crimianl Justice Educ. & Training Standards Comm.	04 DOJ 0511	Chess	07/08/04
Connelly Allen Locklear v. Criminal Justice Educ. & Training Stds. Comm	04 DOJ 0514	Gray	07/15/04
Maureen Cleary Williams v. Sheriffs' Education & Training Standards Comm	04 DOJ 0829	Mann	07/28/04
Tommy Dwight Hunt v. Sheriffs' Educ & Training Stds. Comm	04 DOJ 0830	Elkins	08/24/04

DEPARTMENT OF TREASURER

Mary Pender v. DOT, Retirement Systems Division	04 DST 0027	Conner	07/23/04
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DEPARTMENT OF PUBLIC INSTRUCTION

Alice Bins Rainey, Michele R Rotosky and Madeline Davis Tucker	02 EDC 2310	Lassiter	06/01/04	19:01 NCR	153
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ENVIRONMENT AND NATURAL RESOURCES

Beltex Corporation, a Debtor-in Possession v. DENR, Div of Air Quality	00 EHR 1706	Gray	06/18/04
J.L. Marsh Smith Farms, Inc v. DENR, Div of Air Quality	00 EHR 2116	Gray	06/04/04
Raymond Wallace, The Golden Mirror vs. Div of Radiation Protection	01 EHR 1558	Mann	06/17/04
Old Beau Golf Club v. DENR	03 EHR 1260	Conner	07/28/04
Sandy Mush Properties, Inc v. DENR, Div of Air Quality	03 EHR 1411	Conner	06/28/04
Ronald Frye v DENR	03 EHR 1636	Gray	06/23/04
Robert L. Swinson Sr. v. DENR, Div of Marine Fisheries	03 EHR 2248	Chess	06/10/04
Winston N. Cahoon v. DENR	03 EHR 2305	Lassiter	07/01/04
Jimmy Mathis, Mathis Pump & Well v. DENR	03 EHR 2336	Wade	05/25/04
James D & Jane Lathan Ray; James D. & Brenda W Moser, Jr.; John G. & Sheila A Conner v. DENR, Div. of Coastal Resources and R. Carter Pate	04 EHR 0073 ¹	Wade	08/13/04
R. Carter Pate v. DENR, Div. of Coastal Resources & Steve Bond	04 EHR 0150 ¹	Wade	08/13/04
Big Beaver Drilling Rig v. UST Trust Fund Section Final Agency Decision	04 EHR 0612	Wade	05/25/04

DEPARTMENT OF INSURANCE

Speros J. Fleggas vs. DOI	04 INS 0251	Elikins	06/10/04
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MISCELLENOUS

Alesia Braswell Al Wahshi v. Deborah Mcintyre, Wayne Co, Dept. of Social Services	04 MIS 0146	Gray	06/18/04
O'marr S. Reid v. Gaston Co. Judicial System and Defendants 1,2,3,4,5,6, 7,8,9,10	04 MIS 0682	Elkins	06/22/04
Larry Yancey v. State Bar Grievance Com., Dept of Justice	04 MIS 0891	Morrison	07/27/04
Larry Yancey v. State Bar Grievance Com., Dept of Justice	04 MIS 0892	Morrison	07/27/04
Larry Yancey v. Durham Housing Authority, City of Durham, State of NC	04 MIS 0893	Morrison	07/27/04
Larry Yancey v. Independent Living Rehab Prog, Div of VRS State of NC	04 MIS 0894	Morrison	07/27/04
Larry Yancey v. Durham Dept. of Social Services, State of NC	04 MIS 0895	Morrison	07/27/04

CONTESTED CASE DECISIONS

OFFICE OF STATE PERSONNEL

Kathy M Sledge v. DOC	02 OSP 2117	Conner	08/03/04
Pearl A. Wilkins v. NCSU	03 OSP 0400	Gray	07/26/04
James A. Ray v. Mr. Don Shore, Human Resources, UNC Greensboro	03 OSP 2451	Elkins	06/01/04
James A. Ray v. Sherry Stevens and Facility Services Management, UNC Greensboro	03 OSP 2452	Elkins	06/01/04
James A. Ray v. Hoyte Phifer and Facility Services Management, UNC Greensboro	03 OSP 2453	Elkins	06/01/04
Terry H. Mitchell v. Elizabeth City State University	04 OSP 0015	Conner	07/23/04
Miracle L. Smith v. NC State Highway Patrol	04 OSP 0039	Gray	07/14/04
Samuel Williams v. DOC, Div of Alcoholism, Chemical Dependency Programs	04 OSP 0194	Mann	06/09/04
Jerry William Wiley v. Div of Public Health and DHHS	04 OSP 0210	Elkins	06/23/04
Barbara Hoffner v. DOC, Div of Prisons, Central Prison	04 OSP 0415	Chess	06/17/04
Jeff Nichols v. DOC	04 OSP 0419	Conner	06/29/04
Phyllis Holt v. UNC Chapel Hill	04 OSP 0486	Chess	06/01/04
John V. Smith v. NCSU	04 OSP 0505	Chess	06/17/04
Mark A. Boyce v. Dept. of Commerce	04 OSP 0543	Gray	07/06/04
Eldredia B. Mizelle v. Craven Correctional Institution, Dept. of Corrections, David W. Chester, Capt. Kathryn Brown	04 OSP 0582	Wade	06/24/04
Bernadine Ralph v. O'Berry Center	04 OSP 0706	Lassiter	06/29/04
James A. Ray v. UNC at Greensboro, Facility Services	04 OSP 0751	Elkins	07/14/04
Gwendolyn Robertson Horton v. DHHS	04 OSP 0792	Morrison	07/26/04
Katrina Pittman v. Kenny Gibbs, Div of Vocational Rehab	04 OSP 0930	Lassiter	08/06/04
Veronica J. Johnson v. SOS	04 OSP 0961	Morrison	07/23/04
Gregory Tabron v. John Umstead Hospital	04 OSP 1014	Lassiter	07/26/04

UNC HOSPITALS

Carrie Ann Sykes v. Chapel Hill Hospital	04 UNC 0245	Elkins	06/25/04
Danielle Catoe v. UNC Hospitals	04 UNC 0291	Elkins	06/25/04
Rex A. Coughenour v. UNC Hospitals	04 UNC 0306	Elkins	06/22/04
P. Nettles v. UNC Hospitals	04 UNC 0393	Morrison	07/23/04
P. Nettles v. UNC Hospitals	04 UNC 0393	Morrison	07/23/04
Vanessa Bailey v. UNC Hospitals	04 UNC 0440	Conner	08/09/04
Dennis McCuller v. UNC Hospitals	04 UNC 0458	Chess	08/02/04
Joe Hatcher v. UNC Hospitals	04 UNC 0480	Morrison	07/23/04
Cattrual Heggins v. UNC Hospitals	04 UNC 0496	Chess	08/09/04
Tammy Bottoms v. UNC Hospitals	04 UNC 0502	Elkins	07/21/04
Sandra Lee Petty v. UNC Hospitals	04 UNC 0522	Chess	07/23/04
Thomas Sherman Tate v. UNC Hospitals	04 UNC 0538	Chess	06/15/04
Tracy Lane v. UNC Hospitals	04 UNC 0601	Gray	07/23/04
Chris Oduok v. UNC Hospitals	04 UNC 0760	Morrison	07/26/04
Pamela L. Chevalier v. UNC Hospitals	04 UNC 0773	Morrison	07/26/04

1 Combined Cases