

# ***NORTH CAROLINA REGISTER***

**VOLUME 21 • ISSUE 15 • Pages 1340 - 1461**

**February 1, 2007**

<b>I. EXECUTIVE ORDERS</b>	
Executive Order No. 114.....	1340
Executive Order No. 115.....	1341
<b>II. IN ADDITION</b>	
Brownfields Property – Lake City Tractor Supply.....	1342
Decision Letters on "Changes Affecting Voting" from US Attorney General.....	1343 – 1353
Board of Elections/Written Opinions .....	1354 – 1359
<b>III. APPROVED RULES</b> .....	1360 – 1446
<b>Agriculture and Consumer Services, Department of</b>	
Agriculture, Board of	
<b>Commerce, Department of</b>	
Credit Union Division	
<b>Environment and Natural Resources, Department of</b>	
Coastal Resources Commission	
Environmental Management Commission	
Health Services, Commission for	
<b>Health and Human Services, Department of</b>	
Facility Services, Division of	
Health Services, Commission for	
Social Services Commission	
<b>Insurance, Department of</b>	
Department	
<b>Justice, Department of</b>	
Sheriffs' Education and Training Standards Commission	
<b>Labor</b>	
Department	
<b>Occupational Licensing Boards and Commission</b>	
Appraisal Board	
Certified Public Accountant Examiners, Board of	
Medical Board	
Nursing, Board of	
Pharmacy Board	
Recreational Therapy Licensure, Board of	
<b>Secretary of State, Department of</b>	
Secretary of State	
<b>State Personnel, Office of</b>	
State Personnel Commission	
<b>IV. RULES REVIEW COMMISSION</b> .....	1447 – 1455
<b>V. CONTESTED CASE DECISIONS</b>	
Index to ALJ Decisions .....	1456 – 1461

## **Contact List for Rulemaking Questions or Concerns**

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

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

Office of Administrative Hearings

Rules Division

Capehart-Crocker House

(919) 733-2678

424 North Blount Street

(919) 733-3462 FAX

Raleigh, North Carolina 27601-2817

contact: Molly Masich, Director APA Services

molly.masich@ncmail.net

(919) 733-3367

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dana.sholes@ncmail.net

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julie.edwards@ncmail.net

(919) 733-2696

Felicia Williams, Editorial Assistant

felicia.williams@ncmail.net

(919) 733-3361

### **Rule Review and Legal Issues**

Rules Review Commission

1307 Glenwood Ave., Suite 159

(919) 733-2721

Raleigh, North Carolina 27605

(919) 733-9415 FAX

contact: Joe DeLuca Jr., Staff Director Counsel

joe.deluca@ncmail.net

Bobby Bryan, Staff Attorney

bobby.bryan@ncmail.net

Lisa Johnson, Administrative Assistant

lisa.johnson@ncmail.net

### **Fiscal Notes & Economic Analysis**

Office of State Budget and Management

116 West Jones Street

(919) 733-7061

Raleigh, North Carolina 27603-8005

(919) 733-0640 FAX

contact: Nathan Knuffman

nathan.knuffman@ncmail.net

### **Governor's Review**

Reuben Young

reuben.young@ncmail.net

Legal Counsel to the Governor

(919) 733-5811

116 West Jones Street (919) 733-5811

Raleigh, North Carolina 27603

### **Legislative Process Concerning Rule-making**

Joint Legislative Administrative Procedure Oversight Committee

545 Legislative Office Building

300 North Salisbury Street

(919) 733-2578

Raleigh, North Carolina 27611

(919) 715-5460 FAX

contact: Karen Cochrane-Brown, Staff Attorney

karenc@ncleg.net

Jeff Hudson, Staff Attorney

jeffreyh@ncleg.net

### **County and Municipality Government Questions or Notification**

NC Association of County Commissioners

215 North Dawson Street

(919) 715-2893

Raleigh, North Carolina 27603

contact: Jim Blackburn or Rebecca Troutman

jim.blackburn@ncacc.org

Rebecca Troutman

rebecca.troutman@ncacc.org

NC League of Municipalities

(919) 715-4000

215 North Dawson Street

Raleigh, North Carolina 27603

contact: Anita Watkins

**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2007 – December 2007

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

## **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. 114  
EXTENDING EXECUTIVE ORDER NO. 109  
PROCLAMATION OF STATE OF DISASTER  
FOR JONES COUNTY AND DUPLIN COUNTY**

**WHEREAS**, on October 10, 2006, Executive Order No. 109, which proclaimed a State of Disaster and State of Emergency in Jones and Duplin counties as a result of the damage done by Tropical Storm Ernesto on August 31, 2006, through September 3, 2006, was issued and extended by Executive Order No. 110 on November 9, 2006; and is hereby further extended until January 8, 2007.

This executive order is effective immediately.

**IN WITNESS WHEREOF**, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this ninth day of December in the year of our Lord two thousand and six, and of the Independence of the United States of America the two hundred and thirty-first.



  
Michael F. Easley  
Governor

**ATTEST:**

  
Elaine F. Marshall  
Secretary of State

EXECUTIVE ORDER NO. 115  
AMENDING EXECUTIVE ORDER NO. 91  
GOVERNOR'S TASK FORCE FOR HEALTHY CAROLINIANS

By the power vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED THAT:**

Section 2. v. of Executive Order No. 91 issued by Michael F. Easley on September 27, 2005, is hereby amended as follows:

**Section 2.**      **Membership**

v.      Representative of a statewide organization whose primary goal is to promote physical activity.

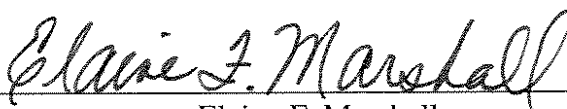
This order is effective immediately.

**IN WITNESS WHEREOF**, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this fifth day of January in the year of our Lord two thousand and seven, and of the Independence of the United States of America the two hundred and thirty-first.



  
\_\_\_\_\_  
Michael F. Easley  
Governor

**ATTEST:**

  
\_\_\_\_\_  
Elaine F. Marshall  
Secretary of State

<p><i><b>Note from the Codifier:</b> This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.</i></p>
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**SUMMARY OF NOTICE OF  
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY  
Lake City Tractor Supply, LLC**

Pursuant to N.C.G.S. § 130A-310.34, Lake City Tractor Supply, LLC has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Charlotte, Mecklenburg County, North Carolina. The Property which is the former site of Arrow Laundry and Cleaners and a Woonsocket Mills facility, consists of 16.5 acres and is located at 4701 Monroe Road, 4733 Monroe Road, 4735 Monroe Road and 2301 Shade Valley Road. Environmental contamination exists on the Property in groundwater. Lake City Tractor Supply, LLC has committed itself to redevelopment of the Property for no uses other than commercial, retail, residential, office and open space use. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Lake City Tractor Supply, LLC, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35.

The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Public Library of Charlotte & Mecklenburg County, 310 N. Tryon St., Charlotte, NC 28202 by contacting Rita Rouse at that address or at (704) 336-2725; or at the offices of the N.C. Brownfields Program, 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 (where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents) by contacting Shirley Liggins at that address, at [shirley.liggins@ncmail.net](mailto:shirley.liggins@ncmail.net), or at (919) 508-8411.

Written public comments, and/or requests for a public meeting, may be submitted to DENR within 30 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Thus, if Lake City Tractor Supply, LLC, as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the brownfields property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods for submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on February 2, 2007. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson  
Brownfields Program Manager  
Division of Waste Management  
NC Department of Environment and Natural Resources  
401 Oberlin Road, Suite 150  
Raleigh, North Carolina 27605

**U.S. Department of Justice**

Civil Rights Division

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JKT:RPL:TGL:maf  
DJ 166-012-3  
2006-6660

*Voting Section – NWB.  
950 Pennsylvania Ave., NW  
Washington, D.C. 20530*

December 21, 2006

Michael Crowell, Esq.  
Tharrington Smith  
P.O. Box 1151  
Raleigh, North Carolina 27602

Dear Mr. Crowell:

This refers to the procedures for conducting the February 6, 2007, special referendum election for the City of Fayetteville in Cumberland County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on October 26, 2006.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41).

Sincerely,

John Tanner  
Chief, Voting Section



**U.S. Department of Justice**

Civil Rights Division

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JKT:RPL:KL:par  
DJ 166-012-3  
2006-6442

*Voting Section – NWB.  
950 Pennsylvania Ave., NW  
Washington, D.C. 20530*

December 5, 2006

Mr. David A. Holec  
City Attorney  
P.O. Box 7207  
Greenville, North Carolina 27835-7207

Dear Mr. Holec:

This refers to twelve annexations (adopted between May 11 and August 10, 2006), and their designation to districts of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on October 12, 2006.

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

Sincerely,

John Tanner  
Chief, Voting Section



U.S. Department of Justice

Civil Rights Division

JKT:MSR:DJ:jdh  
DJ 166-012-3  
2006-5859

Voting Section - NWB.  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

October 13, 2006



Mr. Gary O. Bartlett  
Executive Director  
State Board of Elections  
P.O. Box 27255  
Raleigh, North Carolina 27611-7255

Dear Mr. Bartlett:

This refers to the SL 2006-192 (House Bill 1024) (2006), which contains numerous voting changes, including Section 6, which amends the State's overseas voters' law to include all citizens who are covered by the Uniformed and Overseas Citizens Absentee Voting Act and to extend absentee voting exceptions to overseas citizens regardless of their voter registration status. The changes contained in this law were submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on September 1, 2006.

The State of North Carolina has requested expedited consideration of Section 6. The Attorney General interposes no objection to the changes contained in Section 6 of SL 2006-192 (House Bill 1024) (2006). However, the Attorney General's review of the remaining changes contained in SL 2006-192 (House Bill 1024) (2006) is ongoing. The Department will make a determination or request the additional information necessary to complete our review of the remaining changes by October 31, 2006. See 28 C.F.R. §§ 51.37, 41.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Tanner".

John Tanner  
Chief, Voting Section



U.S. Department of Justice

Civil Rights Division

JKT:MSR:ANS:maf  
DJ 166-012-3  
2006-5859

Voting Section - NWB.  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

October 20, 2006



Mr. Gary O. Bartlett  
Executive Director  
State Board of Elections  
P.O. Box 27255  
Raleigh, North Carolina 27611-7255

Dear Mr. Bartlett:

This refers to Session Law 2006-192 (H.B. 1024) (2006), which provides for:

- 1) the procedures for instituting a pilot program for instant runoff voting in selected municipalities;
- 2) changes in the partisan primary and municipal election schedules;
- 3) a change in sample hand count procedures;
- 4) changes in the procedures for filling vacancies for certain judicial offices;
- 5) changes in candidate qualifying procedures;
- 6) a change in terms of office;
- 7) changes in campaign financing and reporting provisions;
- 8) changes in public notice requirements; and
- 9) an implementation schedule

and Session Law 2006-234 (H.B. 88) (2006), which provides for the following changes relating to new political parties and unaffiliated candidates:

- 1) a change in nominating procedures;
- 2) a change in candidate qualifying procedures;
- 3) a change in candidate qualifications; and
- 4) an implementation schedule


for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on September 1, 2006.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does

-2-

not bar subsequent litigation to enjoin the enforcement of the changes. Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41).

Sincerely,



John Tanner  
Chief, Voting Section



U.S. Department of Justice  
Civil Rights Division

JKT:RPL:EAM;jdh  
DJ 166-012-3  
2006-5858

Voting Section - NWB  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

October 30, 2006

Mr. Gary O. Bartlett  
Executive Director, State Board of Elections  
P.O. Box 27255  
Raleigh, North Carolina 27611-7255

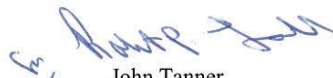
Dear Mr. Bartlett:

This refers to the Session Law 2006-155 (H.B. 2188), which pertains to challenging candidate qualifications; Session Law 2006-201 (H.B. 1843), which establishes the State Government Ethics Act and State Ethics Commission, requires public disclosure of economic interests by certain persons, prescribes possible penalties for failure to comply with requirements of the statements of economic interests, and amends lobbying laws, including restrictions on campaign contributions; and Section 48 (a and b) of Session Law 2006-259 (S.B. 1523), insofar as they change the definition of "candidate" and provide an implementation schedule, for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on September 1, 2006.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41).

Session Law 2006-155 includes provisions that are enabling in nature. Therefore, any changes affecting voting that are adopted pursuant to this legislation will be subject to Section 5 review (e.g., the State Board of Elections' and State Supreme Court's adoption of rules to implement certain provisions of this legislation). See 28 C.F.R. 51.15.

Sincerely,

  
John Tanner  
Chief, Voting Section

NOV - 2 2006



U.S. Department of Justice

Civil Rights Division

JKT:RPL:KL:par  
DJ 166-012-3  
2006-5912

Voting Section - NWB.  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

September 28, 2006

Mr. Gary O. Bartlett  
Executive Director  
6400 Mail Service Center  
Raleigh, North Carolina 27699-6400



Dear Mr. Bartlett:

This refers to S.L. 2006-262 (HB 128) (2006) which, as set forth in your submission:

- (1) authorizes county boards of elections to take steps earlier to count mailed absentee ballots;
- (2) clarifies how a voter shall report a move;
- (3) clarifies the residence of certain persons for voting purposes;
- (4) amends the statutes related to challenges;
- (5) specifies how financial institutions may make loans without violating the prohibition on corporate contributions;
- (6) amends the appropriations act as it relates to appointments to the State Board of Elections;
- (7) clarifies what reasonable administrative expenses include; and
- (8) provides that except for their envelope, provisional ballots shall not be marked to be identifiable to a voter,

and S.L. 2006-264 (SB 602) (2006) which, as set forth in your submission:

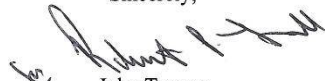
- (1) makes technical corrections and conforming changes to the General Statutes as recommended by the General Statutes Commission; and
- (2) makes various other changes to the General Statutes and Session Laws

for the State of North Carolina. The state submitted these changes to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on September 6, 2006.

-2-

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

Sincerely,



John Tanner  
Chief, Voting Section





U.S. Department of Justice  
Civil Rights Division

JKT:YR:TGL:jdh:par  
DJ 166-012-3  
2006-5913

Voting Section - NWB  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

November 16, 2006

Mr. Gary O. Bartlett  
Executive Director, State Board of Elections  
506 North Harrington Street  
Raleigh, North Carolina 27603

Dear Mr. Bartlett:

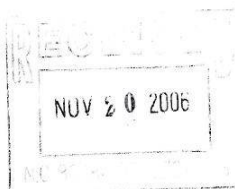
This refers to the Session Law 2006-161, which sets forth permitted and prohibited uses of campaign contributions and reporting requirements, and Session Law 2006-233, which expands disclosure requirements for candidate specific communications, for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on September 6, 2006.

On November 6, 2006, the Attorney General did not interpose an objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41).

Sincerely,

A handwritten signature in cursive script, appearing to read "John Tanner", is written over a horizontal line.

John Tanner  
Chief, Voting Section







Civil Rights Division

JKT:RPL:NT:par  
DJ 166-012-3  
2006-6956

Voting Section - NWB,  
950 Pennsylvania Avenue, N.W.,  
Washington, DC 20530

December 21, 2006

Ms. Tiare B. Smiley  
Special Deputy Attorney General  
Mr. Alexander Mc C. Peters  
Special Deputy Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, North Carolina 27602

Dear Ms. Smiley and Mr. Peters:

This refers to Section 1, Session Law 2003-403 (S.B. 725), which authorizes local governments to create development financing districts and issue project development debt financing instruments without a bond referendum, for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on November 30, 2006; supplemental information was received through December 14, 2006.

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

Sincerely,

John Tanner  
Chief, Voting Section

TOTAL P.02

OCT-27-2006 10:39

DOJ/CRD/VOTING

P.02/02



Civil Rights Division

JKT:MSR:CEI:par  
DJ 166-012-3  
2006-5739

Voting Section - NWB.  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

October 27, 2006

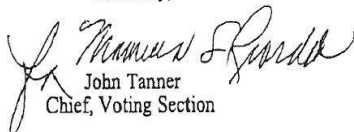
Mr. Gary O. Bartlett  
Executive Director  
State Board of Elections  
P.O. Box 27255  
Raleigh, North Carolina 27611-7255

Dear Ms. Bartlett:

This refers to Session Laws 2006-182 and 2006-259, which make changes and corrections pertaining to electioneering communications for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on August 29, 2006; supplemental information was received on September 6, 2006.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41).

Sincerely,

  
John Tanner  
Chief, Voting Section

OCT 27 2006 10:10

TOTAL P.02  
PAGE.02



STATE BOARD OF ELECTIONS  
6400 Mail Service Center • Raleigh, North Carolina 27699-6400

GARY O. BARTLETT  
Executive Director

MAILING ADDRESS:  
P.O. BOX 27255  
RALEIGH, NC 27611-7255

December 11, 2006

The Honorable Charles W. Albertson  
525 Legislative Office Building  
Raleigh, N.C. 27603-5925

Dear Senator Albertson:

This is to formalize our conversation on December 4, 2006, in which you have requested an advisory opinion pursuant to G.S. § 163-278.23 regarding permissible uses of campaign funds from a candidate's campaign committee. Specifically, you want to ensure that you comply with changes in S.L. 2006-161 that became effective on October 1, 2006.

It is my understanding that your committee would like to make expenditures to reward campaign contributors, volunteers, office staff members or persons with whom you interact as part of running for and holding public office. These expenditures may be tickets purchased from a University or a museum, a thank you dinner, a gift or a charitable contribution made in the honor of such persons. These are legitimate uses of campaign funds under our current Campaign Finance laws and Session Law 2006-161. Below is the statute that governs these expenditures.

*"§ 163-278.16B. Use of contributions for certain purposes.*

*(a) A candidate or candidate campaign committee may use contributions only for the following purposes:*

- (1) Expenditures resulting from the campaign for public office by the candidate or candidate's campaign committee.*
- (2) Expenditures resulting from holding public office.*
- (3) Contributions to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers, or sisters are not employed by the organization.*
- (4) Contributions to a national, State, or district or county committee of a political party or a caucus of the political party.*
- (5) Contributions to another candidate or candidate's campaign committee.*
- (6) To return all or a portion of a contribution to the contributor.*
- (7) Payment of any penalties against the candidate or candidate's campaign committee for violation of this Article imposed by a board of elections or a court of competent jurisdiction.*
- (8) Payment to the Escheat Fund established by Chapter 116B of the General Statutes.*

To ensure full compliance with Campaign Finance disclosure laws, the committee must document for its records the relationship of those who benefit from any expenditure and their ties to the committee's campaign or the elected official's public office. Then any expenditure must be accurately stated on Campaign Finance reports.

Please be aware that Session Law 2006-161 prohibits a contribution to a charitable organization if the candidate's spouse, children, parents, brothers or sisters are employed by the organization or on any board governing the organization.

Another option available to you is the use of a booster fund. In short, this fund is governed by all contribution and expenditure laws, is used for support of an elected official's duties and activities while in elective office, and requiring that the elected official must make semi-annual reports in January or July. Below is the language contained in G.S. §163-278.36:

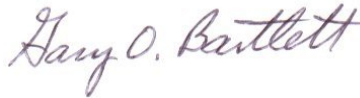
**§ 163-278.36. Elected officials to report funds.**

*All donations to, and all payments from any "booster fund," "support fund," "unofficial office account" or any other similar source made or used in support of an individual's candidacy for elective office, or in support of an individual's duties and activities while in an elective office shall be deemed contributions and expenditures as defined in this Article and shall be reported as contributions and expenditures as required by this Article. The reports due in January and July of each year shall show the balance of each separate fund or account maintained on behalf of the elected office holder. (1977, c. 615; 1999-31, s. 4(c).)*

The purpose of S.L 2006-161 is to limit the wide discretion candidates and political committees previously were allowed in how campaign funds were spent. That purpose should be kept in mind by all committees. Whenever a committee is in doubt about whether an expenditure is proper, it should, as has been done here, request an opinion pursuant to G.S. §163-278.23.

This opinion is based upon the facts as stated in our conversation December 4, 2006. If those facts should change, you should evaluate whether this opinion is still applicable and binding. Finally, this opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,



Gary O. Bartlett



STATE BOARD OF ELECTIONS  
6400 Mail Service Center • Raleigh, North Carolina 27699-6400

GARY O. BARTLETT  
Executive Director

MAILING ADDRESS:  
P.O. BOX 27255  
RALEIGH, NC 27611-7255

October 19, 2006

Senator Charlie Albertson  
North Carolina General Assembly  
525 Legislative Office Building  
Raleigh, NC 27603-5925

Dear Senator Albertson:

This is to memorialize our conversation and your communication dated October 16, 2006, in which you have requested an advisory opinion pursuant to G.S. §163-278.23 regarding permissible uses of campaign funds from a candidate's campaign committee. You also asked whether there are restrictions on one candidate's ability to volunteer in his brother's campaign for another office.

It is my understanding that your brother, Arliss Albertson, is a candidate for re-election in a County Commission District that is incorporated within the North Carolina Senate District where you are a candidate. You want to help your brother, but at the same time wish to make sure you are compliant with campaign finance laws.

Your committee is eligible to make a contribution (direct or in-kind) not to exceed \$4,000 per election. You may contribute to your brother's campaign amounts funds from your personal funds that exceed the \$4,000.00 limit. Contributions to a candidate by his siblings are not limited. Below is the pertinent part of the governing statute:

**§ 163-278.13. Limitation on contributions.**

- (a) No individual, political committee, or other entity shall contribute to any candidate or other political committee any money or make any other contribution in any election in excess of four thousand dollars (\$4,000) for that election.
- (b) No candidate or political committee shall accept or solicit any contribution from any individual, other political committee, or other entity of any money or any other contribution in any election in excess of four thousand dollars (\$4,000) for that election.
- (c) Notwithstanding the provisions of subsections (a) and (b) of this section, it shall be lawful for a candidate or a candidate's spouse, parents, brothers and sisters to make a contribution to the candidate or to the candidate's treasurer of any amount of money or to make any other contribution in any election in excess of four thousand dollars (\$4,000) for that election.
- (d) For the purposes of this section, the term "an election" means any primary, second primary, or general election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the election, except that where a candidate is not on the ballot in a second primary, that second primary is not "an election" with respect to that candidate.

Though you are a candidate, there is no prohibition against your serving as a volunteer in your brother's campaign. Below is the definition of contribution set forth in our campaign finance laws. The bold portion is the pertinent portion.

**§ 163-278.6. Definitions.**

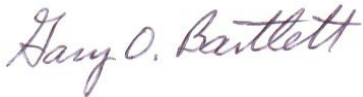
- (6) The terms "contribute" or "contribution" mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, to a candidate to support or oppose the nomination or election of one or more clearly identified candidates, to a political committee, to a political party, or to a referendum committee, whether or not made in an election year, and any contract,

agreement, promise or other obligation, whether or not legally enforceable, to make a contribution. These terms include, without limitation, such contributions as labor or personal services, postage, publication of campaign literature or materials, in-kind transfers, loans or use of any supplies, office machinery, vehicles, aircraft, office space, or similar or related services, goods, or personal or real property. These terms also include, without limitation, the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods. **Notwithstanding the foregoing meanings of "contribution," the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, political committee, or referendum committee. The term "contribution" does not include an "independent expenditure." If:**

- a. Any individual, person, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) makes, or contracts to make, any disbursement for any electioneering communication, as defined in G.S. 163-278.80(2) and (3) and G.S. 163-278.90(2) and (3); and
- b. That disbursement is coordinated with a candidate, an authorized political committee of that candidate, a State or local political party or committee of that party, or an agent or official of any such candidate, party, or committee that disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate's party and as an expenditure by that candidate or that candidate's party.

This opinion is based upon the facts as stated in our conversation on August 23, 2006. If those facts should change, you should evaluate whether this opinion is still applicable and binding. Finally, this opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,



Gary O. Bartlett  
Executive Director



STATE BOARD OF ELECTIONS  
6400 Mail Service Center • Raleigh, North Carolina 27699-6400

GARY O. BARTLETT  
Executive Director

MAILING ADDRESS:  
P.O. BOX 27255  
RALEIGH, NC 27611-7255

February 9, 2007

Mr. John R. Wallace  
Wallace, Nordan & Sarda, L.L.P.  
P. O. Box 12065  
Raleigh, N.C. 27605

Re: Advisory Opinion Pursuant to N.C.G.S. § 163-278.23; Use of Political Committee Funds for Legal Fees and Expenses

Dear Mr. Wallace:

You have asked for an opinion pursuant to N.C.G.S. § 163-278.23 on whether, under Article 22A of Chapter 163 of the General Statutes, the funds of the Jim Black Committee may be spent for the legal expenses of the Committee, its Treasurer Virginia Kelly and other campaign staff, Speaker Black, and Speaker Black's legislative staff. Effective October 1, 2006, "[a] candidate or candidate campaign committee may use contributions only for the following purposes" as set forth in N.C.G.S. § 163-278.16B:

- (1) Expenditures resulting from the campaign for public office by the candidate or candidate's campaign committee.
- (2) Expenditures resulting from holding public office.
- (3) Contributions to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers, or sisters are not employed by the organization.
- (4) Contributions to a national, State, or district or county committee of a political party or a caucus of the political party.
- (5) Contributions to another candidate or candidate's campaign committee.
- (6) To return all or a portion of a contribution to the contributor.
- (7) Payment of any penalties against the candidate or candidate's campaign committee for violation of this Article imposed by a board of elections or a court of competent jurisdiction.

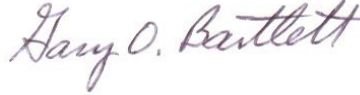
Legal fees and expenses have been incurred because of investigations into the fund raising activities of the Jim Black Committee, its treasurer and others, including the Speaker himself, and investigations related to his tenure in legislative office. These legal expenses arising from investigations into his campaigns or service in office appear to fall under the statute's authorized purposed in that they are "[e]xpenditures resulting from the campaign for public office by the candidate or candidate's campaign committee" or "[e]xpenditures resulting from holding public office." Thus, they are permitted expenditures under Article 22A of Chapter 163 of the General Statutes.

It could be argued that legal fees incurred because of activities which are ultimately deemed to be illegal are not proper expenditures under the statute. Such a ruling would be inconsistent, however, with the legislature's determination in subsection (7) of N.C.G.S. § 163-278.16B that any penalties assessed against "the candidate or candidate's campaign committee for violation" of Article 22A of Chapter 163 of the General Statutes may be paid from the committee's funds. If a penalty resulting from an investigation into a campaign finance violation is a permissible expenditure, then it is reasonable to infer that the legislature intended that it is also a permissible expenditure for a candidate's committee to pay any legal fees incurred in the course of the investigation that led to the penalty.

For your information, a study committee of the Senate has been appointed to study the issue of legal assistance funds for candidates and elected officials. Any legislation adopted by the General Assembly on this issue may impact this opinion.

This opinion is based upon the facts as stated in your letter of December 21, 2006. If those facts should change, you should evaluate whether this opinion is still applicable and binding. Finally, this opinion is made pursuant to N.C. Gen. Stat. § 163-278.23 and will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,

A handwritten signature in purple ink that reads "Gary O. Bartlett". The signature is written in a cursive, flowing style.

Gary O. Bartlett

cc: Julian Mann, III Codifier of Rules



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**APPROVED RULES**

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

*Rules approved by the Rules Review Commission at its meeting on December 14, 2006.*

**REGISTER CITATION TO THE  
NOTICE OF TEXT****AGRICULTURE, BOARD OF**

Application for Registration of Fertilizers	02 NCAC 48B .0121*	21:04 NCR
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**CREDIT UNION DIVISION**

Permissible Transactions	04 NCAC 06C .1202*	21:04 NCR
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**SOCIAL SERVICES COMMISSION**

Personnel Centers Home With Operator and Staff	10A NCAC 06R .0305*	21:04 NCR
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**HHS-FACILITY SERVICES**

Performance Standards	10A NCAC 14C .2503*	20:23 NCR
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**HEALTH SERVICES, COMMISSION FOR**

General Policies	10A NCAC 43G .0101	21:02 NCR
Definitions	10A NCAC 43G .0102	21:02 NCR
Location of Services	10A NCAC 43G .0103	21:02 NCR
Types of Services Provided	10A NCAC 43G .0104	21:02 NCR
Eligibility for Direct Services	10A NCAC 43G .0105	21:02 NCR
Fees	10A NCAC 43G .0107	21:02 NCR
Administration	10A NCAC 43G .0108*	21:02 NCR
Children's Developmental Services Agencies	10A NCAC 43G .0109	21:02 NCR
Eligibility	10A NCAC 43G .0110*	21:02 NCR
Service Plan -Service Delivery	10A NCAC 43G .0111	21:02 NCR
Center-Program Operations Manual	10A NCAC 43G .0201	21:02 NCR
Personnel Management	10A NCAC 43G .0202	21:02 NCR
Safety	10A NCAC 43G .0203	21:02 NCR
Annual Program Planning and Performance Evaluation	10A NCAC 43G .0204	21:02 NCR
Integration of Services with Local Communities	10A NCAC 43G .0205	21:02 NCR
Forms	10A NCAC 43G .0206	21:02 NCR
Clinical Assessment Services	10A NCAC 43G .0301	21:02 NCR
Treatment and Client/Family Instruction Services	10A NCAC 43G .0302	21:02 NCR

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**APPROVED RULES**

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Case Management Services	10A NCAC 43G .0303	21:02 NCR
Screening Services	10A NCAC 43G .0304	21:02 NCR
Case-Specific Technical Assistance Services	10A NCAC 43G .0305	21:02 NCR
Confidentiality	10A NCAC 43G .0401	21:02 NCR
Information from Other Agencies	10A NCAC 43G .0402	21:02 NCR
Ownership of Records	10A NCAC 43G .0403	21:02 NCR
Security of Records	10A NCAC 43G .0404	21:02 NCR
Right of Access	10A NCAC 43G .0405	21:02 NCR
Withholding Information from the Client	10A NCAC 43G .0406	21:02 NCR
Contested Information	10A NCAC 43G .0407	21:02 NCR
Procedure Obtaining Permission for Release of Information	10A NCAC 43G .0408	21:02 NCR
Disclosure for the purpose of Research	10A NCAC 43G .0409	21:02 NCR
Disclosure Pursuant to a Court Order	10A NCAC 43G .0410	21:02 NCR
Definitions	10A NCAC 43G .0502	21:02 NCR
Provider Eligibility	10A NCAC 43G .0503	21:02 NCR
Client Eligibility	10A NCAC 43G .0504	21:02 NCR
Allocation of Funds	10A NCAC 43G .0505	21:02 NCR
Allocation of Funds	10A NCAC 43G .0506	21:02 NCR
Reporting Requirements	10A NCAC 43G .0507	21:02 NCR
Client and Third Party Fees	10A NCAC 43G .0508	21:02 NCR
Application for Funds	10A NCAC 43G .0509	21:02 NCR
Budgeting of Grant Funds	10A NCAC 43G .0510	21:02 NCR
Annual Plan	10A NCAC 43G .0511	21:02 NCR
Renewal of Grant Funds	10A NCAC 43G .0512	21:02 NCR

**INSURANCE, DEPARTMENT OF**

Requirements	11 NCAC 05A .0603	21:05 NCR
Requirements for Units Required to Match Grants	11 NCAC 05A .0703*	21:05 NCR
Licensee Requirements	11 NCAC 06A .0802*	21:06 NCR
Courses Specifically Approved	11 NCAC 06A .0803*	21:06 NCR
Attendance	11 NCAC 06A .0806	21:06 NCR
Hardship	11 NCAC 06A .0807	21:06 NCR
Sanctions for Noncompliance	11 NCAC 06A .0811*	21:06 NCR

**SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION**

Suspension: Revocation: or Denial of Certification	12 NCAC 10B .0204	21:03 NCR
Period of Suspension: Revocation: or Denial	12 NCAC 10B .0205	21:04 NCR
Background Investigations	12 NCAC 10B .0305	21:04 NCR
Admission of Trainees	12 NCAC 10B .0713*	21:04 NCR
Sheriff Responsibilities	12 NCAC 10B .1701	21:04 NCR
Instructors	12 NCAC 10B .1702	21:04 NCR
Minimum Training Requirements	12 NCAC 10B .1703	21:04 NCR
Domestic Violence In-Service Training Program Specifications	12 NCAC 10B .1704	21:04 NCR

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**APPROVED RULES**

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Failure to Complete in-Service Domestic Violence Training...	12	NCAC 10B .1705	21:04 NCR
Sheriff Responsibilities	12	NCAC 10B .1801	21:04 NCR
Instructors	12	NCAC 10B .1802	21:04 NCR
Minimum Training Requirements	12	NCAC 10B .1803	21:04 NCR
Law Enforcement In-Service Training Program Specifications	12	NCAC 10B .1804	21:04 NCR
Failure to Complete Law Enforcement Training Program	12	NCAC 10B .1805	21:04 NCR
In-Service Training Coordinator	12	NCAC 10B .1806	21:04 NCR
In-Service Training for Justice Officers	12	NCAC 10B .2001	21:04 NCR
Certification-Specific Programs	12	NCAC 10B .2002	21:04 NCR
In-Service Training Coordinator	12	NCAC 10B .2003*	21:04 NCR
Instructors	12	NCAC 10B .2004	21:04 NCR
Minimum Training Requirements	12	NCAC 10B .2005	21:04 NCR
In-Service Training Program Specifications	12	NCAC 10B .2006*	21:04 NCR
Sheriff/Agency head Responsibilities	12	NCAC 10B .2007*	21:04 NCR
Failure to Complete in-Service Training Programs	12	NCAC 10B .2008*	21:04 NCR

**LABOR, DEPARTMENT OF**

Handicapped Worker Certification	13	NCAC 12 .0202*	21:06 NCR
Withholding of Wages	13	NCAC 12 .0304*	21:06 NCR
Authorization for Withholding of Wages	13	NCAC 12 .0305	21:06 NCR
Vacation Pay	13	NCAC 12 .0306	21:06 NCR
Bonuses, Commissions and Other Forms of Wage Calculation	13	NCAC 12 .0307	21:06 NCR
Application for a Youth Employment Certificate	13	NCAC 12 .0402	21:06 NCR
Review Issuance and Maintenance of Certificates	13	NCAC 12 .0403*	21:06 NCR
Waiver	13	NCAC 12 .0404*	21:06 NCR
Revocation	13	NCAC 12 .0405*	21:06 NCR
Parental Exemption	13	NCAC 12 .0409	21:06 NCR

**ENVIRONMENTAL MANAGEMENT COMMISSION**

Outstanding Resource Waters	15A	NCAC 02B .0225*	20:22 NCR
Little Tennessee River Basin and Savannah River Drainage ...	15A	NCAC 02B .0303*	20:22 NCR
New Source Performance Standards	15A	NCAC 02D .0524	20:24 NCR
General Recordkeeping and Reporting Requirements	15A	NCAC 02D .0605	20:24 NCR
Bulk Gasoline Terminals	15A	NCAC 02D .0927*	20:24 NCR
Gasoline Truck Tanks and Vapor Collection Systems	15A	NCAC 02D .0932*	20:24 NCR
Sale and Service of Analyzers	15A	NCAC 02D .1006*	20:24 NCR
Maximum Achievable Control Technology	15A	NCAC 02D .1111	20:24 NCR
Purpose and Applicability	15A	NCAC 02D .2501*	20:21 NCR

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**APPROVED RULES**

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Definitions	15A NCAC 02D .2502	20:21 NCR
Mercury Emission	15A NCAC 02D .2503*	20:21 NCR
Permitting	15A NCAC 02D .2504*	20:21 NCR
Monitoring, Reporting, and Recordkeeping	15A NCAC 02D .2505*	20:21 NCR
Designated Representative	15A NCAC 02D .2506*	20:21 NCR
Computation of Time	15A NCAC 02D .2507	20:21 NCR
New Source Growth	15A NCAC 02D .2508*	20:21 NCR
Periodic Review and Reallocation	15A NCAC 02D .2509*	20:21 NCR
Trading Program and Banking	15A NCAC 02D .2510*	20:21 NCR
Mercury Emission Limits	15A NCAC 02D .2511*	20:21 NCR
Universal Stormwater Management Program	15A NCAC 02H .1020*	20:18 & 21:05 NCR
Permits requiring Public Participation	15A NCAC 02Q .0306	20:24 NCR
Definitions	15A NCAC 02Q .0503	20:24 NCR
Permit Content	15A NCAC 02Q .0508*	20:24 NCR
Administrative Permit	15A NCAC 02Q .0514*	20:24 NCR
Local Program Approval	15A NCAC 02T .0915*	20:07 NCR

**COASTAL RESOURCES COMMISSION**

Public Hearing and Local Adoption Requirements	15A NCAC 07B .0801*	21:03 NCR
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**HEALTH SERVICES, COMMISSION FOR**

STDS Applicable to Generators of Hazardous Waste-Part 262	15A NCAC 13A .0107*	21:13 NCR
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**SECRETARY OF STATE, DEPARTMENT OF**

Scope	18 NCAC 07C .0101*	21:05 NCR
Definitions	18 NCAC 07C .0102*	21:05 NCR
Application	18 NCAC 07C .0201*	21:05 NCR
Oath of Office and Delivery of Commission	18 NCAC 07C .0202*	21:05 NCR
Re-Registration	18 NCAC 07C .0203*	21:05 NCR
Approved Course of Study for Electronic Notaries Public	18 NCAC 07C .0301	21:05 NCR
Electronic Notary Signature	18 NCAC 07C .0401*	21:05 NCR
Electronic Notary Seal	18 NCAC 07C .0402*	21:05 NCR
Physical Presence Requirement for Electronic Notarization	18 NCAC 07C .0403*	21:05 NCR
Electronic Notary Solution Provider Application	18 NCAC 07C .0501*	21:05 NCR
Criteria for Approval of Electronic Notary Solution Provi...	18 NCAC 07C .0502*	21:05 NCR
Electronic Notary Solution Provider Changes	18 NCAC 07C .0503*	21:05 NCR
Separate Attestations	18 NCAC 07C .0601*	21:05 NCR
Electronic Notary Seals	18 NCAC 07C .0602*	21:05 NCR
Employers of Electronic Notaries	18 NCAC 07C .0603*	21:05 NCR
Protected Access	18 NCAC 07C .0604*	21:05 NCR

**CERTIFIED PUBLIC ACCOUNTANT EXAMINERS, BOARD OF**

CPE Requirements for CPAS	21	NCAC 08G .0401	21:01 NCR
Qualification of CPE Sponsors	21	NCAC 08G .0403*	21:01 NCR
Requirements for CPE Credit	21	NCAC 08G .0404*	21:01 NCR
Compliance with CPE Requirements	21	NCAC 08G .0406	21:01 NCR
Computation of CPE Credits	21	NCAC 08G .0409	21:01 NCR
Professional Ethics and Conduct CPE	21	NCAC 08G .0410	21:01 NCR

**MEDICAL BOARD**

Process for Approval to Practice	21	NCAC 32M .0104*	21:03 NCR
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**NURSING, BOARD OF**

Revocation Suspension or Denial of License	21	NCAC 36 .0217*	21:02 NCR
Refresher Course	21	NCAC 36 .0220*	G.S. 150B-21.5(a)(3) & (4)
Clinical Nurse Specialist Practice	21	NCAC 36 .0228*	G.S. 150B-21.5(a)(3) & (4)
Process for Approval to Practice	21	NCAC 36 .0804*	21:02 NCR

**APPRAISAL BOARD**

Registration, License and Certificate Renewal	21	NCAC 57A .0203*	21:06 NCR
Continuing Education	21	NCAC 57A .0204*	21:06 NCR
Expired Registration License or Certificate	21	NCAC 57A .0206*	21:06 NCR
National Appraiser Registry	21	NCAC 57A .0209	21:06 NCR
Temporary Practice	21	NCAC 57A .0210	21:06 NCR
Nonresident Trainee Registration, Appraiser Licensure and...	21	NCAC 57A .0211*	21:06 NCR
Subject Matter and Passing Scores	21	NCAC 57A .0302*	21:06 NCR
Appraisal Reports	21	NCAC 57A .0405*	21:06 NCR
Supervision of Trainees	21	NCAC 57A .0407*	21:06 NCR
Course Records	21	NCAC 57B .0210*	21:06 NCR
Instructor Requirements	21	NCAC 57B .0306*	21:06 NCR
Criteria for Course Approval	21	NCAC 57B .0603*	21:06 NCR
Prelicensing and Precertification Courses	21	NCAC 57B .0604	21:06 NCR
Course Operational Requirements	21	NCAC 57B .0606	21:06 NCR
Renewal of Approval and Fees	21	NCAC 57B .0611	21:06 NCR

**RESPIRATORY CARE BOARD**

Definitions	21	NCAC 61 .0103*	21:04 NCR
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**RECREATIONAL THERAPY LICENSURE, BOARD OF**

Supervision of a Licensed Recreational Therapy Assistant	21	NCAC 65 .0205*	21:04 NCR
Application Procedures for Licensed Recreational Therapis...	21	NCAC 65 .0401*	21:04 NCR
Practice and Continuing Education Requirements for Licens...	21	NCAC 65 .0601*	21:04 NCR

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**APPROVED RULES**

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Renewal Requirements for Licensed Recreational Therapist	21	NCAC 65	.0602*	21:04 NCR
Change of Address for Licensed Recreational Therapist	21	NCAC 65	.0603*	21:04 NCR
Investigation of Suspected Violations and Complaints	21	NCAC 65	.1001*	21:04 NCR

**STATE PERSONNEL COMMISSION**

Unavailability When Leave is Exhausted	25	NCAC 01C	.1007*	21:02 NCR
Redeployment	25	NCAC 01D	.0912*	21:02 NCR
Posting and Announcement of Vacancies	25	NCAC 01H	.0602	21:02 NCR
Applicant Information and Application	25	NCAC 01H	.0604	21:02 NCR
Special Applicant Considerations: Agency Responsibilities	25	NCAC 01H	.0605	21:02 NCR
Selection of Applicants	25	NCAC 01H	.0606	21:02 NCR
Minimum Qualifications	25	NCAC 01H	.0607	21:02 NCR
Final Commitments	25	NCAC 01H	.0609	21:02 NCR
Periods of War	25	NCAC 01H	.0611	21:02 NCR
Agency Responsibility	25	NCAC 01H	.0616	21:02 NCR
Employee's Responsibility	25	NCAC 01H	.0617	21:02 NCR
Verification Procedures	25	NCAC 01H	.0620	21:02 NCR
Agency Certification	25	NCAC 01H	.0621	21:02 NCR
Applicant Disqualification	25	NCAC 01H	.0622	21:02 NCR
Disciplinary Action	25	NCAC 01H	.0623	21:02 NCR
Dismissal	25	NCAC 01H	.0624	21:02 NCR
Recruitment and Selection Policy	25	NCAC 01H	.0630*	21:02 NCR
Applicant Information and Application	25	NCAC 01H	.0632*	21:02 NCR
Special Applicant Consideration and Employment of Relatives	25	NCAC 01H	.0633*	21:02 NCR
Selection of Applicants	25	NCAC 01H	.0634*	21:02 NCR
Employment of Aliens	25	NCAC 01H	.0636*	21:02 NCR
Credentials Verification Procedures	25	NCAC 01H	.0637	21:02 NCR
Applicant Disqualification-False or Misleading Information	25	NCAC 01H	.0638*	21:02 NCR
Disciplinary Action-False or Misleading Information	25	NCAC 01H	.0639*	21:02 NCR
Dismissal-False or Misleading Information	25	NCAC 01H	.0640	21:02 NCR
General Provisions	25	NCAC 01H	.0701*	21:02 NCR
Promotional Priority Consideration	25	NCAC 01H	.0801*	21:02 NCR
Relationship to Other Priority Considerations	25	NCAC 01H	.0802*	21:02 NCR
Reduction-in-Force Consideration	25	NCAC 01H	.0901*	21:02 NCR
Requirement for RIF Priority Consideration	25	NCAC 01H	.0902*	21:02 NCR
Reemployment After Priority Expiration	25	NCAC 01H	.0903	21:02 NCR
Agency and Employee Responsibilities	25	NCAC 01H	.0904*	21:02 NCR
Office of State Personnel Responsibilities	25	NCAC 01H	.0905*	21:02 NCR
Cumulative State Service	25	NCAC 01H	.1002	21:02 NCR
Agency and Employee Responsibilities	25	NCAC 01H	.1003	21:02 NCR
Office of State Personnel Responsibilities	25	NCAC 01H	.1004	21:02 NCR

Mandatory Right to a Position	25	NCAC 01H .1005*	21:02 NCR
Veterans' Preference Policy Statement	25	NCAC 01H .1101	21:02 NCR
Claiming Veterans' Preference	25	NCAC 01H .1102*	21:02 NCR
Allegation of Denial of Veterans' Preference	25	NCAC 01H .1103*	21:02 NCR
Application of Veterans' Preference	25	NCAC 01H .1104*	21:02 NCR
Separation	25	NCAC 01I .2005*	21:02 NCR

The following rule is subject to legislative review due to procedures in affect prior to a 2003 amendment to Chapter 150B.

**PHARMACY, BOARD OF**

Pharmacist Work Conditions	21	NCAC 46 .2506*	13:04 NCR
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**TITLE 02 – DEPARTMENT OF AGRICULTURE AND  
CONSUMER SERVICES**

**02 NCAC 48B .0121 APPLICATION FOR  
REGISTRATION OF FERTILIZERS**

(a) Each application for registration of any fertilizer shall include the:

- (1) net weight;
- (2) brand;
- (3) grade;
- (4) name and address of the person guaranteeing registration; and
- (5) sources from which nitrogen, phosphate, and potash are derived in mixed fertilizers.

(b) Each application for registration of any fertilizer in addition to the information contained in Paragraph (a) of this Rule, shall include a guaranteed analysis showing the percentages of primary plant nutrients and chlorine in the following order and form:

- (1) tobacco fertilizers:
  - (A) total nitrogen (N) X Percent;

[breakdown of nitrogen (N) is optional]

- (B) available phosphate (P2O5) X Percent;
  - (C) soluble potash (K2O) X Percent;
  - (D) chlorine (maximum) X Percent;
- (2) fertilizer materials:
  - (A) total nitrogen (N) X Percent;
  - (B) available phosphate (P2O5) X Percent;
  - (C) soluble potash (K2O) X Percent;
- (3) specialty fertilizers, manures and fortified mulch:
  - (A) total nitrogen (N) X Percent;

(B) available phosphate (P2O5) X Percent;

(C) soluble potash (K2O) X Percent;

(4) organic fertilizers:

(A) total nitrogen (N) (see 02 NCAC 48B .0122) X Percent;

(B) available phosphate (P2O5) X Percent;

(C) soluble potash (K2O) X Percent.

(c) Immediately following the guarantees for primary plant nutrients, the following plant nutrients, if used, shall be listed on the application and guaranteed by percentage of each in elemental form, with the following minimum guarantees:

	Element	Minimum Concentration, %
(1)	calcium (Ca)	1.0000
(2)	magnesium (Mg) (see 02 NCAC 48B .0132)	0.5000
(3)	sulfur (S)	1.0000
(4)	boron (B)	0.0200
(5)	chlorine (Cl)	0.1000
(6)	cobalt (Co)	0.0005
(7)	copper (Cu)	0.0500
(8)	iron (Fe)	0.1000
(9)	manganese (Mn) (see 02 NCAC 48B .0132)	0.0500
(10)	molybdenum (Mo)	0.0005
(11)	nickel (Ni)	0.0010
(12)	sodium (Na)	0.1000
(13)	zinc (Zn)	0.0500

Sources of these elements and proof of availability shall be provided to the Commissioner upon request.

(d) A person shall not make any guarantee or claim for a secondary or minor plant nutrient not listed in Paragraph (c) of this Rule. "Secondary plant nutrient" means calcium, magnesium, and sulfur. "Minor plant nutrient" means the other elements listed in Paragraph (c) of this Rule, commonly known as "micronutrients".

- (e) A person shall express potential acidity or basicity as equivalent pounds per ton of calcium carbonate, if acid forming or nonacid forming potential is guaranteed.
- (f) Where no determination of available phosphate for organic phosphates is made, total phosphate shall be guaranteed, except as provided in Paragraph (g) of this Rule.
- (g) Where unacidulated mineral phosphates or basic slag is used, both total and available phosphate, as well as degree of fineness, shall be guaranteed.

*History Note: Authority G.S. 106-660(a); 106-673; Eff. January 1, 1985; Amended Eff. January 1, 2007; June 1, 1994; January 1, 1992; December 1, 1985.*

#### **TITLE 04 – DEPARTMENT OF COMMERCE**

##### **04 NCAC 06C .1202 PERMISSIBLE TRANSACTIONS**

Credit unions may:

- (1) purchase or sell securities in accordance with G.S. 54-109.1 et seq. and when the purchase or sale is to be completed within five business days after the agreement is made;
- (2) buy or sell a future contract only if it is used as a hedging contract incidental to the assembly of a pool of loans for sale in the secondary market;
- (3) enter into reverse repurchase agreements to meet ordinary and unexpected liquidity needs such as temporary share withdrawal or loan demands, but such agreements represent borrowing and are limited to the borrowing limitations as specified in Rule .0308 of this Subchapter;
- (4) enter into loan-type repurchase agreements only with their own members, other credit unions, or credit union organizations;
- (5) enter into investment-type repurchase agreements if the following elements of a sale of security are included:
  - (a) The Credit Union takes possession of the securities or receives a custodial or safekeeping receipt from a bank or other financial institution evidencing that the securities have been segregated from the general assets of the vendor.
  - (b) The Credit Union is not required to deliver the identical securities in the event of repurchase.
  - (c) The Credit Union assumes the risks of market fluctuation in the value of the securities at purchase.
  - (d) The Credit Union receives the coupons or stated interest rate dividend on the securities purchased for the time period owned.

- (6) deliver written application to the Administrator to make investments and purchase insurance, mutual funds and fixed or variable annuity products. The Administrator shall promptly grant or deny the application within 60 calendar days following receipt with or without conditions or provisions, upon consideration of the following factors:
  - (a) The investment or product is for the sole purpose of funding employee benefit, retirement or deferred compensation plans for employees of the Credit Union; and
  - (b) The investment or purchase is made consistent with G.S. 54-109.12.

*History Note: Authority G.S. 54-109.12; 54-109.82; 54-109.92(a); Eff. April 1, 1979; Amended Eff. January 1, 2007.*

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

##### **10A NCAC 06R .0305 PERSONNEL: CENTERS: HOMES WITH OPERATOR AND STAFF**

(a) General Requirements

- (1) The owner of adult day care homes initially certified after January 1, 2003, or homes that make structural building modifications after this date, shall reside in the home.
- (2) Staff positions shall be planned and filled according to the goals of the program and the manpower needed to develop and direct the activities which meet these goals.
- (3) There shall be a statewide criminal history records search of all newly-hired employees of adult day programs for the past five years conducted by an agency approved by the North Carolina Administrative Offices of the Courts.
- (4) There shall be a written job description for each position, full-time or part-time. The job description shall specify qualifications of education and experience; to whom employee is responsible; duties and responsibilities; and salary range.
- (5) References, including former employers, shall be required in recruitment of staff.
- (6) There shall be an established review process for each employee at least annually and following any probationary period.
- (7) There shall be a written plan for orientation and staff development of new employees and volunteers and ongoing development and training of all staff. Documentation of such



orientation, staff development and training shall be recorded.

- (8) There shall be a written plan for staff substitutions in case of absences. The plan shall include the coverage of usual responsibilities as well as maintenance of staff/participant ratio. Substitute staff shall have the same qualifications and training as those required by the position and in this Subchapter. Substitutes are not required to have current certified CPR and First Aid training as long as other staff are present with this training at all times. Trained volunteers may be used instead of paid substitutes.

- (9) Prior to beginning employment, each new employee shall present a written medical statement, completed within the prior 12 months by a physician, nurse practitioner or physician's assistant, certifying that the employee has no illness or health condition that would pose a health risk to others and that the employee can perform the duties assigned in the job.

**(b) Personnel Policies**

- (1) Personnel policies and their content are the responsibility of each adult day care program. Each program shall state its policies in writing. A copy of this statement of personnel practice shall be given to each employee and shall state the program's policy on the following:

- (A) annual leave,
- (B) educational opportunities,
- (C) pay practices,
- (D) employee benefits,
- (E) grievance procedures,
- (F) performance and evaluation procedures,
- (G) criteria for advancement,
- (H) discharge procedures,
- (I) hiring and firing responsibility,
- (J) use of any probationary period,
- (K) staff participation in reviews of personnel practices,
- (L) maternity leave,
- (M) military leave,
- (N) civil leave (jury duty and court attendance), and
- (O) protection of confidential information.

- (2) All policies developed shall conform to the United States Department of Labor wage and hour regulations.

(c) **Staffing Pattern.** The staffing pattern shall be dependent upon the enrollment criteria and the particular needs of the participants who are to be served. The ratio of staff to participants shall be adequate to meet the goals and objectives of the program. Whenever regularly scheduled staff are absent, substitutes shall be used to maintain the staff-participant ratio. The minimum ratios shall be as follows:

- (1) **Adult Day Care Homes**  
One staff person with responsibility for direct participant care for each six participants, up to 16 participants total.

- (2) **Adult Day Care Centers**  
One staff person with responsibility for direct participant care for each eight participants.

**(d) Program Director**

- (1) The program director shall have the authority and responsibility for the management of activities and direction of staff to insure that activities and services are provided in accordance with established program policies.

- (2) The program director shall:

- (A) be at least 18 years of age;
- (B) have completed a minimum of two years of formal post secondary education from an institution accredited by an accrediting agency recognized by the United States Department of Education (including colleges, universities, technical institutes, and correspondence schools) or shall have a high school diploma or the equivalent and a combination minimum of five years experience and training in services to elderly or adults with disabilities;

- (C) have at least two years of work experience in supervision and administration;

- (D) provide, prior to employment, a written medical statement, completed within the prior 12 months by a physician, nurse practitioner, or physician's assistant, certifying that the employee has no illness or health condition that would pose a risk to others and that the employee can perform the duties assigned on the job; and

- (E) provide at least three reference letters or the names of individuals with whom a reference interview can be conducted, including at least one former employer. The individuals providing reference information shall have knowledge of the applicant program director's background and qualifications.

- (3) In employing a program director, the governing body, agency or owner shall consider whether or not applicants exhibit these characteristics:

- (A) ability to make decisions and set goals;
- (B) knowledge and understanding of the needs of the aging and disabled;

- (C) ability to design and implement a varied, structured program of group and individual activities; and
  - (D) managerial and administrative skills - ability to supervise staff and to plan and coordinate staff training.
- (4) The adult day care program shall have a full-time program director or a full-time substitute meeting the requirements as specified in this Paragraph. The program director shall assign authority and responsibility for the management of activities and direction of staff when the program director is not on site.

*History Note:* Authority G.S. 130A-148; 131D-6; 143B-153; Eff. July 1, 1978;  
Amended Eff. July 1, 2007; May 1, 1992; July 1, 1990; July 1, 1984; January 1, 1981.

**10A NCAC 14C .2503 PERFORMANCE STANDARDS**

(a) An applicant proposing additional intensive treatment beds shall not be approved unless the overall occupancy, over the nine months immediately preceding the submittal of the application, of the total number of intensive treatment beds within the facility in which the beds are to be located has been:

- (1) 75 percent for facilities with a total of 1 through 15 intensive treatment beds; or
- (2) 85 percent for facilities with a total of 16 or more intensive treatment beds.

(b) An applicant shall not be approved unless the overall occupancy of the total number of intensive treatment beds to be operated in the facility is projected by the fourth quarter of the third year of operation following completion of the project, to be:

- (1) 75 percent for facilities with a total of 1 through 15 intensive treatment beds; or
- (2) 85 percent for facilities with a total of 16 or more intensive treatment beds.

(c) The applicant shall document the specific methodology and assumptions by which occupancies are projected, including the average length of stay and anticipated recidivism rate.

*History Note:* Authority G.S. 131E-177(1); 131E-183(b); Eff. November 1, 1996;  
Temporary Amendment Eff. January 1, 2002;  
Amended Eff. April 1, 2003;  
Temporary Amendment Eff. February 1, 2006;  
Amended Eff. January 1, 2007.

- 10A NCAC 43G .0101 ADMINISTRATION**
- 10A NCAC 43G .0102 DEFINITIONS**
- 10A NCAC 43G .0103 LOCATION OF SERVICES**
- 10A NCAC 43G .0104 TYPES OF SERVICES PROVIDED**
- 10A NCAC 43G .0105 ELIGIBILITY FOR DIRECT SERVICES**

*History Note:* Authority G.S. 130A-5(3); 130A-124;

Eff. January 1, 1984;  
Amended Eff. September 1, 1990;  
Temporary Repeal Eff. July 1, 2006;  
Repeal Eff. January 1, 2007.

**10A NCAC 43G .0107 FEES**

*History Note:* Authority G.S. 130A-5(3); 130A-124; Eff. January 1, 1984;  
Temporary Repeal Eff. July 1, 2006;  
Repealed Eff. January 1, 2007.

**10A NCAC 43G .0108 ADMINISTRATION**

The Department of Health and Human Services shall administer the statewide early intervention program under Federal law, Part C of the Individuals with Disabilities Act (IDEA).

*History Note:* Authority G.S. 130A-126;  
Temporary Adoption Eff. July 1, 2006;  
Adoption Eff. January 1, 2007.

**10A NCAC 43G .0109 CHILDREN'S DEVELOPMENTAL SERVICES AGENCIES**

The Children's Developmental Services Agencies within the Early Intervention Branch shall manage the Early Intervention Program at the local level. Each Children's Developmental Services Agency shall serve children birth to three years of age who have been referred by parents, community agencies, physicians, or other interested parties for early intervention services. The Children's Developmental Services Agency shall determine the child's eligibility for the Early Intervention Program.

*History Note:* Authority G.S. 130A-126;  
Temporary Adoption Eff. July 1, 2006;  
Adoption Eff. January 1, 2007.

**10A NCAC 43G .0110 ELIGIBILITY**

(a) Children from birth to age three are eligible for early intervention services under the provisions of this subchapter and under Part C of the Individuals with Disabilities Education Act (IDEA) if they have been determined by the Children's Developmental Services Agency to meet the criteria of one of the two following categories:

- (1) developmental delay; or
- (2) established conditions.

(b) Developmental Delay.

- (1) A child is considered to have developmental delay if the child's development is delayed in one or more of the following areas:
  - (A) Cognitive Development;
  - (B) Physical Development, including fine and gross motor function;
  - (C) Communication Development;
  - (D) Social-Emotional Development; or
  - (E) Adaptive Development.
- (2) The specific level of delay shall be:
  - (A) documented by scores of 2.0 standard deviations below the mean of the

- (B) composite score (total test score) on standardized tests in at least one of the above areas of development; or documented by a 30 percent delay on instruments which determine scores in months in at least one of the above areas of development, or
- (C) documented by scores of 1.5 standard deviations below the mean of the composite score (total test score) on standardized tests in at least two of the above areas of development, or
- (D) documented by a 25 percent delay on instruments which determine scores in months in at least two of the above areas of development.

(c) Established Conditions. A child is considered to have an established condition if the child has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay. Diagnosis may be made by Children's Developmental Services Agency staff or the child's physician. Specific conditions through which a child shall be deemed eligible in the established conditions category are as follows:

- (1) Congenital Anomaly/Genetic Disorders/Inborn Errors of Metabolism. These are children diagnosed with one or more congenital abnormalities or genetic disorders with developmental implications. Some examples are Down Syndrome, Fragile X Syndrome, familial retardation syndromes, and fetal alcohol syndrome.
- (2) Congenital Infections. These are children diagnosed with congenital infections with developmental implications. Some examples are toxoplasmosis, rubella, cytomegalovirus, and HIV.
- (3) Autism. These are children diagnosed with autism or autism spectrum disorders.
- (4) Attachment disorder. These are children with a diagnosed attachment disorder.
- (5) Hearing Loss. These are children diagnosed with unilateral or bilateral permanent hearing loss.
- (6) Visual Impairment. These are children diagnosed with a visual impairment that is not correctable with treatment, surgery, glasses, or contact lenses.
- (7) Neurologic Disease/Central Nervous System Disorders. These are children diagnosed with a disease or disorder known to affect the nervous system with developmental implications, such as Cerebral Palsy, Spina Bifida, Epilepsy, and Microcephaly.
- (8) Neonatal Conditions and Associated Complications. These are children diagnosed with one or more of the following neonatal diseases or disorders:
  - (A) Gestational age less than 27 weeks or birth weight less than 1000 grams;

- (B) Neonatal encephalopathy with neurological abnormality persisting at discharge from the neonatal intensive care unit.
- (C) Moderate to Severe Ventricular Enlargement at discharge from the neonatal intensive care unit or a ventriculoperitoneal shunt;
- (D) Neonatal seizures, stroke, meningitis, encephalitis, porencephaly, or holoprosencephaly;
- (E) Bronchopulmonary Dysplasia requiring supplemental oxygen at discharge from the neonatal intensive care unit;
- (F) Intrauterine Growth Retardation;
- (G) Necrotizing enterocolitis requiring surgery;
- (H) Abnormal neurological exam at discharge;
- (I) Intraventricular hemorrhage III or IV; or
- (J) Periventricular leukomalacia.

*History Note: Authority G.S. 130A-126;  
Temporary Adoption Eff. July 1, 2006;  
Adoption Eff. January 1, 2007.*

**10A NCAC 43G .0111 SERVICE PLAN – SERVICE DELIVERY**

Once a child is determined eligible for the program, the Children's Developmental Services Agency shall develop a service plan based on the child's needs and the requirements of Part C of the Individuals with Disabilities Education Act (IDEA). Service provision shall be monitored by the Children's Developmental Services Agency. The services shall be provided by the following:

- (1) staff of the Children's Developmental Services Agency, or
- (2) agencies or individuals within the community who have executed a provider agreement with the Children's Developmental Services Agency.

*History Note: Authority G.S. 130A-126;  
Temporary Adoption Eff. July 1, 2006;  
Adoption Eff. January 1, 2007.*

<b>10A NCAC 43G .0201</b>	<b>CENTER-PROGRAM</b>
<b>10A NCAC 43G .0202</b>	<b>OPERATIONS MANUAL</b>
<b>10A NCAC 43G .0203</b>	<b>PERSONNEL MANAGEMENT</b>
<b>10A NCAC 43G .0204</b>	<b>SAFETY</b>
<b>10A NCAC 43G .0205</b>	<b>ANNUAL PROGRAM</b>
<b>10A NCAC 43G .0206</b>	<b>PLANNING AND</b>
	<b>PERFORMANCE EVALUATION</b>
	<b>INTEGRATION OF SERVICES</b>
	<b>WITH LOCAL COMMUNITIES</b>
	<b>FORMS</b>

*History Note:* Authority G.S. 130A-5(3); 130A-124;  
*Eff. January 1, 1984;*  
*Amended Eff. September 1, 1990;*  
*Temporary Repeal Eff. July 1, 2006;*  
*Repealed Eff. January 1, 2007.*

- 10A NCAC 43G .0301 CLINICAL ASSESSMENT SERVICES**
- 10A NCAC 43G .0302 TREATMENT AND CLIENT/FAMILY INSTRUCTION SERVICES**
- 10A NCAC 43G .0303 CASE MANAGEMENT SERVICES**
- 10A NCAC 43G .0304 SCREENING SERVICES**
- 10A NCAC 43G .0305 CASE-SPECIFIC TECHNICAL ASSISTANCE SERVICES**

*History Note:* Authority G.S. 130A-5(3); 130A-124;  
*Eff. January 1, 1984;*  
*Amended Eff. September 1, 1990;*  
*Temporary Repeal Eff. July 1, 2006;*  
*Repealed Eff. January 1, 2007.*

- 10A NCAC 43G .0401 CONFIDENTIALITY**
- 10A NCAC 43G .0402 INFORMATION FROM OTHER AGENCIES**
- 10A NCAC 43G .0403 OWNERSHIP OF RECORDS**
- 10A NCAC 43G .0404 SECURITY OF RECORDS**
- 10A NCAC 43G .0405 RIGHT OF ACCESS**
- 10A NCAC 43G .0406 WITHHOLDING INFORMATION FROM THE CLIENT**
- 10A NCAC 43G .0407 CONTESTED INFORMATION**
- 10A NCAC 43G .0408 PROCEDURE OBTAINING PERMISSION FOR RELEASE OF INFORMATION**
- 10A NCAC 43G .0409 DISCLOSURE FOR THE PURPOSE OF RESEARCH**
- 10A NCAC 43G .0410 DISCLOSURE PURSUANT TO A COURT ORDER**

*History Note:* Authority G.S. 130A-124;  
*Eff. April 1, 1985;*  
*Amended Eff. September 1, 1990;*  
*Temporary Repeal Eff. July 1, 2006;*  
*Repealed Eff. January 1, 2007.*

- 10A NCAC 43G .0502 DEFINITIONS**
- 10A NCAC 43G .0503 PROVIDER ELIGIBILITY**
- 10A NCAC 43G .0504 CLIENT ELIGIBILITY**
- 10A NCAC 43G .0505 SCOPE OF SERVICES**
- 10A NCAC 43G .0506 ALLOCATION OF FUNDS**
- 10A NCAC 43G .0507 REPORTING REQUIREMENTS**
- 10A NCAC 43G .0508 CLIENT AND THIRD PARTY FEES**
- 10A NCAC 43G .0509 APPLICATION FOR FUNDS**
- 10A NCAC 43G .0510 BUDGETING OF GRANT FUNDS**
- 10A NCAC 43G .0511 ANNUAL PLAN**
- 10A NCAC 43G .0512 RENEWAL OF GRANT FUNDS**

*History Note:* Authority G.S. 130A-124;  
*Eff. April 1, 1985;*  
*Amended Eff. September 1, 1990;*  
*Temporary Repeal Eff. July 1, 2006;*  
*Repealed Eff. January 1, 2007.*

## **TITLE 11 – DEPARTMENT OF INSURANCE**

### **11 NCAC 05A .0603 REQUIREMENTS**

(a) Application forms shall be mailed by the Division to all known departments by January 2 of each year.  
 (b) Any application received by the Division that is incorrect or incomplete shall be returned to the department with a request that the correct or complete information be sent to the Division within 10 business days after receipt by the department. The failure of the department to return the requested correct or complete information shall result in the forfeiture by the department of its eligibility for a grant during that current grant cycle.

(c) Applications shall be mailed to the Division and be postmarked no later than March 1. Applications bearing postmarks later than March 1 are disqualified. The names of grant recipients shall be announced on May 15. If May 15 falls on a weekend, the announcement shall be made on the following Monday.

(d) The Division shall approve all or part of a complete application.

(e) If the application includes a request for a motor vehicle, the vehicle specifications and, if used, the previous year's maintenance records shall accompany the application.

(f) The following documents shall accompany a grant application:

- (1) A contract showing an agreement between the department and a county for the department to provide fire protection to a district;
- (2) An active roster comprising a list of members meeting the training requirements in G.S. 58-86-30;
- (3) A charter showing the incorporation of the department as a nonprofit corporation;
- (4) A statement verifying the population that the department serves;
- (5) A financial statement showing the fiscal status of the department; and
- (6) A statement verifying that the department is financially able to match the grant.

(g) Statements that there are no overdue taxes, conflict of interest statements, payment agreements, and equipment invoices shall be received by the Division no later than September 30 following the announcement of grant recipients. Departments submitting incorrect invoices, such as sales orders, acknowledgements, and packing slips, before September 30 shall be contacted by the Division and given 10 business days to submit correct documents. The failure of any department to comply shall result in the department forfeiting its eligibility for a grant from the Fund. Equipment or capital improvements that

are ordered by a department before May 15 or equipment that is back-ordered by a department on or before September 30 shall not be funded by grants from the Fund.

(h) Equipment purchased with grants is subject to periodic inspection by Division personnel.

*History Note: Authority G.S. 58-2-40(1); 58-36-10(3); 58-87-1;*

*Eff. February 1, 1993;*

*Amended Eff. January 1, 2007.*

**11 NCAC 05A .0703 REQUIREMENTS FOR UNITS  
REQUIRED TO MATCH GRANTS**

(a) Application forms shall be mailed by the Division to all known units by August 1 of each year.

(b) Any application received by the Division that is incorrect or incomplete shall be returned to the unit with a request that the correct or complete information be sent to the Division within 10 business days after receipt by the unit. The failure by the unit to return the requested correct or complete information shall result in the forfeiture by the unit of its eligibility for a grant during that current grant cycle.

(c) Applications shall be mailed to the Division and be postmarked no later than October 1. Applications bearing postmarks later than October 1 are disqualified. The names of the grant recipients shall be announced on December 15. If December 15 falls on a weekend, the announcement will be made on the following Monday.

(d) The Division shall approve all or part of a complete application.

(e) If the application includes a request for a vehicle, the vehicle specifications and, if used, the previous year's maintenance records shall accompany the application.

(f) The following documents shall accompany a grant application;

- (1) A contract showing that a county recognizes the unit as providing rescue or rescue/EMS services to a specified district;
- (2) A charter showing the incorporation of the unit as a nonprofit corporation;
- (3) An active roster comprising a list of unit members;
- (4) A statement verifying that the unit is financially able to match the amount of the grant;
- (5) A financial statement showing the fiscal status of the unit; and
- (6) A rescue provider statement, which may be submitted in lieu of the contract required by Subparagraph (1) of this Paragraph. As used in this Subparagraph, "rescue provider statement" means a notarized statement, signed by representatives of a unit and the county in which the rescue or rescue/EMS services are provided, that the unit provides rescue or rescue/EMS services within the county.

(g) Statements that there are no overdue taxes, conflict of interest statements, payment agreements, and equipment

invoices shall be received by the Division no later than April 30. Units submitting incorrect invoices, such as sales orders, acknowledgements, and packing slips, before April 30 shall be contacted by the Division and given 10 business days to submit the correct documents. The failure of any unit to comply shall result in the unit forfeiting its eligibility for a grant from the Fund. Equipment or capital improvements that are ordered by a unit before December 15 or equipment that is back-ordered by a unit on or before April 30 shall not be funded by grants from the Fund.

(h) Equipment purchased with grants is subject to periodic inspection by Division personnel.

*History Note: Authority G.S. 58-2-40(1); 58-87-5;*

*Eff. February 1, 1993;*

*Amended Eff. January 1, 2007.*

**11 NCAC 06A .0802 LICENSEE REQUIREMENTS**

(a) Life and health licensees shall obtain 12 ICECs during each calendar year in approved life and health courses. Each person holding a life and health license shall complete a continuing education course on ethics within two years after January 1, 2008, and every two years thereafter. The course shall comprise three ICECs and shall be approved by the Commissioner.

(b) Property and liability licensees shall obtain 12 ICECs during each calendar year in approved property and liability courses. Each person holding a property and liability license shall complete a continuing education course on ethics within two years after January 1, 2008, and every two years thereafter. The course shall comprise three ICECs and shall be approved by the Commissioner.

(c) Any person holding more than one license to which this Section applies shall obtain 18 ICECs during each calendar year, including a minimum of six ICECs for each kind of license.

(d) An instructor shall receive the maximum ICECs awarded to a student for the course.

(e) Licensees shall not receive ICECs for the same course more often than one time in any three calendar year period.

(f) Licensees do not have to obtain ICECs for the calendar year in which they are initially licensed.

(g) Licensees shall receive ICECs for a course only for the calendar year in which the course is completed. Any course requiring an examination shall not be considered completed until the licensee passes the examination.

(h) Licensees shall maintain records of all ICECs for three years following the obtaining of such ICECs, which records shall be available for inspection upon the Commissioner's request.

(i) Nonresident licensees who meet continuing education requirements in their home states meet the continuing education requirements of this Section. Nonresident licensees whose home states have no continuing education requirements shall meet the requirements of this Section.

(j) Licensees are exempt from the requirements of this Section if they:

- (1) are age 65 or older; and
- (2) have been continuously licensed in the line of insurance for at least 25 years; and
- (A) either hold a nationally recognized professional designation for the line

- of insurance. Acceptable designations include those listed in 11 NCAC 6A .0803(a) and (b); or
- (B) certify to the Department annually they are inactive agents who neither solicit applications for insurance nor take part in the day to day operation of an agency.

(k) Any licensee holding more than one license to which this Section applies and qualifies for exemption under Paragraph (j) of this Rule for one license type shall obtain a minimum of six ICECs in each calendar year for the license type not exempted.

(l) Courses completed before the issue date of a new license do not meet the requirements of this Section for that new license.

(m) No credit shall be given for courses taken before they have been approved by the Department.

(n) Persons who hold adjuster licenses shall obtain 12 ICECs during each calendar year in approved property and liability courses. As used in this Section, "licensee" includes a person who holds an adjuster license and who is required to comply with this Section.

(o) Each person holding a property and liability, personal lines, or adjuster license shall complete a continuing education course on flood insurance and the National Flood Insurance Program within two years after January 1, 2008, and every four years thereafter. The course shall comprise three ICECs and shall be approved by the Commissioner.

*History Note: Authority G.S. 58-2-40; 58-33-130; Temporary Adoption Eff. June 22, 1990, for a period of 180 days to expire on December 19, 1990; ARRC Objection Lodged July 19, 1990; Eff. December 1, 1990; Temporary Amendment Eff. October 3, 1991 for a period of 180 days to expire on March 30, 1992; Amended Eff. January 1, 2007; February 1, 1995; August 1, 1994; February 1, 1994; January 1, 1993.*

#### **11 NCAC 06A .0803 COURSES SPECIFICALLY APPROVED**

(a) Courses that are necessary to obtain the following nationally recognized designations are approved for 18 ICECs upon successful completion of the national examination for each part:

- (1) Accredited Advisor in Insurance (AAI);
- (2) Associate in Claims (AIC);
- (3) Associate in Loss Control Management (ALCM);
- (4) Associate in Risk Management (ARM);
- (5) Associate in Underwriting (AU);
- (6) Certified Employees Benefit Specialist (CEBS);
- (7) Chartered Financial Consultant (ChFC);
- (8) Chartered Life Underwriter (CLU);
- (9) Chartered Property and Casualty Underwriter (CPCU);
- (10) Fellow Life Management Institute (FLMI);
- (11) General Insurance (INS);
- (12) Life Underwriter Training Council Fellow, 26 week (LUTCF);

- (13) Certified Financial Planner (CFP).

(b) Courses that are necessary to obtain the following nationally recognized designations are approved for an amount of ICECs to be determined by the Commissioner under this Section.

- (1) Agency Management Training Course Graduate;
- (2) Certified Insurance Counselor (CIC);
- (3) Certified Insurance Service Representative (CISR);
- (4) Certified Professional Service Representative (CPSR);
- (5) Fraternal Insurance Counselor (FIC);
- (6) Health Insurance Associate (HIA);
- (7) Life Underwriter Training Council Fellow, 13 weeks (LUTCF);
- (8) Registered Health Underwriter (RHU).

(c) Courses that are taught by a college or university that is accredited by the Southern Association of Colleges and Schools or by an accreditation agency recognized by the U.S. Department of Education are approved for a number of ICECs to be determined by the Commissioner under this Section.

(d) Any course prepared by the Commissioner is approved as a component of each resident licensee's continuing education requirement for a number of ICECs to be determined by the Commissioner under this Section.

*History Note: Authority G.S. 58-2-40; 58-33-130; Temporary Adoption Eff. June 22, 1990, for a period of 180 days to expire on December 19, 1990; ARRC Objection Lodged July 19, 1990; Eff. December 1, 1990; Amended Eff. January 1, 2007; February 1, 1995; June 1, 1992.*

#### **11 NCAC 06A .0806 ATTENDANCE**

(a) If six or fewer ICECs are assigned to a course, the licensee shall attend 100 percent of the course to receive any ICECs.

(b) If more than six ICECs are assigned to a course, and the licensee passes the exam and attends at least 80 percent of the course, the licensee shall receive 100 percent of the ICECs assigned to the course.

(c) If more than six ICECs are assigned to a course, and the licensee does not pass the exam but attends at least 80 percent of the course, the licensee shall receive 80 percent of the ICECs assigned to the course.

(d) An instructor may conduct a class with up to 30 students with no additional assistance. For classes with attendance exceeding 30 students, one assistant to the instructor is required for each additional 50 students or any portion thereof. Each assistant shall be physically present in the classroom during the instructor's presentation.

*History Note: Authority G.S. 58-2-40; 58-33-130; Temporary Adoption Eff. June 22, 1990, for a period of 180 days to expire on December 19, 1990; ARRC Objection Lodged July 19, 1990; Eff. December 1, 1990; Amended Eff. January 1, 2007; February 1, 1995; June 1, 1992.*

#### **11 NCAC 06A .0807 HARDSHIP**

Licensees shall make appeals for extensions of time under G.S. 58-33-130(c) on or before January 30 of the year immediately following the calendar year in which the required ICECs were not obtained.

*History Note: Authority G.S. 58-2-40; 58-33-130; Temporary Adoption Eff. June 22, 1990, for a period of 180 days to expire on December 19, 1990; ARRC Objection Lodged July 19, 1990; Eff. December 1, 1990; Amended Eff. January 1, 2007; June 1, 1992.*

**11 NCAC 06A .0811 SANCTIONS FOR NONCOMPLIANCE**

(a) This Rule establishes sanctions for licensees who fail to complete their annual continuing education requirements and for licensees, course providers, course provider personnel, course presenters, course presenter personnel, and course instructors who falsify any records or documents in connection with the continuing education program or who do not comply with G.S. 58-33-130, G.S. 58-33-132, or this Section.

(b) If the license of any person lapses under G.S. 58-33-130(c), the Commissioner shall reinstate the license when the person has completed the continuing education requirements. If the person does not satisfy the requirements for licensure reinstatement by July 1 of that year, the person shall complete the appropriate precertification education requirement and pass the appropriate licensing examination, at which time the Commissioner shall reinstate the person's license.

(c) The Commissioner may suspend, revoke, or refuse to renew a license for any of the following causes:

- (1) Failing to respond to Department inquiries, including continuing education audit requests, within seven calendar days after the receipt of the inquiry or request.
- (2) Requesting an extension or waiver under false pretenses.
- (3) Refusing to cooperate with Department employees in an investigation or inquiry.

(d) The Commissioner may suspend, revoke, or refuse to renew a course provider's, presenter's or instructor's authority to offer courses for any of the following causes:

- (1) Advertising that a course is approved before the Commissioner has granted such approval in writing.
- (2) Submitting a course outline with material inaccuracies, either in length, presentation time, or topic content.
- (3) Presenting or using unapproved material in providing an approved course.
- (4) Failing to conduct a course for the full time specified in the approval request submitted to the Commissioner.
- (5) Preparing and distributing certificates of attendance or completion before the course has been approved.
- (6) Issuing certificates of attendance or completion before the completion of the course.

- (7) Failing to issue certificates of attendance or completion to any licensee who satisfactorily completes a course.
- (8) Failing to notify the Commissioner in writing of suspected or known violations of the North Carolina General Statutes or Administrative Code within 30 days after suspecting or knowing about the violations.
- (9) Violating the North Carolina General Statutes or Administrative Code.
- (10) Failing to monitor attendance and attention of attendees.

(e) Course providers and presenters are responsible for the activities of persons conducting, supervising, instructing, proctoring, monitoring, moderating, facilitating, or in any way responsible for the conduct of any of the activities associated with the course.

(f) The Commissioner may require any one of the following upon a finding of a violation of this Section:

- (1) Refunding all course tuition and fees to licensees.
- (2) Providing licensees with a course to replace the course that was found in violation.
- (3) Withdrawal of approval of courses offered by the provider, presenter, or instructor.

(g) Each nonresident licensee shall certify to the Commissioner that the licensee has complied with the continuing education requirements in the licensee's home state and paid a recertification fee by March 1 of each year. If the license lapses under G.S. 58-33-125(c) and an extension of time is not sought, the Commissioner shall reinstate the license when the licensee has completed the home state continuing education requirements and paid a recertification fee.

*History Note: Authority G.S. 58-2-40; 58-33-125(a); 58-33-130; 58-33-132; Temporary Adoption Eff. June 22, 1990, for a period of 180 days to expire on December 19, 1990; ARRC Objection Lodged July 19, 1990; Eff. December 1, 1990; Amended Eff. January 1, 2007; June 1, 1992.*

**TITLE 12 – DEPARTMENT OF JUSTICE**

**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 the rules in this Subchapter; or
  - (2) fails to meet or maintain any of the employment or certification standards required by 12 NCAC 10B .0300; or
  - (3) fails to satisfactorily complete the 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(a)(6) or .0410(a) or in connection with an application for or certification as a justice officer or a criminal justice officer as defined in 12 NCAC 09A .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 09A .0103(6), unless the positive result is due to a medically indicated cause.
- (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, 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) an accumulation of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor, regardless of the date of commission or conviction except the applicant shall be certified if the last conviction or commission occurred more than two years prior to the date of appointment; or
  - (5) 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 shall 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 revoked shall not be employed or appointed as a justice officer or exercise the authority or perform the duties of a justice officer.
- (g) If the Commission does revoke, suspend, or deny the certification of a justice officer pursuant to this Rule, the period of such sanction shall be as set out in 12 NCAC 10B .0205.
- History Note: Authority G.S. 17E-7;  
Eff. January 1, 1990;  
Amended Eff. July 1, 1990;  
Recodified from 12 NCAC 10B .0204 Eff. January 1, 1991;  
Amended Eff. April 1, 1991; January 1, 1991;*



*Recodified from 12 NCAC 10B .0207 Eff. January 1, 1992;  
Amended Eff. January 1, 2007; January 1, 2006; March 1,  
2005; January 1, 2005; August 1, 1998; January 1, 1996;  
January 1, 1995; January 1, 1994; January 1, 1993.*

**12 NCAC 10B .0205 PERIOD OF SUSPENSION:  
REVOCATION: OR DENIAL**

When the Commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall be:

- (1) permanent where the cause of sanction is:
  - (a) commission or conviction of a felony; or
  - (b) commission or conviction of a crime for which authorized punishment included imprisonment for more than two years; or
  - (c) the second revocation, suspension, or denial of an officer's certification for any of the causes requiring a five-year period of revocation, suspension, or denial as set out in Item (2) of this Rule.
- (2) not less than five years where the cause of sanction is:
  - (a) commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(1).
  - (b) material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission.
  - (c) 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.
  - (d) knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, aiding 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 credit for in-service training as required by 12 NCAC 10B .1700, .1800, .2000, or .2100.
  - (e) failure to make either of the notifications as required by 12 NCAC 10B .0301(a)(7); or

- (f) removal from office under the provisions of G.S. 128-16 or the provisions of G.S. 14-230.
- (g) a positive result on a drug screen, or a refusal to submit to drug testing both pursuant to 12 NCAC 10B .0301 and 12 NCAC 10B .0406, or in connection with an application for certification as a criminal justice officer as defined in 12 NCAC 09A .0103(6).

The Commission may either reduce or suspend the periods of sanction under this Item or substitute a period of probation in lieu of revocation, suspension or denial following an administrative hearing. This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension, in the discretion of the Commission.

- (3) for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is:
  - (a) failure to meet or satisfy relevant basic training requirements.
  - (b) failure to meet or maintain the minimum standards of employment or certification;
  - (c) failure to meet or satisfy the in-service training requirements as prescribed in 12 NCAC 10B .1700 or .2100.
  - (d) commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(2), (3), (4) and (5).
  - (e) denial, suspension, or revocation of certification pursuant to 12 NCAC 10B .0204(c)(5).

The Commission may either reduce or suspend the periods of sanction where revocation, denial or suspension of certification is based upon Subparagraphs .0204(d)(3), (d)(4), and (d)(5) or substitute a period of probation in lieu of revocation, suspension or denial following an administrative hearing. This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension, in the discretion of the Commission.

*History Note: Authority G.S. 17E-4; 17E-7;  
Eff. January 1, 1991;  
Recodified from 12 NCAC 10B .0208 Eff. January 1, 1992;  
Amended Eff. January 1, 2007; January 1, 2006; March 1,  
2005; January 1, 1995; January 1, 1994; January 1, 1993;  
January 1, 1992.*

**12 NCAC 10B .0305 BACKGROUND**

**INVESTIGATION**

(a) Prior to the background investigation conducted by the employing agency to determine the applicant's suitability to perform essential job functions, the applicant shall complete the Commission's Personal History Statement (F-3) to provide a basis for the investigation. The Personal History Statement (F-3) submitted to the Division shall be completed no more than 120 days prior to the applicant's date of appointment.

(b) If the Personal History Statement (F-3) was completed more than 120 days prior to the applicant's date of appointment the Personal History Statement (F-3) shall be updated by the applicant who shall initial and date all changes or a new Personal History Statement (F-3) must be completed.

(c) The employing agency shall ensure the proper dates, signatures, and notarizations are affixed to the Personal History Statement (F-3); and shall also certify that the results of the background investigation are consistent with the information provided by the applicant on the Personal History Statement (F-3), and if not, provide the applicant the opportunity to update the F-3 prior to submission to the Division.

(d) The employing agency, prior to employment, shall examine the applicant's character traits and habits relevant to his/her performance as a justice officer and shall determine whether the applicant is of good moral character as defined in Rule .0301(a)(8). The investigator shall summarize the results of the investigation on the Commission-mandated Background Investigation Form (F-8) which shall be signed and dated by the investigator.

(e) The Background Investigation Form (F-8) shall include records checks from:

- (1) a state-wide search of the Administrative Office of the Courts (AOC) computerized system;
- (2) the national criminal record database accessible through the Division of Criminal Information (DCI) network;
- (3) the North Carolina Department of Motor Vehicles, if the applicant has ever possessed a driver's license issued in North Carolina; and
- (4) out-of-state motor vehicles check from the appropriate agency, if the applicant has ever been issued a driver's license by a state other than North Carolina.

(f) The Background Investigation must also include, if available, county-wide and certified records checks from each jurisdiction where the applicant has resided for the past 10 years and from the jurisdiction where the applicant attended high school. These records shall be performed on each name by which the applicant for certification has ever been known.

(g) If the applicant had prior military service within the 10 year period prior to the date of appointment, then the Background Investigation must also include a copy of the applicant's DD214 which shows the characterization of discharge and military discipline received, if any. If the DD214 indicates a discharge characterization of any type other than Honorable, then a military records check is also required.

(h) The employing agency shall also forward to the Division certified copies of any criminal charge(s) and disposition(s) known to the agency or listed on the applicant's Personal History

Statement (F-3) or both. The employing agency shall explain to the satisfaction of Division staff that charges or other violations which may result from the records checks required in Paragraph (e) of this Section do not pertain to the applicant for certification. This documentation shall be included with all other documentation required in 12 NCAC 10B .0408.

(i) The employing agency shall include a signed and notarized Release Authorization Form which authorizes the Division staff to obtain documents and records pertaining to the applicant for certification which may be required in order to determine whether certification can be granted.

*History Note: Authority G.S. 17E-7;*

*Eff. January 1, 1989;*

*Amended Eff. January 1, 2007; August 1, 2002; January 1, 1994; January 1, 1993; January 1, 1992; January 1, 1990.*

**12 NCAC 10B .0713 ADMISSION OF TRAINEES**

(a) The school director shall not admit any individual as a trainee in any commission-certified basic training course who is not a citizen of the United States.

(b) The school may not admit any individual younger than 21 years of age as a trainee in any commission-certified basic training course without the prior written approval of the Director of the Standards Division. The Director shall approve those individuals who will turn 21 years of age during the course, but prior to the ending date.

(c) The school shall give priority admission in commission-certified basic training courses to individuals holding full-time employment with criminal justice agencies.

(d) The school shall administer the reading component of a standardized test which reports a grade level for each trainee participating in either the Telecommunicator or Detention Officer Certification Course. The specific type of test instrument shall be determined by the school director and shall be administered within the first week of the Course. The grade level results on each trainee shall be submitted to the Commission on each trainee's Report of Student Course Completion.

(f) 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. 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.

(g) The school shall not admit any individual trainee in commission-certified basic training courses unless as a prerequisite the individual has provided the certified School Director a certified criminal record check for local and state records for the time period where the trainee has resided within the past 10 years and where the trainee attended high school. An Administrative Office of the Courts criminal record check or a comparable out-of-state criminal record check will satisfy this requirement. If an individual trainee has received a probationary

certificate from the Commission at the time of enrollment, this records check requirement is waived.

(h) The school shall not admit any individual as a trainee in commission-certified basic training courses who has been convicted of the following:

- (1) a felony; or
- (2) a crime for which the punishment could have been imprisonment for more than two years; or
- (3) a crime or unlawful act defined as a "Class B Misdemeanor" within the five year period prior to the date of appointment; or
- (4) four or more crimes or unlawful acts as defined as "Class B Misdemeanors" regardless of the date of conviction; or
- (5) four or more crimes or unlawful acts defined as "Class A Misdemeanors" except the trainee may be enrolled if the last conviction occurred more than two years prior to the date of enrollment; or
- (6) a combination of four or more "Class A Misdemeanors" or "Class B Misdemeanors" regardless of the date of conviction.

(i) Individuals charged with crimes as specified in this Paragraph, and such offenses were dismissed or the person was found not guilty, may be admitted into the commission-certified basic training courses but completion will not ensure that certification as a justice officer through the Commission will be issued. Every individual who is admitted as a trainee in a presentation of the Basic Law Enforcement Training Course commission-certified basic training courses shall notify the School Director of all criminal offenses which the trainee is arrested for or charged with, pleads no contest to, pleads guilty to or is found guilty of, and notify the School Director of all Domestic Violence Orders (G.S. 50B) and Civil No Contact Orders (50C) which are issued by a judicial official that provide an opportunity for both parties to be present. This shall include all criminal offenses except minor traffic offenses. A minor traffic offense is defined for purposes of this Paragraph as any offense under G.S. 20 or similar laws of other jurisdictions; except those Chapter 20 offenses published in the Class B Misdemeanor Manual. Other traffic offenses under laws of other jurisdictions which shall be reported to the School Director expressly include either first or subsequent offenses of driving while impaired if the maximum allowable punishment is for a term of more than six months but not more than two years, and driving while license permanently revoked or permanently suspended. The notifications required under this Paragraph must be in writing, must specify the nature of the offense, the court in which the case was handled, the date of the arrest or criminal charge, the date of issuance of the Domestic Violence Order (G.S. 50B), Civil No Contact Order (G.S. 50C) the final disposition, and the date thereof. The notifications required under this Paragraph must be received by the School Director within 30 days of the date the case was disposed of in court. The requirements of this Paragraph shall be applicable at all times during which the trainee is enrolled in a Basic Law Enforcement Training Course. The requirements of this Paragraph are in addition to the notifications required under 12 NCAC 10B .0301 and 12 NCAC 09B .0101(8).

*History Note:* Authority G.S. 17E-7;  
*Eff.* April 1, 2001;  
*Amended Eff.* January 1, 2007; January 1, 2005.

<b>12 NCAC 10B .1701</b>	<b>SHERIFF RESPONSIBILITIES</b>
<b>12 NCAC 10B .1702</b>	<b>INSTRUCTORS</b>
<b>12 NCAC 10B .1703</b>	<b>MINIMUM TRAINING</b>
	<b>REQUIREMENTS</b>
<b>12 NCAC 10B .1704</b>	<b>DOMESTIC VIOLENCE IN-</b>
	<b>SERVICE TRAINING</b>
<b>12 NCAC 10B .1705</b>	<b>PROGRAM SPECIFICATIONS</b>
	<b>FAILURE TO COMPLETE IN-</b>
	<b>SERVICE DOMESTIC</b>
	<b>VIOLENCE TRAINING</b>
	<b>PROGRAM</b>

*History Note:* Authority G.S. 17E-4; 17E-7;  
*Eff.* March 1, 2005;  
*Amended Eff.* January 1, 2006;  
*Repealed Eff.* January 1, 2007.

<b>12 NCAC 10B .1801</b>	<b>SHERIFF RESPONSIBILITIES</b>
<b>12 NCAC 10B .1802</b>	<b>INSTRUCTORS</b>
<b>12 NCAC 10B .1803</b>	<b>MINIMUM TRAINING</b>
	<b>REQUIREMENTS</b>
<b>12 NCAC 10B .1804</b>	<b>LAW ENFORCEMENT IN-</b>
	<b>SERVICE TRAINING</b>
<b>12 NCAC 10B .1805</b>	<b>PROGRAM SPECIFICATIONS</b>
	<b>FAILURE TO COMPLETE LAW</b>
	<b>ENFORCEMENT IN-SERVICE</b>
	<b>TRAINING PROGRAM</b>
<b>12 NCAC 10B .1806</b>	<b>IN-SERVICE TRAINING</b>
	<b>COORDINATOR</b>

*History Note:* Authority G.S. 17E-4; 17E-7;  
*Eff.* January 1, 2006;  
*Repealed Eff.* January 1, 2007.

**12 NCAC 10B .2001 PURPOSE**  
 In order to ensure a minimum level of proficiency in specific topical areas for justice officers within the state the Commission establishes the Justice Officers' In-Service Training Programs.

*History Note:* Authority G.S. 17E-4; 17E-7;  
*Eff.* January 1, 1989;  
*Amended Eff.* January 1, 2007; February 1, 1998; January 1, 1990.

**12 NCAC 10B .2002 CERTIFICATION-SPECIFIC PROGRAMS**

The following Justice Officer In-Service Training Programs shall be required for justice officers who are active in the certification specified:

- (1) Firearms Training and Requalification for deputy sheriffs and detention officers as set out in Section .2100 of these Rules;

- (2) Law Enforcement In-Service Training Program for deputy sheriffs as set out in Rule .2005 of this Section;
- (3) Detention Officer In-Service Training Program as set out in Rule .2005 of this Section; and
- (4) Telecommunicator In-Service Training Program as set out in Rule .2005 of this Section.

*History Note: Authority G.S. 17E-4; 17E-7;  
Eff. January 1, 1989;*

*Amended Eff. January 1, 1990;*

*Temporary Amendment Eff. March 1, 1998;*

*Amended Eff. January 1, 2007; January 1, 2006; March 1, 2005; August 1, 1998.*

### **12 NCAC 10B .2003 IN-SERVICE TRAINING COORDINATOR**

If a Sheriff or Department Head chooses to conduct its own in-service training, then the Sheriff or Department Head must also appoint an "In-Service Training Coordinator" who meets the following criteria:

- (1) Has four years of experience as a criminal justice officer or as an administrator or specialist in a field directly related to the criminal justice system;
- (2) Holds General Instructor certification; and
- (3) Has successfully participated in the "Coordinating In-Service Training" course presented by the NC Justice Academy for the purpose of familiarization with trainee and instructor evaluation.

The Sheriff or Department Head shall submit an application for such appointment to the Division for approval of this designation.

*History Note: Authority G.S. 17E-4; 17E-7;  
Eff. January 1, 2007.*

### **12 NCAC 10B .2004 INSTRUCTORS**

The following requirements and responsibilities are hereby established for instructors who conduct a Commission-mandated In-Service Training Program:

- (1) With the exception of firearms as set out in 12 NCAC 10B .2102, the instructors shall hold General Instructor Certification as issued by the North Carolina Criminal Justice Education and Training Standards Commission as set out in 12 NCAC 09B .0302, .0304, and .0306. In addition, each instructor certified by the Criminal Justice Commission to teach in a Commission-certified course shall remain competent in his/her specific or specialty areas. Such competence includes remaining current in the instructor's area of expertise, which may be demonstrated by attending and successfully completing all instructor updates issued by the Commission.

- (2) The instructor shall deliver the training consistent with the specifications as established in the rules in this Section.
- (3) The instructor shall document the successful or unsuccessful completion of training for each person attending a training program and forward a record of their completion to each person's Sheriff or Department Head.

*History Note: Authority G.S. 17E-4; 17E-7;  
Eff. January 1, 2007.*

### **12 NCAC 10B .2005 MINIMUM TRAINING REQUIREMENTS**

(a) A Sheriff or Department Head may choose to use a lesson plan developed by the North Carolina Justice Academy, or may opt to use a lesson plan for any of the topical areas developed by another entity. The Sheriff may also opt to use a lesson plan developed by a certified instructor, provided that the instructor develops the lesson plan, in accordance with the Instructional Systems Development model as taught in Criminal Justice Instructor Training in 12 NCAC 09B .0209.

(b) The 2006 Law Enforcement In-Service Training Program requires a minimum of 24 hours of training in the following topical areas:

- (1) Legal Update;
- (2) Ethics;
- (3) Juvenile Minority Sensitivity Training;
- (4) Methamphetamine Awareness or Methamphetamine Investigative Issues;
- (5) Firearms Training and Requalification for deputy sheriffs and detention officers as set out in Section .2100 of this Subchapter; and
- (6) Any topic areas of the Sheriff's choosing.

(c) The 2007 Law Enforcement In-Service Training Program requires a minimum of 24 hours of training in the following topical areas:

- (1) Legal Update;
- (2) Ethics (on-duty or off-duty);
- (3) Juvenile Minority Sensitivity Training;
- (4) Domestic Violence;
- (5) Interacting with Special Populations (which shall include autism);
- (6) Firearms Training and Requalification for deputy sheriffs and detention officers as set out in Section .2100 of this Subchapter; and
- (7) Any topic areas of the Sheriff's choosing.

(d) The Detention Officer In-Service Training Program requires a minimum of 16 hours of training in the following topical areas:

- (1) Detention Legal Update;
- (2) Ethics for Detention Officers;
- (3) Special Inmate Population Management; and
- (4) Any topic areas of the Sheriff's or Department Head's choosing.

(e) The Telecommunicator In-Service Training Program requires a minimum of 16 hours of training in the following topical areas:

- (1) Handling Suicidal Callers;
- (2) Emergency Call Taking Procedures;

- (3) Terrorism Training an Awareness Level For Telecommunicators;
- (4) Officer Safety Training for Telecommunicators; and
- (5) Any topic areas of the Sheriff's or Department Head's choosing.

*History Note: Authority G.S. 17E-4; 17E-7;  
Eff. January 1, 2007.*

**12 NCAC 10B .2006 IN-SERVICE TRAINING PROGRAM SPECIFICATIONS**

Justice officers who have been active as a deputy sheriff, detention officer, or telecommunicator between January and June of each calendar year must complete the respective In-Service Training Program(s) established by 12 NCAC 10B .2002 by December of each calendar year. For each justice officer holding multiple certifications from the Commission, the Sheriff shall designate the officer's primary duties for the purpose of selecting which one of the in-service training programs the officer must complete for a calendar year.

*History Note: Authority G.S. 17E-4; 17E-7;  
Eff. January 1, 2007.*

**12 NCAC 10B .2007 SHERIFF/AGENCY HEAD RESPONSIBILITIES**

Each Sheriff or Department Head shall ensure that the respectively required In-Service Training Program established by this Section is conducted. In addition, the Sheriff or Department Head shall:

- (1) report to the Division those deputy sheriffs, detention officers and telecommunicators who are inactive;
- (2) maintain a roster of each deputy sheriff, detention officer and telecommunicator who successfully completes the respectively required In-Service Training Program;
- (3) report to the Division by January 15<sup>th</sup>, 2007, those active deputy sheriffs who fail to complete the 2006 Law Enforcement In-Service Training Program in accordance with 12 NCAC 10B .2005. Such reporting shall be on a Commission form;
- (4) report to the Division by January 15<sup>th</sup>, 2008, those active deputy sheriffs who fail to complete the 2007 Law Enforcement In-Service Training Program in accordance with 12 NCAC 10B .2005. Such reporting shall be on a Commission form;
- (5) report to the Division by January 15<sup>th</sup>, 2008, those active detention officers who fail to complete the 2007 Detention Officer In-Service Training Program in accordance with 12 NCAC 10B .2005. Such reporting shall be on a Commission form; and
- (6) report to the Division by January 15<sup>th</sup>, 2008, those active telecommunicators who fail to complete the 2007 Telecommunicator Officer

In-Service Training Program in accordance with 12 NCAC 10B .2005. Such reporting shall be on a Commission form.

*History Note: Authority G.S. 17E-4; 17E-7;  
Eff. January 1, 2007.*

**12 NCAC 10B .2008 FAILURE TO COMPLETE IN-SERVICE TRAINING PROGRAMS**

(a) Failure to complete the respectively required In-Service Training Program(s), except as set forth in Paragraph (c) of this Rule, in accordance with this Section shall result in the summary suspension of certification by the Commission.

(b) Certification may be reinstated at the request of the justice officer's Sheriff/Agency Head provided the justice officer completes the respectively required In-Service Training Program within six months of the end of the calendar year in which the justice officer failed to comply. An In-Service Training Program completed under this provision shall be credited to the prior year of non-compliance; and shall not be credited toward the current year of completion.

(c) Failure to qualify a justice officer in accordance with Section .2100 of these Rules shall be governed by 12 NCAC 10B .2105.

*History Note: Authority G.S. 17E-4; 17E-7;  
Eff. January 1, 2007.*

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**TITLE 13 – DEPARTMENT OF LABOR**

**13 NCAC 12 .0202 DISABLED WORKER CERTIFICATION**

(a) For purposes of this Rule, a "disabled worker" means an individual whose earning capacity is impaired by age or physical or mental deficiency or injury for the work he is to perform.

(b) An application for the issuance of a disabled worker certificate establishing a subminimum wage rate for an individual for a particular job may be made by an employer with the Administrator of the Wage and Hour Bureau and must include:

- (1) the name, address and nature of the business of the employer;
- (2) a description of the occupation at which the worker is to be employed;
- (3) the nature of the worker's disability and its relation to his work;
- (4) the wage the employer proposes to pay the worker (as a percentage of the State minimum wage);
- (5) signatures of the employer and the worker; and
- (6) certification of the applicant's disability by the Division of Vocational Rehabilitation of the Department of Health and Human Services.

(c) If the proposed subminimum wage is less than 50 percent of the applicable minimum wage, the application and evidence must establish that the individual has multiple disabilities or is so severely impaired that his earning or productive capacity would not yield wages equal to at least 50 percent of the

minimum wage if compensated at wage rates which are commensurate with those for non-disabled workers in industry in the vicinity for essentially the same type, quality, and quantity of work.

(d) To determine whether the facts justify the issuance of a certificate, the Administrator may require the submission of additional information and may require the worker to take a medical examination.

(e) A Disabled Worker Certificate shall be issued by the Administrator only if a proper application has been made and the facts show:

- (1) A special subminimum wage is necessary to prevent curtailment of the worker's opportunities for employment.
- (2) The earning or productive capacity of the worker for the work he is to perform is impaired by age or physical or mental deficiency or injury.
- (3) The wage rate requested reflects adequately the individual worker's earning or productive capacity and is not less than 50 percent of the applicable minimum wage, unless a lower rate is justified in accordance with (c) of this Rule.
- (4) In an establishment or a vicinity where non-disabled employees are employed at piece rates in the same occupation, the disabled worker will be paid at least the same piece rates or at the hourly rate specified in the certificate, whichever is greater.

(f) When a certificate is issued, the subminimum wage rate shall be established as a percentage of the State minimum wage, so that the disabled worker's wage rate will adjust automatically with changes in the State minimum wage without reissuance of a new certificate. Copies of the certificate shall be transmitted to the employer and the worker. The employer shall keep, maintain and have available for inspection a copy of the certificate.

(g) A certificate shall not be issued retroactively and shall be issued for a period of three years, subject to renewal by the Administrator. The terms of a certificate, including wage rate, may be amended by the Administrator upon written notice to the parties concerned, if the facts justify such an amendment. A certificate expires automatically when there is a substantial change in the job description, employment is terminated, or due to a change in circumstances the Administrator determines that the certificate or the subminimum wage rate set by the certificate no longer complies with the requirements of this Rule.

(h) Any person aggrieved by an action of the Administrator pursuant to this Rule may, within 15 days after such action, file with the Administrator a written petition for review setting forth the grounds. The Commissioner of Labor or his designated hearing officer may conduct a hearing and offer aggrieved persons the opportunity to present data and views pursuant to Chapter 150B, Article 3 of the North Carolina General Statutes. Any person adversely affected by the decision of the Commissioner or his designee may appeal by filing a written petition for a contested case hearing with the Office of Administrative Hearings (OAH) under Chapter 150B, Article 3 of the North Carolina General Statutes.

(i) Certificates providing subminimum wage rates for sheltered workshops for persons with disabilities may be issued in accordance with the rules and regulations promulgated under the F.L.S.A. regulating and allowing for the issuance of such certificates.

*History Note:* Authority G.S. 95-25.3; 95-25.15; 95-25.17; 95-25.19;

*Eff.* November 1, 1980;

*Amended Eff.* January 1, 2007; February 1, 1982.

### **13 NCAC 12 .0304 WITHHOLDING OF WAGES**

(a) Employers shall furnish each employee an itemized statement indicating the amount and purpose of all deductions, diversions, payments or withholding of wages for each pay period in which deductions or recoupments are made.

(b) "Criminal process," as that term is used in G.S. 95-25.8(e), means any citation, criminal summons, warrant for arrest, or order for arrest, issued by a justice, judge, magistrate, clerk of court, or law enforcement officer for the purpose of requiring a person to appear in court and answer to allegations of a cash shortage, inventory shortage, or damage to an employer's property based upon a showing of probable cause supported by oath or affirmation.

*History Note:* Authority G.S. 95-25.8; 95-25.11; 95-25.13; 95-25.19;

*Eff.* November 1, 1980;

*Amended Eff.* January 1, 2007; April 1, 1999; February 1, 1982.

### **13 NCAC 12 .0305 AUTHORIZATION FOR WITHHOLDING OF WAGES**

(a) When an authorization is required by the Act, the monetary limitations and time requirements specified in G. S. 95-25.8 of the Wage and Hour Act apply and shall not be waived.

(b) Deductions for the convenience of the employee, as that term is used in G.S. 95-25.8, include savings plans, credit union installments, savings bonds, union or club dues, uniform rental or cleaning not required by the employer, parking and charitable contributions.

(c) A "reasonable opportunity to withdraw," as that term is used in G.S. 95-25.8(a), shall be at least three calendar days from the date of the employer's notice of the actual amount to be deducted or the employee's written notice of withdrawal of the authorization.

(d) In accordance with G.S. 95-25.8(d), advances of wages to the employee or to a third party at the employee's request are considered to be prepayment of wages. A dated receipt, signed by the employee, for the advance of wages, shall be sufficient to show that the advance was requested and made.

(e) Loans from an employer to an employee that are considered to be an advance of wages pursuant to G.S. 95-25.8(d) may include credit advanced for purchasing from the employer items not primarily for the benefit of the employer and personal usage of the employer's property when designated for business use only. Personal loans from a supervisor to a subordinate or loans made by third parties to an employee with payroll deduction arrangements are not an advance of wages.

(f) If an employer underpays wages to an employee as a result of a miscalculation of wages or other bona fide error, the employer shall pay any such underpayment owed as soon as possible upon the discovery of the error and no later than the next regularly scheduled pay day, along with accrued interest at the legal rate set forth in G.S. 24-1 from the date the wages first became due.

(g) Authorizations for deductions that are not permitted by law are invalid. For example:

- (1) G.S. 97-21 invalidates agreements by an employee to pay any portion of a premium paid by his or her employer to a workers' compensation insurance carrier;
- (2) 13 NCAC 07F .0101(a)(2) requires the employer to provide, at no cost to the employee, all personal protective equipment which the employee does not wear off the jobsite for use off the job.

If an employer withholds or diverts wages for purposes not permitted by law, the employer shall be in violation of G.S. 95-25.6 or G.S. 95-25.7, or both, even if the employee authorizes the withholding in writing pursuant to G.S. 95-25.8(a), because that authorization is invalid.

(h) An employer may obtain a written authorization pursuant to G.S. 95-25.8(a) and include in the authorization a provision for deducting the balance of the unpaid amount from the employee's paycheck in the event the employee separates before the full amount has been collected. If the employer obtains such an authorization, the employer may deduct as much of the balance possible from the final paycheck without having to give the employee notice of the amount and a reasonable opportunity to withdraw his or her authorization as required by G.S. 95-25.8(a), subject to the withholding limitations of G.S. 95-25.8(b).

(i) A wage credit in the form of tips in accordance with Rule .0303 of this Section, or the reasonable costs of meals, lodging or other facilities in accordance with Rule .0301 of this Section, is not a withholding of wages and does not require written authorization pursuant to G.S. 95-25.8(a).

*History Note:* Authority G.S. 95-25.8; 95-25.11; 95-25.13; 95-25.19;

*Eff. November 1, 1980;*

*Legislative Objection Lodged Eff. March 27, 1981;*

*Amended Eff. January 1, 2007; April 1, 1999; February 1, 1982.*

### **13 NCAC 12 .0306 VACATION PAY**

(a) All vacation policies and practices shall address:

- (1) How and when vacation is earned so that the employees know the amount of vacation to which they are entitled;
- (2) Whether or not vacation time may be carried forward from one year to another, and if so, in what amount;
- (3) When vacation time must be taken;
- (4) When and if vacation pay may be paid in lieu of time off; and
- (5) Under what conditions vacation pay will be forfeited upon discontinuation of employment for any reason.

(b) Ambiguous policies and practices shall be construed against the employer and in favor of employees.

(c) Vacation benefits granted under a policy which does not establish an earning period cannot be reduced or eliminated as a result of a change in policy. An example of such a policy is: "Employees are entitled to one week of vacation per calendar year." If a policy which establishes an earning period or accrual rate is changed, employees are entitled to a pro rata share of the benefits earned under the original policy through the effective date of the change and of the benefits earned under the new policy from the effective date forward, so long as the earning criteria are met under both policies.

*History Note:* Authority G.S. 95-25.2; 95-25.12; 95-25.13; 95-25.19;

*Eff. November 1, 1980;*

*Legislative Objection Lodged Eff. March 27, 1981;*

*Amended Eff. January 1, 2007; April 1, 2001; April 1, 1999; February 1, 1982.*

### **13 NCAC 12 .0307 BONUSES, COMMISSIONS AND OTHER FORMS OF WAGE CALCULATION**

(a) Employers may pay wages based on bonuses, commissions or other forms of calculation as infrequently as annually, if the employees are so notified before earning such wages.

(b) Employers shall notify employees of the employers' policies and practices concerning pay, wages based on bonuses, commissions, or other forms of wage calculation.

(c) Ambiguous policies and practices shall be construed against the employer and in favor of employees.

(d) All policies or practices relating to bonuses, commissions, or other forms of calculation wages shall address:

- (1) How and when bonuses, commissions or other forms of calculation wages are earned so that the employees know the amount of bonuses, commissions or other forms of calculation wages to which they are entitled; and
- (2) Under what conditions and in what amount bonuses, commissions or other forms of calculation wages will be paid upon discontinuation of employment.

(e) Wages computed under a bonus, commission, or other forms of calculation policy or practice which does not establish specific earning criteria cannot be reduced or eliminated as a result of a change in policy or practice. An example of such a policy is: "Employees earn commissions of xx% on all 'sales' (where sales are not defined by the employer)." If the employer changes a policy or practice which establishes specific earning criteria, the employee is entitled to the bonus, commission or other forms of calculation wages earned under the original policy through the effective date of the change and is entitled to the bonus, commission or other forms of calculation wages earned under the new policy from the effective date forward, so long as the earning criteria are met under both policies.

*History Note:* Authority G.S. 95-25.6; 95-25.7; 95-25.13; 95-25.19;

*Eff. February 1, 1982;*

*Amended Eff. January 1, 2007; April 1, 2001; April 1, 1999.*

**13 NCAC 12 .0402 APPLICATION FOR A YOUTH EMPLOYMENT CERTIFICATE**

- (a) A youth employment certificate may be obtained:
- (1) electronically from the Department of Labor; or
  - (2) from the county director of social services' office in the county in which the youth resides or the county in which the youth intends to work, or from a designee outside the social services' office in the county in which the youth resides or the county in which the youth intends to work who has been approved to issue youth employment certificates pursuant to 13 NCAC 12 .0407.

(b) Proof of Age.

- (1) If the youth employment certificate is obtained electronically, the employer shall verify the age of the youth.
- (2) If the youth employment certificate is not obtained electronically, the youth must provide proof of age by means of one of the following:
  - (A) A birth certificate;
  - (B) Evidence from the bureau of vital statistics in the state in which the youth was born;
  - (C) Any state driver's license, learner's permit, or state-issued identification card;
  - (D) Passport;
  - (E) School records or insurance records; or
  - (F) Other documentary evidence determined as equivalent by the Wage and Hour Bureau.

(c) A youth employment certificate obtained pursuant to Paragraph (a) of this Rule shall not be valid unless it is signed by the youth and by a parent, guardian, custodian, or other person standing in loco parentis and by the employer. In the event that a final decree of emancipation has been issued for the youth by a court of competent jurisdiction pursuant to G.S. 7B, Article 35, the youth may sign the certificate without the approval of a parent, guardian or custodian, or other person standing in loco parentis.

*History Note: Authority G.S. 95-25.5; 95-25.19; Eff. November 1, 1980; Amended Eff. January 1, 2007; February 1, 2004; April 1, 2001.*

**13 NCAC 12 .0403 REVIEW: ISSUANCE AND MAINTENANCE OF CERTIFICATES**

(a) The county director of social services, approved designee or the Department of Labor shall review the youth employment certificate to see that it is complete and shall ascertain the age of the youth by the means prescribed in Rule .0402 of this Section and the permissibility of employment based on type of employment and prohibitions in G.S. 95-25.5 and the child labor provisions of the F.L.S.A.

(b) The county director of social services, approved designee or Department of Labor shall sign, date and issue the certificate. The employer's copy of the certificate shall be given to the youth. Certificates shall not be issued if:

- (1) The proposed employment does not comply with all statutory requirements and prohibitions, and all rules adopted under this Section; or
- (2) The proposed employment will be in violation of the F.L.S.A. and all rules promulgated thereunder.

(c) The county director of social services shall send one copy of each certificate to the Wage and Hour Bureau within one week of issuance, and shall maintain one copy of each certificate on file for two years following the date of issuance.

(d) The employer's copy of the youth employment certificate must be given to the employer by the youth on or before the first day of employment. The employer shall not employ a youth until the employer has received its copy of the issued certificate. The employer shall maintain the certificate on record where it is readily accessible to any person authorized to inspect or investigate youth employment. The employer shall maintain the certificate on record so long as the youth is employed thereunder and for two years after the employment terminates.

(e) The employer or youth may request a review of the denial of a certificate by written or oral request to the Wage and Hour Bureau. Appeals of the review decisions rendered must be made in writing within 15 days to the Wage and Hour Administrator who shall issue a written decision. Any person adversely affected by the Administrator's decision may appeal by filing a written petition for a contested case hearing with the Office of Administrative Hearings (OAH) under Chapter 150B, Article 3 of the North Carolina General Statutes.

*History Note: Authority G.S. 95-25.5; 95-25.14; 95-25.15; Eff. November 1, 1980; Amended Eff. January 1, 2007; April 1, 2001; February 1, 1982.*

**13 NCAC 12 .0404 WAIVER**

(a) When an application for a waiver of any youth employment provision is received, if the proposed employment is in the best interest of the youth and his health and safety will not be adversely affected, the Department shall issue a waiver for the youth.

(b) Any person adversely affected by a decision of the Department may appeal by filing a written petition for a contested case hearing with the Office of Administrative Hearings (OAH) under Chapter 150B, Article 3 of the North Carolina General Statutes.

*History Note: Authority G.S. 95-25.5; 95-25.17; Eff. November 1, 1980; Amended Eff. January 1, 2007; July 1, 1988.*

**13 NCAC 12 .0405 REVOCATION**

(a) The Administrator of the Wage and Hour Bureau or his designated representative shall review the issuance of all youth employment certificates by county social services directors. If upon review, or because of any other circumstance, the



Administrator determines a certificate has been issued in violation of the youth employment provisions or the rules adopted thereunder, he shall notify the youth, the county social service director and the employer of the youth that the certificate is being revoked and shall specify the reasons for the revocation.

(b) If the certificate is revoked, the employer shall cease to employ the youth and shall return the certificate to the Administrator of the Wage and Hour Bureau or to the county social service director, who shall forward it to the Wage and Hour Administrator.

(c) The employer or youth may object to the revocation by filing a written petition for a contested case hearing with the Office of Administrative Hearings (OAH) under Chapter 150B, Article 3 of the North Carolina General Statutes. Even if a petition for a hearing is filed, the certificate must be returned and the employment must cease pursuant to Paragraph (b) of this Rule.

*History Note: Authority G.S. 95-25.5; 95-25.17;  
Eff. November 1, 1980;  
Amended Eff. January 1, 2007; July 1, 1988.*

### **13 NCAC 12 .0409 PARENTAL EXEMPTION**

*History Note: Authority G.S. 95-25.5; 95-25.19;  
Eff. April 1, 2001;  
Repealed Eff. January 1, 2007.*

## **TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

### **15A NCAC 02B .0225 OUTSTANDING RESOURCE WATERS**

(a) General. In addition to the existing classifications, the Commission may classify unique and special surface waters of the state as outstanding resource waters (ORW) upon finding that such waters are of exceptional state or national recreational or ecological significance and that the waters have exceptional water quality while meeting the following conditions:

- (1) that the water quality is rated as excellent based on physical, chemical or biological information;
- (2) the characteristics which make these waters unique and special may not be protected by the assigned narrative and numerical water quality standards.

(b) Outstanding Resource Values. In order to be classified as ORW, a water body must exhibit one or more of the following values or uses to demonstrate it is of exceptional state or national recreational or ecological significance:

- (1) there are outstanding fish (or commercially important aquatic species) habitat and fisheries;
- (2) there is an unusually high level of water-based recreation or the potential for such recreation;
- (3) the waters have already received some special designation such as a North Carolina or

National Wild and Scenic River, Native or Special Native Trout Waters or National Wildlife Refuge, which do not provide any water quality protection;

- (4) the waters represent an important component of a state or national park or forest; or
- (5) the waters are of special ecological or scientific significance such as habitat for rare or endangered species or as areas for research and education.

#### **(c) Quality Standards for ORW**

- (1) Freshwater: Water quality conditions shall be maintained to protect the outstanding resource values of waters classified ORW. Management strategies to protect resource values shall be developed on a site specific basis during the proceedings to classify waters as ORW. No new discharges or expansions of existing discharges shall be permitted, and stormwater controls for all new development activities requiring an Erosion and Sedimentation Control Plan in accordance with rules established by the NC Sedimentation Control Commission or an appropriate local erosion and sedimentation control program shall be required to follow the stormwater provisions as specified in 15A NCAC 02H .1000. Specific stormwater requirements for ORW areas are described in 15A NCAC 02H .1007.

- (2) Saltwater: Water quality conditions shall be maintained to protect the outstanding resource values of waters classified ORW. Management strategies to protect resource values shall be developed on a site-specific basis during the proceedings to classify waters as ORW. New development shall comply with the stormwater provisions as specified in 15A NCAC 02H .1000. Specific stormwater management requirements for saltwater ORWs are described in 15A NCAC 02H .1007. New non-discharge permits shall meet reduced loading rates and increased buffer zones, to be determined on a case-by-case basis. No dredge or fill activities shall be allowed if those activities would result in a reduction of the beds of submerged aquatic vegetation or a reduction of shellfish producing habitat as defined in 15A NCAC 03I .0101(b)(20)(A) and (B), except for maintenance dredging, such as that required to maintain access to existing channels and facilities located within the designated areas or maintenance dredging for activities such as agriculture. A public hearing is mandatory for any proposed permits to discharge to waters classified as ORW.

Additional actions to protect resource values shall be considered on a site specific basis during the proceedings to classify waters as ORW and shall be specified in Paragraph (e) of this Rule.

These actions may include anything within the powers of the Commission. The Commission shall also consider local actions which have been taken to protect a water body in determining the appropriate state protection options. Descriptions of boundaries of waters classified as ORW are included in Paragraph (e) of this Rule and in the Schedule of Classifications (15A NCAC 02B .0302 through 02B .0317) as specified for the appropriate river basin and shall also be described on maps maintained by the Division of Water Quality.

(d) Petition Process. Any person may petition the Commission to classify a surface water of the state as an ORW. The petition shall identify the exceptional resource value to be protected, address how the water body meets the general criteria in Paragraph (a) of this Rule, and the suggested actions to protect the resource values. The Commission may request additional supporting information from the petitioner. The Commission or its designee shall initiate public proceedings to classify waters as ORW or shall inform the petitioner that the waters do not meet the criteria for ORW with an explanation of the basis for this decision. The petition shall be sent to:

Director  
DENR/Division of Water Quality  
1617 Mail Service Center  
Raleigh, North Carolina 27699-1617

The envelope containing the petition shall clearly bear the notation: RULE-MAKING PETITION FOR ORW CLASSIFICATION.

(e) Listing of Waters Classified ORW with Specific Actions  
Waters classified as ORW with specific actions to protect exceptional resource values are listed as follows:

- (1) Roosevelt Natural Area [White Oak River Basin, Index Nos. 20-36-9.5-(1) and 20-36-9.5-(2)] including all fresh and saline waters within the property boundaries of the natural area shall have only new development which complies with the low density option in the stormwater rules as specified in 15A NCAC 2H .1005(2)(a) within 575 feet of the Roosevelt Natural Area (if the development site naturally drains to the Roosevelt Natural Area).
- (2) Chattooga River ORW Area (Little Tennessee River Basin and Savannah River Drainage Area): the following undesigned waterbodies that are tributary to ORW designated segments shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section. However, expansions of existing discharges to these segments shall be allowed if there is no increase in pollutant loading:
  - (A) North and South Fowler Creeks;
  - (B) Green and Norton Mill Creeks;
  - (C) Cane Creek;
  - (D) Ammons Branch;
  - (E) Glade Creek; and
  - (F) Associated tributaries.
- (3) Henry Fork ORW Area (Catawba River Basin): the following undesigned

waterbodies that are tributary to ORW designated segments shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section:

- (A) Ivy Creek;
  - (B) Rock Creek; and
  - (C) Associated tributaries.
- (4) South Fork New and New Rivers ORW Area [New River Basin (Index Nos. 10-1-33.5 and 10)]; the following management strategies, in addition to the discharge requirements specified in Subparagraph (c)(1) of this Rule, shall be applied to protect the designated ORW areas:
- (A) Stormwater controls described in Subparagraph (c)(1) of this Rule shall apply to land within one mile of and that drains to the designated ORW areas;
  - (B) New or expanded NPDES permitted wastewater discharges located upstream of the designated ORW shall be permitted such that the following water quality standards are maintained in the ORW segment:
    - (i) the total volume of treated wastewater for all upstream discharges combined shall not exceed 50 percent of the total instream flow in the designated ORW under 7Q10 conditions, which are defined in Rule .0206(a)(1) of this Section;
    - (ii) a safety factor shall be applied to any chemical allocation such that the effluent limitation for a specific chemical constituent shall be the more stringent of either the limitation allocated under design conditions (pursuant to 15A NCAC 02B .0206) for the normal standard at the point of discharge, or the limitation allocated under design conditions for one-half the normal standard at the upstream border of the ORW segment;
    - (iii) a safety factor shall be applied to any discharge of complex wastewater (those containing or potentially containing toxicants) to protect for chronic toxicity in the ORW segment by

setting the whole effluent toxicity limitation at the higher (more stringent) percentage effluent determined under design conditions (pursuant to 15A NCAC 02B .0206) for either the instream effluent concentration at the point of discharge or twice the effluent concentration calculated as if the discharge were at the upstream border of the ORW segment;

- (C) New or expanded NPDES permitted wastewater discharges located upstream of the designated ORW shall comply with the following:
  - (i) Oxygen Consuming Wastes: Effluent limitations shall be as follows: BOD = 5 mg/l, and NH<sub>3</sub>-N = 2 mg/l;
  - (ii) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 10 mg/l for trout waters and to 20 mg/l for all other waters;
  - (iii) Emergency Requirements: Failsafe treatment designs shall be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs;
  - (iv) Nutrients: Where nutrient overenrichment is projected to be a concern, effluent limitations shall be set for phosphorus or nitrogen, or both.
- (5) Old Field Creek (New River Basin): the undesignated portion of Old Field Creek (from its source to Call Creek) shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section.
- (6) In the following designated waterbodies, no additional restrictions shall be placed on new or expanded marinas. The only new or expanded NPDES permitted discharges that shall be allowed shall be non-domestic, non-process industrial discharges. The Alligator River Area (Pasquotank River Basin) extending from the source of the Alligator River to the U.S. Highway 64 bridge including

New Lake Fork, North West Fork Alligator River, Juniper Creek, Southwest Fork Alligator River, Scouts Bay, Gum Neck Creek, Georgia Bay, Winn Bay, Stumpy Creek Bay, Stumpy Creek, Swann Creek (Swann Creek Lake), Whipping Creek (Whipping Creek Lake), Grapevine Bay, Rattlesnake Bay, The Straits, The Frying Pan, Coopers Creek, Babbitt Bay, Goose Creek, Milltail Creek, Boat Bay, Sandy Ridge Gut (Sawyer Lake) and Second Creek, but excluding the Intracoastal Waterway (Pungo River-Alligator River Canal) and all other tributary streams and canals.

- (7) In the following designated waterbodies, the only type of new or expanded marina that shall be allowed shall be those marinas located in upland basin areas, or those with less than 10 slips, having no boats over 21 feet in length and no boats with heads. The only new or expanded NPDES permitted discharges that shall be allowed shall be non-domestic, non-process industrial discharges.
  - (A) The Northeast Swanquarter Bay Area including all waters northeast of a line from a point at Lat. 35E 23N 51O and Long. 76E 21N 02O thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential Proclamation) to Drum Point.
  - (B) The Neuse-Southeast Pamlico Sound Area (Southeast Pamlico Sound Section of the Southeast Pamlico, Core and Back Sound Area); (Neuse River Basin) including all waters within an area defined by a line extending from the southern shore of Ocracoke Inlet northwest to the Tar-Pamlico River and Neuse River basin boundary, then southwest to Ship Point.
  - (C) The Core Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin), including all waters of Core Sound and its tributaries, but excluding Nelson Bay, Little Port Branch and Atlantic Harbor at its mouth, and those tributaries of Jarrett Bay that are closed to shellfishing.
  - (D) The Western Bogue Sound Section of the Western Bogue Sound and Bear Island Area (White Oak River Basin) including all waters within an area defined by a line from Bogue Inlet to the mainland at SR 1117 to a line across Bogue Sound from the

- southwest side of Gales Creek to Rock Point, including Taylor Bay and the Intracoastal Waterway.
- (E) The Stump Sound Area (Cape Fear River Basin) including all waters of Stump Sound and Alligator Bay from marker Number 17 to the western end of Permuda Island, but excluding Rogers Bay, the Kings Creek Restricted Area and Mill Creek.
- (F) The Topsail Sound and Middle Sound Area (Cape Fear River Basin) including all estuarine waters from New Topsail Inlet to Mason Inlet, including the Intracoastal Waterway and Howe Creek, but excluding Pages Creek and Futch Creek.
- (8) In the following designated waterbodies, no new or expanded NPDES permitted discharges and only new or expanded marinas with less than 10 slips, having no boats over 21 feet in length and no boats with heads shall be allowed:
- (A) The Swanquarter Bay and Juniper Bay Area (Tar-Pamlico River Basin) including all waters within a line beginning at Juniper Bay Point and running south and then west below Great Island, then northwest to Shell Point and including Shell Bay, Swanquarter and Juniper Bays and their tributaries, but excluding all waters northeast of a line from a point at Lat. 35E 23N 51O and Long. 76E 21N 02O thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential Proclamation) to Drum Point and also excluding the Blowout Canal, Hydeland Canal, Juniper Canal and Quarter Canal.
- (B) The Back Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin) including that area of Back Sound extending from Core Sound west along Shackleford Banks, then north to the western most point of Middle Marshes and along the northwest shore of Middle Marshes (to include all of Middle Marshes), then west to Rush Point on Harker's Island, and along the southern shore of Harker's Island back to Core Sound.
- (C) The Bear Island Section of the Western Bogue Sound and Bear Island Area (White Oak River Basin) including all waters within an area defined by a line from the western most point on Bear Island to the northeast mouth of Goose Creek on the mainland, east to the southwest mouth of Queen Creek, then south to green marker No. 49, then northeast to the northern most point on Huggins Island, then southeast along the shoreline of Huggins Island to the southeastern most point of Huggins Island, then south to the northeastern most point on Dudley Island, then southwest along the shoreline of Dudley Island to the eastern tip of Bear Island.
- (D) The Masonboro Sound Area (Cape Fear River Basin) including all waters between the Barrier Islands and the mainland from Carolina Beach Inlet to Masonboro Inlet.
- (9) Black and South Rivers ORW Area (Cape Fear River Basin) [Index Nos. 18-68-(0.5), 18-68-(3.5), 18-68-(11.5), 18-68-12-(0.5), 18-68-12-(11.5), and 18-68-2]: the following management strategies, in addition to the discharge requirements specified in Subparagraph (c)(1) of this Rule, shall be applied to protect the designated ORW areas:
- (A) Stormwater controls described in Subparagraph (c)(1) of this Rule shall apply to land within one mile of and that drains to the designated ORW areas;
- (B) New or expanded NPDES permitted wastewater discharges located one mile upstream of the stream segments designated ORW (upstream on the designated mainstem and upstream into direct tributaries to the designated mainstem) shall comply with the following discharge restrictions:
- (i) Oxygen Consuming Wastes: Effluent limitations shall be as follows: BOD = 5 mg/l and NH<sub>3</sub>-N = 2 mg/l;
- (ii) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 20 mg/l;
- (iii) Emergency Requirements: Failsafe treatment designs shall be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or

- equivalent failsafe treatment designs;
- (iv) Nutrients: Where nutrient overenrichment is projected to be a concern, effluent limitations shall be set for phosphorus or nitrogen, or both.
  - (v) Toxic substances: In cases where complex discharges (those containing or potentially containing toxicants) may be currently present in the discharge, a safety factor shall be applied to any chemical or whole effluent toxicity allocation. The limit for a specific chemical constituent shall be allocated at one-half of the normal standard at design conditions. Whole effluent toxicity shall be allocated to protect for chronic toxicity at an effluent concentration equal to twice that which is acceptable under flow design criteria (pursuant to 15A NCAC 02B .0206).
- (10) Lake Waccamaw ORW Area (Lumber River Basin) [Index No. 15-2]: all undesignated waterbodies that are tributary to Lake Waccamaw shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section.
- (11) Swift Creek and Sandy Creek ORW Area (Tar-Pamlico River Basin) [portion of Index No. 28-78-(0.5) and Index No. 28-78-1-(19)]: all undesignated waterbodies that drain to the designated waters shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section and to protect outstanding resource values found in the designated waters as well as in the undesignated waters that drain to the designated waters.
- (12) Fontana Lake North Shore ORW Area (Little Tennessee River Basin and Savannah River Drainage Area) [Index Nos. 2-96 through 2-164 (excluding all waterbodies that drain to the south shore of Fontana Lake) consists of the entire watersheds of all creeks that drain to the north shore of Fontana Lake between Eagle and Forney Creeks, including Eagle and Forney Creeks. In addition to the requirements specified in Subparagraph (c)(1) of this Rule, any person conducting development activity disturbing greater than or equal to 5,000 square feet of land area in the designated ORW area shall undertake the following actions to protect the outstanding resource values of the designated ORW and downstream waters:
- (A) investigate for the presence of and identify the composition of acid-producing rocks by exploratory drilling or other means and characterize the net neutralization potential of the acid-producing rocks prior to commencing the land-disturbing activity;
  - (B) avoid areas to the maximum extent practical where acid-producing rocks are found with net neutralization potential of -5 or less;
  - (C) establish background levels of acidity and mineralization prior to commencing land-disturbing activity, and monitor and maintain baseline water quality conditions for the duration of the land-disturbing activity and for any period thereafter not less than two years as determined by the Division as part of a certification issued in accordance with 15A NCAC 02H .0500 or stormwater permit issued pursuant to this Rule;
  - (D) obtain a National Pollutant Discharge Elimination System permit for construction pursuant to Rule 15A NCAC 02H .0126 prior to initiating land-disturbing activity;
  - (E) design stormwater control systems to control and treat stormwater runoff generated from all surfaces generated by one inch of rainfall in accordance with 15A NCAC 02H. 1008; and
  - (F) replicate pre-development runoff characteristics and mimic the natural and unique hydrology of the site, post development.
- History Note: Authority G.S. 143-214.1; S.L. 2005-97; Eff. October 1, 1995; Amended Eff. August 1, 2003 (see S.L. 2003-433, s.2); August 1, 2000; April 1, 1996; January 1, 1996; Temporary Amendment Eff. October 7, 2003; Amended Eff. January 1, 2007; June 1, 2004.*
- 15A NCAC 02B .0303 LITTLE TENN RIVER BASIN AND SAVANNAH RIVER DRAINAGE AREA**
- (a) The schedule may be inspected at the following places:
- (1) Clerk of Court:  
Clay County  
Graham County  
Jackson County  
Macon County

Swain County

Transylvania County

- (2) North Carolina Department of Environment and Natural Resources  
Asheville Regional Office  
2090 US Highway 70  
Swannanoa, North Carolina.

(b) Unnamed Streams. Such streams entering Georgia or Tennessee shall be classified "C Tr." Such streams in the Savannah River drainage area entering South Carolina shall be classified "B Tr."

(c) The Little Tennessee River Basin and Savannah River Drainage Area Schedule of Classifications and Water Quality Standards was amended effective:

- (1) February 16, 1977;
- (2) March 1, 1977;
- (3) July 13, 1980;
- (4) February 1, 1986;
- (5) October 1, 1987;
- (6) March 1, 1989;
- (7) January 1, 1990;
- (8) July 1, 1990;
- (9) August 1, 1990;
- (10) March 1, 1991;
- (11) August 3, 1992;
- (12) February 1, 1993;
- (13) August 1, 1994;
- (14) September 1, 1996;
- (15) August 1, 1998;
- (16) August 1, 2000;
- (17) April 1, 2003;
- (18) January 1, 2007.

(d) The Schedule of Classifications of Water Quality Standards for the Little Tennessee Basin and Savannah River Drainage Area was amended effective March 1, 1989 as follows:

- (1) Nantahala River (Index No. 2-57) from source to the backwaters of Nantahala Lake and all tributary waters were reclassified from Class B-trout, Class C-trout and Class C to Class B-trout ORW, Class C-trout ORW and Class C ORW.
- (2) Chattooga River (Index No. 3) including Scotsman Creek, Overflow Creek, Big Creek, Talley Mill Creek and all tributary waters were reclassified from Class B-trout, Class C-trout and Class C to Class B-trout ORW, Class C-trout ORW and Class C ORW and Clear Creek and all tributary waters were reclassified from Class C-trout and Class C to Class B-trout and Class B.

(e) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective January 1, 1990 as follows:

- (1) North Fork Coweeta Creek (Index No. 2-10-4) and Falls Branch (Index No. 2-10-4-1) were reclassified from Class C to Class B.
- (2) Burningtown Creek (Index No. 2-38) was reclassified from C-trout to B-trout.

(f) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective July 1, 1990 by the reclassification of Alarka Creek (Index No. 2-69) from source to Upper Long Creek (Index No. 2-69-2) including all tributaries from Classes C and C Tr to Classes C HQW and C Tr HQW.

(g) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective March 1, 1991 as follows:

- (1) Cartoogechaye Creek [Index Nos. 2-19-(1) and 2-19-(16)] from Gibson Cove Branch to bridge at U.S. Hwy. 23 and 441 and from the bridge at U.S. Hwy. 23 and 441 to the Little Tennessee River was reclassified from Classes WS-III Tr and C Tr to Classes WS-III and B Tr and B Tr respectively.
- (2) Coweeta Creek (Index Nos. 2-10) from its source to the Little Tennessee River including all tributaries except Dryman Fork (Index No. 2-10-3) and North Fork Coweeta Creek (Index No. 2-10-4) was reclassified from Classes C and C Tr to Classes B and B Tr.

(h) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(i) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area has been amended effective February 1, 1993 as follows:

- (1) Bearwallow Creek from its source to 2.3 miles upstream of the Toxaway River [Index No. 4-7-(1)] was revised to indicate the application of an additional management strategy (referencing 15A NCAC 2B .0201(d) to protect downstream waters; and
- (2) the Tuckaseegee River from its source to Tennessee Creek [Index No. 2-79-(0.5)] including all tributaries was reclassified from Classes WS-III&B Tr HQW, WS-III HQW and WS-III to Classes WS-III Tr ORW and WS-III ORW.

(j) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective August 1, 1994 with the reclassification of Deep Creek [Index Nos. 2-79-63-(1) and 2-79-63-(16)] from its source to the Great Smokey Mountains

National Park Boundary including tributaries from Classes C Tr, B Tr and C Tr HQW to Classes WS-II Tr and WS-II Tr CA.

(k) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective September 1, 1996 as follows:

- (1) Deep Creek from the Great Smoky Mountains National Park Boundary to the Tuckasegee River [Index no. 2-79-63-(21)] was reclassified from Class C Tr to Class B Tr; and
- (2) the Tuckasegee River from the West Fork Tuckasegee River to Savannah Creek and from Macks Town Branch to Cochran Branch [Index Nos. 2-79-(24), 2-79(29.5) and 2-79-(38)] was reclassified from Classes WS-III Tr, WS-III Tr CA and C to Classes WS-III&B Tr, WS-III&B Tr CA and B.

(l) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective August 1, 1998 with the reclassifications of Thorpe Reservoir (Lake Glenville), Hurricane Creek, and Laurel Branch [Index Nos. 2-79-23-(1), 2-79-23-2, and 2-79-23-2-1 respectively] from classes WS-III&B, WS-III Tr and WS-III to classes WS-III&B HQW, WS-III Tr HQW, and WS-III HQW.

(m) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended August 1, 2000 with the reclassification of Wesser Creek [Index No. 2-79-52-5-1] from its source to Williams Branch from Class C to Class C Tr.

(n) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended April 1, 2003 with the reclassification of a portion of the Little Tennessee River [Index No. 2-(1)] from a point 0.4 mile upstream of N.C. Highway 28 to Nantahala River Arm of Fontana Lake from Class C to Class B.

(o) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended January 1, 2007 with the reclassification of the entire watersheds of all creeks that drain to the north shore of Fontana Lake between Eagle and Forney Creeks, including Eagle and Forney Creeks, [Index Nos. 2-96 through 2-164 (excluding all waterbodies that drain to the south shore of Fontana Lake)] from Class B, C Tr, WS-IV Tr CA, WS-IV Tr, and WS-IV & B CA to Class B ORW, C Tr ORW, WS-IV Tr ORW CA, WS-IV Tr ORW, and WS-IV & B ORW CA, respectively. Additional site-specific management strategies are outlined in Rule 15A NCAC 02B .0225(e)(12).

*History Note: Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1); S.L. 2005-97; Eff. February 1, 1976; Amended Eff. January 1, 2007; April 1, 2003; August 1, 2000; August 1, 1998; September 1, 1996; August 1, 1994; February 1, 1993; August 3, 1992; March 1, 1991.*

**15A NCAC 02D .0524 NEW SOURCE PERFORMANCE STANDARDS**

(a) With the exception of Paragraph (b) or (c) of this Rule, sources subject to new source performance standards promulgated in 40 CFR Part 60 shall comply with emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedural provisions, and any other provisions, as required therein, rather than with any otherwise-applicable rule in this Section which would be in conflict therewith.

(b) The following is not included under this Rule:

- (1) 40 CFR Part 60, Subpart AAA (new residential wood heaters);
- (2) 40 CFR Part 60, Subpart B (adoption and submittal of state plans for designated facilities);
- (3) 40 CFR Part 60, Subpart C (emission guidelines and compliance times);
- (4) 40 CFR Part 60, Subpart Ca (guidelines for municipal waste combustors);
- (5) 40 CFR Part 60, Subpart Cb (guidelines for municipal waste combustors constructed on or before December 19, 1995);
- (6) 40 CFR Part 60, Subpart Cc (guidelines for municipal solid waste landfills); or
- (7) 40 CFR Part 60, Subpart Cd (guidelines for sulfuric acid production units).

(c) Along with the notice appearing in the North Carolina Register for a public hearing to amend this Rule to exclude a standard from this Rule, the Director shall state whether or not the new source performance standards promulgated under 40 CFR Part 60, or part thereof, shall be enforced. If the Commission does not adopt the amendment to this Rule to exclude or amend the standard within 12 months after the close of the comment period on the proposed amendment, the Director shall begin enforcing that standard when 12 months has elapsed after the end of the comment period on the proposed amendment.

(d) New sources of volatile organic compounds that are located in an area designated in 40 CFR 81.334 as nonattainment for ozone or an area identified in accordance with 15A NCAC 02D .0902 as being in violation of the ambient air quality standard for ozone shall comply with the requirements of 40 CFR Part 60 that are not excluded by this Rule, as well as with any applicable requirements in Section .0900 of this Subchapter.

(e) All requests, reports, applications, submittals, and other communications to the administrator required under Paragraph (a) of this Rule shall be submitted to the Director of the Division of Air Quality rather than to the Environmental Protection Agency; except that all such reports, applications, submittals, and other communications to the administrator required by 40 CFR Part 60, Subpart JJJ for dry cleaners covered under Chapter 143, Article 21A, Part 6 of the General Statutes shall be submitted to the Director of the Division of Waste Management.

(f) In the application of this Rule, definitions contained in 40 CFR Part 60 shall apply rather than those of Section .0100 of this Subchapter.

(g) With the exceptions allowed under 15A NCAC 02Q .0102, Activities Exempted from Permit Requirements, the owner or

operator of the source shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 150B-21.6; Eff. June 18, 1976; Temporary Amendment Eff. January 3, 1988, for a period of 180 days to expire on June 30, 1988; Amended Eff. December 1, 1992; July 1, 1992; Temporary Amendment Eff. March 8, 1994, for a period of 180 days or until the permanent rule is effective, whichever is sooner; Amended Eff. January 1, 2007; July 1, 2000; April 1, 1997; July 1, 1996; July 1, 1994.*

**15A NCAC 02D .0605 GENERAL RECORDKEEPING AND REPORTING REQUIREMENTS**

(a) The owner or operator of a source subject to a requirement of this Subchapter or Subchapter 02Q of this Chapter shall maintain:

- (1) records detailing all malfunctions under Rule .0535 of this Subchapter,
- (2) records of all testing conducted under rules in this Subchapter,
- (3) records of all monitoring conducted under rules in this Subchapter or Subchapter 02Q of this Chapter,
- (4) records detailing activities relating to any compliance schedule in this Subchapter, and
- (5) for unpermitted sources, records necessary to determine compliance with rules in this Subchapter or Subchapter 02Q of this Chapter

(b) The Director shall specify in the source's permit:

- (1) the type of monitoring required and the frequency of the monitoring,
- (2) the type of records to be maintained, and
- (3) the type of reports to be submitted and the frequency of submitting these reports, as necessary to determine compliance with rules in this Subchapter or Subchapter 02Q of this Chapter or with an emission standard or permit condition.

(c) If the Director has evidence that a source is violating an emission standard or permit condition, the Director may require that the owner or operator of any source subject to the requirements of this Subchapter or Subchapter 02Q of this Chapter submit to the Director any information necessary to determine the compliance status of the source.

(d) The owner or operator of a source of excess emissions which last for more than four hours and which results from a malfunction, a breakdown of process or control equipment, or any other abnormal conditions shall report excess emissions in accordance with the requirements of Rule .0535 of this Subchapter.

(e) Copies of all records and reports generated in response to the requirements of this Section shall be retained by the owner or operator for a period of two years after the date on which the record was made or the report submitted, except that the Director

may extend the retention period in particular instances when necessary to comply with other State or federal requirements or when compliance with a particular standard requires documentation for more than two years.

(f) All records and reports generated in response to the requirements of this Section shall be made available to personnel of the Division for inspection.

(g) The owner or operator of a source subject to the requirements of this Section shall comply with the requirements of this Section at his own cost.

(h) No person shall falsify any information required by a rule in this Subchapter or a permit issued under 15A NCAC 02Q. No person shall knowingly submit any falsified information required by a rule in this Subchapter or a permit issued under 15A NCAC 02Q.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215-65; 143-215.66; 143-215.1078(a)(4); Eff. February 1, 1976; Amended Eff. January 1, 2007; April 1, 1999; July 1, 1984; June 18, 1976.*

**15A NCAC 02D .0927 BULK GASOLINE TERMINALS**

(a) For the purpose of this Rule, the following definitions apply:

- (1) "Bulk gasoline terminal" means:
  - (A) breakout tanks of an interstate oil pipeline facility; or
  - (B) a gasoline storage facility that usually receives gasoline from refineries primarily by pipeline, ship, or barge; delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by tank truck; and has an average daily throughput of more than 20,000 gallons of gasoline.
- (2) "Breakout tank" means a tank used to:
  - (A) relieve surges in a hazardous liquid pipeline system, or
  - (B) receive and store hazardous liquids transported by pipeline for reinjection and continued transport by pipeline.
- (3) "Gasoline" means a petroleum distillate having a Reid vapor pressure of four psia or greater.
- (4) "Contact deck" means a deck in an internal floating roof tank that rises and falls with the liquid level and floats in direct contact with the liquid surface.
- (5) "Degassing" means the process by which a tank's interior vapor space is decreased to below the lower explosive limit for the purpose of cleaning, inspection, or repair.
- (6) "Leak" means a crack or hole that lets petroleum product vapor or liquid escape that can be identified through the use of sight, sound, smell, an explosimeter, or the use of a meter that measures volatile organic compounds. When an explosimeter or meter is used to detect a leak, a leak is a measurement that is equal to or greater than 100 percent of



the lower explosive limit, as detected by a combustible gas detector using the test procedure described in Rule .0940 of this Section.

- (7) "Liquid balancing" means a process used to degas floating roof gasoline storage tanks with a liquid whose vapor pressure is below 1.52 psia. This is done by removing as much gasoline as possible without landing the roof on its internal supports, pumping in the replacement fluid, allowing mixing, remove as much mixture as possible without landing the roof, and repeating these steps until the vapor pressure of the mixture is below 1.52 psia.

- (8) "Liquid displacement" means a process by which gasoline vapors, remaining in an empty tank, are displaced by a liquid with a vapor pressure below 1.52 psia.

(b) This Rule applies to bulk gasoline terminals and the appurtenant equipment necessary to load the tank truck or trailer compartments.

(c) Gasoline shall not be loaded into any tank trucks or trailers from any bulk gasoline terminal unless:

- (1) The bulk gasoline terminal is equipped with a vapor control system that prevents the emissions of volatile organic compounds from exceeding 35 milligrams per liter. The owner or operator shall obtain from the manufacturer and maintain in his records a pre-installation certification stating the vapor control efficiency of the system in use;
- (2) Displaced vapors and gases are vented only to the vapor control system or to a flare;
- (3) A means is provided to prevent liquid drainage from the loading device when it is not in use or to accomplish complete drainage before the loading device is disconnected; and
- (4) All loading and vapor lines are equipped with fittings that make vapor-tight connections and that are automatically and immediately closed upon disconnection.

(d) Sources regulated by Paragraph (b) of this Rule shall not:

- (1) allow gasoline to be discarded in sewers or stored in open containers or handled in any manner that would result in evaporation, or
- (2) allow the pressure in the vapor collection system to exceed the tank truck or trailer pressure relief settings.

(e) The owner or operator of a bulk gasoline terminal shall paint all tanks used for gasoline storage white or silver at the next scheduled painting or by December 1, 2002, whichever occurs first.

(f) The owner or operator of a bulk gasoline terminal shall install on each external floating roof tank with an inside diameter of 100 feet or less used to store gasoline a self-supporting roof, such as a geodesic dome, at the next time that the tank is taken out of service or by December 1, 2002, whichever occurs first.

(g) The following equipment shall be required on all tanks storing gasoline at a bulk gasoline terminal:

- (1) rim-mounted secondary seals on all external and internal floating roof tanks,
- (2) gaskets on deck fittings, and
- (3) floats in the slotted guide poles with a gasket around the cover of the poles.

(h) Decks shall be required on all above ground tanks with a capacity greater than 19,800 gallons storing gasoline at a bulk gasoline terminal. All decks installed after June 30, 1998 shall comply with the following requirements:

- (1) deck seams shall be welded, bolted or riveted; and
- (2) seams on bolted contact decks and on riveted contact decks shall be gasketed.

(i) If, upon facility or operational modification of a bulk gasoline terminal that existed before December 1, 1992, an increase in benzene emissions results such that:

- (1) emissions of volatile organic compounds increase by more than 25 tons cumulative at any time during the five years following modifications; and
- (2) annual emissions of benzene from the cluster where the bulk gasoline terminal is located (including the pipeline and marketing terminals served by the pipeline) exceed benzene emissions from that cluster based upon calendar year 1991 gasoline throughput and application of the requirements of this Subchapter,

then, the annual increase in benzene emissions due to the modification shall be offset within the cluster by reduction in benzene emissions beyond that otherwise achieved from compliance with this Rule, in the ratio of at least 1.3 to 1.

(j) The owner or operators of a bulk gasoline terminal that has received an air permit before December 1, 1992, to emit toxic air pollutants under 15A NCAC 02Q .0700 to comply with Section .1100 of this Subchapter shall continue to follow all terms and conditions of the permit issued under 15A NCAC 02Q .0700 and to bring the terminal into compliance with Section .1100 of this Subchapter according to the terms and conditions of the permit, in which case the bulk gasoline terminal shall continue to need a permit to emit toxic air pollutants and shall be exempted from Paragraphs (e) through (i) of this Rule.

(k) The owner or operator of a bulk gasoline terminal shall not load, or allow to be loaded, gasoline into any truck tank or trailer unless the truck tank or trailer has been certified leak tight according to Rule .0932 of this Section within the last 12 months.

(l) The owner or operator of a bulk gasoline terminal shall have on file at the terminal a copy of the certification test conducted according to Rule .0932 of this Section for each gasoline tank truck loaded at the terminal.

(m) Emissions of gasoline from degassing of external or internal floating roof tanks at a bulk gasoline terminal shall be collected and controlled by at least 90 percent by weight. Liquid balancing shall not be used to degas gasoline storage tanks at bulk gasoline terminals. Bulk gasoline storage tanks containing not more than 138 gallons of liquid gasoline or the equivalent of gasoline vapor

and gasoline liquid are exempted from the degassing requirements if gasoline vapors are vented for at least 24-hours. Documentation of degassing external or internal floating roof tanks shall be made according to 15A NCAC 02D .0903.

(n) According to Rule .0903 of this Section, the owner or operator of a bulk gasoline terminal shall visually inspect the following for leaks each day that the terminal is both manned and open for business:

- (1) the vapor collection system,
- (2) the vapor control system, and
- (3) each lane of the loading rack while a gasoline tank truck or trailer is being loaded.

If no leaks are found, the owner or operator shall record that no leaks were found. If a leak is found, the owner or operator shall record the information specified in Paragraph (p) of this Rule. The owner or operator shall repair all leaks found according to Paragraph (q) of this Rule.

(o) The owner or operator of a bulk gasoline terminal shall inspect weekly for leaks:

- (1) the vapor collection system,
- (2) the vapor control system, and
- (3) each lane of the loading rack while a gasoline tank truck or trailer is being loaded.

The weekly inspection shall be done using sight, sound, or smell; a meter used to measure volatile organic compounds; or an explosimeter. An inspection using either a meter used to measure volatile organic compounds or an explosimeter shall be conducted every month. If no leaks are found, the owner or operator shall record the date that the inspection was done and that no leaks were found. If a leak is found, the owner or operator shall record the information specified in Paragraph (p) of this Rule. The owner or operator shall repair all leaks found according to Paragraph (q) of this Rule.

(p) For each leak found under Paragraph (n) or (o) of this Rule, the owner or operator of a bulk gasoline terminal shall record:

- (1) the date of the inspection,
- (2) the findings (location, nature and severity of each leak),
- (3) the corrective action taken,
- (4) the date when corrective action was completed, and
- (5) any other information that the terminal deems necessary to demonstrate compliance.

(q) The owner or operator of a bulk gasoline terminal shall repair all leaks as follows:

- (1) The vapor collection hose that connects to the tank truck or trailer shall be repaired or replaced before another tank truck or trailer is loaded at that rack after a leak has been detected originating with the terminal's equipment rather than from the gasoline tank truck or trailer.
- (2) All other leaks shall be repaired as expeditiously as possible but no later than 15 days from their detection. If more than 15 days are required to make the repair, the reasons that the repair cannot be made shall be documented, and the leaking equipment shall not be used after the fifteenth day from when

the leak detection was found until the repair is made.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);

*Eff.* July 1, 1979;

*Amended Eff.* January 1, 2007; April 1, 2003; August 1, 2002; July 1, 1998; July 1, 1996; July 1, 1994; December 1, 1992; December 1, 1989; January 1, 1985.

## **15A NCAC 02D .0932 GASOLINE TRUCK TANKS AND VAPOR COLLECTION SYSTEMS**

(a) For the purposes of this Rule, the following definitions apply:

- (1) "Bottom filling" means the filling of a tank truck or stationary storage tank through an opening that is flush with the tank bottom.
- (2) "Bulk gasoline plant" means a gasoline storage and distribution facility which has an average daily throughput of less than 20,000 gallons of gasoline and which usually receives gasoline from bulk terminals by trailer transport, stores it in tanks, and subsequently dispenses it via account trucks to local farms, businesses, and service stations.
- (3) "Bulk gasoline terminal" means:
  - (A) breakout tanks of an interstate oil pipeline facility; or
  - (B) a gasoline storage facility that usually receives gasoline from refineries primarily by pipeline, ship, or barge; delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by tank truck; and has an average daily throughput of more than 20,000 gallons of gasoline.
- (4) "Certified facility" means any facility that has been certified under Rule .0960 of this Section to perform leak tightness tests on truck tanks.
- (5) "Gasoline" means any petroleum distillate having a Reid vapor pressure of 4.0 psia or greater.
- (6) "Gasoline dispensing facility" means any site where gasoline is dispensed to motor vehicle gasoline tanks from stationary storage tanks.
- (7) "Gasoline service station" means any gasoline dispensing facility where gasoline is sold to the motoring public from stationary storage tanks.
- (8) "Truck tank" means the storage vessels of trucks or trailers used to transport gasoline from sources of supply to stationary storage tanks of bulk gasoline terminals, bulk gasoline plants, gasoline dispensing facilities and gasoline service stations.
- (9) "Truck tank vapor collection equipment" means any piping, hoses, and devices on the truck tank used to collect and route gasoline vapors in the tank to or from the bulk gasoline

- terminal, bulk gasoline plant, gasoline dispensing facility or gasoline service station vapor control system or vapor balance system.
- (10) "Vapor balance system" means a combination of pipes or hoses that create a closed system between the vapor spaces of an unloading tank and a receiving tank such that vapors displaced from the receiving tank are transferred to the tank being unloaded.
- (11) "Vapor collection system" means a vapor balance system or any other system used to collect and control emissions of volatile organic compounds.

(b) This Rule applies to gasoline truck tanks that are equipped for vapor collection and to vapor control systems at bulk gasoline terminals, bulk gasoline plants, equipped with vapor balance or vapor control systems.

(c) Gasoline Truck Tanks.

- (1) Gasoline truck tanks and their vapor collection systems shall be tested annually by a certified facility. The test procedure that shall be used is described in Rules .0940 and .0941 of this Section, and is according to Rule .0912 of this Section. The gasoline truck tank shall not be used if it sustains a pressure change greater than 1.0 inches of water in five minutes when pressurized to a gauge pressure of 18 inches of water or when evacuated to a gauge pressure of 6.0 inches of water.
- (2) Each gasoline truck tank that has been certified leak tight, according to Subparagraph (1) of this Paragraph shall display a sticker on the front tank shell.
- (3) There shall be no liquid leaks from any gasoline truck tank.
- (4) Any truck tank with a leak equal to or greater than 100 percent of the lower explosive limit, as detected by a combustible gas detector using the test procedure described in Rule .0940 of this Section, shall not be used beyond 15 days after the leak has been discovered, unless the leak has been repaired and the tank has been certified to be leak tight according to Subparagraph (1) of this Paragraph.
- (5) The owner or operator of a gasoline truck tanks with a vapor collection system shall maintain records of all certification testing and repairs. The records shall identify the gasoline truck tank, the date of the test or repair; and, if applicable, the type of repair and the date of retest. The records of certification tests shall include:
- (A) the gasoline truck tank identification number;
- (B) the initial test pressure and the time of the reading;
- (C) the final test pressure and the time of the reading;

- (D) the initial test vacuum and the time of reading;
- (E) the final test vacuum and the time of the reading;
- (F) the date and location of the tests;
- (G) the NC sticker number issued; and
- (H) the final change in pressure of the internal vapor value test.

- (6) A copy of the most recent certification report shall be kept with the truck tank. The owner or operator of the truck tank shall also file a copy of the most recent certification test with each bulk gasoline terminal that loads the truck tank. The records shall be maintained for at least two years after the date of the testing or repair, and copies of such records shall be made available within a reasonable time to the Director upon written request.

(d) Bulk Gasoline Terminals, Bulk Gasoline Plants Equipped With Vapor Balance or Vapor Control Systems

- (1) The vapor collection system and vapor control system shall be designed and operated to prevent gauge pressure in the truck tank from exceeding 18 inches of water and to prevent a vacuum of greater than six inches of water.
- (2) During loading and unloading operations there shall be:
- (A) no vapor leakage from the vapor collection system such that a reading equal to or greater than 100 percent of the lower explosive limit at one inch around the perimeter of each potential leak source as detected by a combustible gas detector using the test procedure described in Rule .0940 of this Section; and
- (B) no liquid leaks.
- (3) If a leak is discovered that exceeds the limit in Subparagraph (2) of this Paragraph:
- (A) For bulk gasoline plants, the vapor collection system or vapor control system (and therefore the source) shall not be used beyond 15 days after the leak has been discovered, unless the leak has been repaired and the system has been retested and found to comply with Subparagraph (2) of this Paragraph;
- (B) For bulk gasoline terminals, the vapor collection system or vapor control system shall be repaired following the procedures in Rule .0927 of this Section.
- (4) The owner or operator of a vapor collection system at a bulk gasoline plant or a bulk gasoline terminal shall test, according to Rule .0912 and .0940 of this Section, the vapor collection system at least once per year. If after two complete annual checks no more

- than 10 leaks are found, the Director may allow less frequent monitoring. If more than 20 leaks are found, the Director may require that the frequency of monitoring be increased.
- (5) The owner or operator of a vapor control systems at bulk gasoline terminals, bulk gasoline plants, gasoline dispensing facilities, and gasoline service stations equipped with vapor balance or vapor control systems shall maintain records of all certification testing and repairs. The records shall identify the vapor collection system, or vapor control system; the date of the test or repair; and, if applicable, the type of repair and the date of retest.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. July 1, 1980; Amended Eff. January 1, 2007; April 1, 2003; August 1, 2002; July 1, 1994; December 1, 1989; January 1, 1985.*

#### **15A NCAC 02D .1006 SALE AND SERVICE OF ANALYZERS**

(a) Definition. For the purposes of this Rule, "vendor" means any person who sells or leases equipment to inspection stations that is used to measure emissions from motor vehicles for the purpose of showing compliance with Rule .1004 of this Section or that is used to perform on-board diagnostic tests to show compliance with Rule .1005 of this Section.

(b) Requirements. A vendor shall not sell or lease equipment unless it meets the requirements of 40 CFR 85.2231 On-board Diagnostic Test Equipment Requirements, and has the software necessary to record and transmit the data required by the Division of Motor Vehicles and the Division of Air Quality to determine compliance with the inspection/maintenance program requirements of this Section.

(c) Hardware repair and software repair. When equipment hardware or software fails to meet the requirements of Paragraph (b) of this Rule for a particular analyzer, the vendor, after receiving a call to its respective service call center, shall communicate with the impacted station within 24 hours and:

- (1) Where the hardware problem is stopping 20 percent or more inspections for a particular analyzer or is compromising the security of the inspection system, the vendor shall repair the problem within 48 hours after the initial call to its respective service call center.
- (2) Where the hardware problem is stopping less than 20 percent of all inspections for a particular analyzer and is not compromising the security of the inspection system, the vendor shall repair the problem within 72 hours after the initial call to its respective service call center.
- (3) Where the hardware problem is not stopping inspections and is not compromising the security of the inspection system, the vendor shall repair the problem within 96 hours after

the initial call to its respective service call center.

(d) Software repair revisions. When analyzer software fails to meet the requirements of Paragraph (b) of this Rule, the vendor, after receiving a call to its respective service call center, shall communicate with the station within 24 hours. The vendor shall identify and characterize the software problem within 5 days. The vendor shall, within that same 5-day period, inform the station owner and the Division as to the nature of the problem and the proposed corrective course of action and:

- (1) Where the software problem is stopping 20 percent or more inspections for a particular analyzer or is compromising the security of the inspection system, the vendor shall submit a new revision of the software to the Division for approval within 19 days after receiving the initial call to its service call center.
- (2) Where the software problem is stopping less than 20 percent of all inspections for a particular analyzer and is not compromising the security of the inspection system, the vendor shall submit a new revision of the software to the Division for approval within 33 days after receiving the initial call to its service call center.
- (3) The vendor shall distribute the new revision of the software to all impacted stations within 14 days after the vendor receives written notification from the Division that the software has been approved as meeting the requirements of Paragraph (b) of this Rule.

(e) Documentation of the initial service call. The vendor's service call center shall assign a unique service response number to every reported new hardware or software problem. The time and date of the initial call shall be recorded and identified with the service response number. The service response number shall be communicated to the inspection station operator at the time of the initial contact.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(6), (14); Eff. January 1, 2007.*

#### **15A NCAC 02D .1111 MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY**

(a) With the exception of Paragraph (b) or (c) of this Rule, sources subject to national emission standards for hazardous air pollutants for source categories promulgated in 40 CFR Part 63 shall comply with emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedural provisions, and any other provisions, as required therein, rather than with any otherwise-applicable rule in Section .0500 of this Subchapter which would be in conflict therewith.

(b) The following are not included under this Rule:

- (1) approval of state programs and delegation of federal authorities (40 CFR 63.90 to 63.96, Subpart E); and

- (2) requirements for control technology determined for major sources in accordance with Clean Air Act Sections 112(g) and 112(j) (40 CFR 63.50 to 63.57, Subpart B).

(c) Along with the notice appearing in the North Carolina Register for a public hearing to amend this Rule to exclude a standard from this Rule, the Director shall state whether or not the national emission standard for hazardous air pollutants for source categories promulgated under 40 CFR Part 63, or part thereof, shall be enforced. If the Commission does not adopt the amendment to this Rule to exclude or amend the standard within 12 months after the close of the comment period on the proposed amendment, the Director shall begin enforcing that standard when 12 months has elapsed after the end of the comment period on the proposed amendment.

(d) New sources of volatile organic compounds that are located in an area designated in 40 CFR 81.334 as nonattainment for ozone or an area identified in accordance with 15A NCAC 02D .0902 as being in violation of the ambient air quality standard for ozone shall comply with the requirements of 40 CFR Part 63 that are not excluded by this Rule as well as with any applicable requirements in Section .0900 of this Subchapter.

(e) All requests, reports, applications, submittals, and other communications to the administrator required under Paragraph (a) of this Rule shall be submitted to the Director of the Division of Air Quality rather than to the Environmental Protection Agency; except that all such reports, applications, submittals, and other communications to the administrator required by 40 CFR Part 63, Subpart M for dry cleaners covered under Chapter 143, Article 21A, Part 6 of the General Statutes shall be submitted to the Director of the Division of Waste Management.

(f) In the application of this Rule, definitions contained in 40 CFR Part 63 shall apply rather than those of Section .0100 of this Subchapter when conflict exists.

(g) 15A NCAC 02Q .0102 and .0302 are not applicable to any source to which this Rule applies if the source is required to be permitted under 15A NCAC 02Q .0500, Title V Procedures. The owner or operator of the source shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500. Sources that have heretofore been exempted from needing a permit and become subject to requirements promulgated under 40 CFR 63 shall apply for a permit in accordance to 15A NCAC 02Q .0109.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 150B-21.6;*

*Eff. July 1, 1996;*

*Amended Eff. January 1, 2007; April 1, 1997.*

#### **15A NCAC 02D .2501 PURPOSE AND APPLICABILITY**

(a) Purpose. The purpose of this Section is to control mercury emissions from coal-fired electric steam generating Hg units and to comply with the mercury emission caps of 1.133 tons (36,256 ounces) per year between 2010 and 2017 inclusive and 0.447 tons (14,304 ounces) per year for 2018 and thereafter as set out in 40 CFR 60.24.

(b) Applicability. This Section applies to:

- (1) any stationary coal-fired boiler or any stationary coal-fired combustion turbine

serving at any time, since the start-up of a unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale; or

- (2) any unit that qualifies as a cogeneration unit during the 12-month period starting on the date that the unit first produces electricity and continues to qualify as a cogeneration unit, or any cogeneration unit serving at any time a generator with nameplate capacity of more than 25 MWe and supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale. If a unit that qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity but subsequently no longer qualifies as a cogeneration unit, the unit shall be subject to Subparagraph (1) of this Paragraph starting on the day on which the unit first no longer qualifies as a cogeneration unit; or

- (3) the Hg budget unit identified in the table in Rule .2503 of this Section.

(c) Retired Hg unit exemption. Any Hg unit that is permanently retired shall be exempted from the annual trading program if it complies with the provisions of 40 CFR 60.4105.

(d) Effect on other authorities. No provision of this Section, any application submitted or any permit issued pursuant to Rule .2504 of this Section, or any exemption under 40 CFR 60.4105, shall be construed as exempting any Hg unit or source covered under this Section or the owner or operator or designated representative of any Hg unit or source covered under this Section from complying with any other requirements of this Subchapter or Subchapter 15A NCAC 02Q.

(e) Additional controls. The Commission shall require additional reductions in mercury emissions when needed to reduce mercury concentrations to levels that do not cause or contribute to mercury-related health problems.

*History Note: Authority G.S. 143-215.3(a); 143-215.107(a)(5), (10);*

*Eff. January 1, 2007.*

#### **15A NCAC 02D .2502 DEFINITIONS**

(a) For the purpose of this Section, the definitions in 40 CFR 60.4102, shall apply.

(b) For the purpose of this Section, the abbreviations and acronyms listed in 40 CFR 60.4103 shall apply.

*History Note: Authority G.S. 143-215.3(a); 143-215.107(a)(5), (10);*

*Eff. January 1, 2007.*

#### **15A NCAC 02D .2503 MERCURY EMISSION**

(a) Allocations. The table in this Paragraph contains allocations in ounces of total mercury.

**APPROVED RULES**

Hg BUDGET SOURCE	Hg BUDGET UNIT	ALLOCATION FOR 2010 – 2017 (ounces)	ALLOCATION FOR 2018 AND LATER (ounces)
Duke Energy, Belews Creek	1	3440	1386
	2	3212	1294
Duke Energy, Buck	5	53	21
	6	54	22
	7	59	24
	8	297	120
	9	330	133
Duke Energy, Cliffside	1	61	25
	2	62	25
	3	100	40
	4	86	35
	5	1499	604
Duke Energy, Dan River	1	102	41
	2	113	45
	3	252	102
Duke Energy, G G Allen	1	349	141
	2	324	131
	3	601	242
	4	655	264
	5	615	248
Duke Energy, Marshall	1	1037	418
	2	1085	437
	3	1799	725

**APPROVED RULES**

Hg BUDGET SOURCE	Hg BUDGET UNIT	ALLOCATION FOR 2010 – 2017 (ounces)	ALLOCATION FOR 2018 AND LATER (ounces)
	4	1835	739
Duke Energy, Riverbend	7	186	75
	8	180	72
	9	325	131
	10	323	130
Progress Energy, Asheville	1	621	250
	2	575	232
Progress Energy, Cape Fear	5	347	140
	6	407	164
Progress Energy, L V Sutton	1	195	78
	2	198	80
	3	905	365
Progress Energy, Lee	1	191	77
	2	189	76
	3	607	245
Progress Energy, Mayo	1A	1188	479
	1B	1153	465
Progress Energy, Roxboro	1	1041	419
	2	1930	777
	3A	990	399
	3B	1008	406
	4A	987	397
	4B	917	369
Progress Energy,	1	112	45

Hg BUDGET SOURCE	Hg BUDGET UNIT	ALLOCATION FOR 2010 – 2017 (ounces)	ALLOCATION FOR 2018 AND LATER (ounces)
W H Weatherspoon	2	111	45
	3	177	71
Dwayne Collier Battle Cogeneration Facility	1A	114	46
	1B	105	42
	2A	106	43
	2B	108	44
Elizabethtown Power	1	28	11
	2	26	10
Lumberton Power	1	31	12
	2	52	21
Primary Energy, Roxboro	1	95	38
Primary Energy, Southport	1	117	47
	2	118	47
Westmoreland-LG&E Partners Roanoke Valley	1	490	197
	2	171	69

(b) Compliance. The emissions of mercury of a Hg budget source shall not exceed the number of allowances that it has in its compliance account according to Rule .2510 of this Section.

(c) Emission measurement requirements. The emissions measurements recorded and reported according to 40 CFR 60.4170 through 60.4176 shall be used to determine compliance by each source identified in this rule with its emissions limitation according to 40 CFR 60.4106(c).

(d) Excess emission requirements. The provisions of 40 CFR 60.4106(d) shall be used for excess emissions.

(e) Liability. The owner or operator of any source covered under this Section shall be subject to the provisions of 40 CFR 60.4106(f).

(f) Modification and reconstruction, replacement, retirement, or change of ownership. The modification or reconstruction of a source covered under this Rule shall not make that source a "new" source for the purposes of this Section; it may be considered a new source under Rule 15A NCAC 02D .0524,

New Source Performance Standards, or 40 CFR Part 60. A source that is modified or reconstructed shall retain its emission allocation under Paragraph (a) of this Rule. If one or more sources covered under this Rule is replaced, the new source shall receive the allocation of the source, or sources, that it replaces instead of an allocation under Rule .2508 of this Section. If the owner of a source changes, the emission allocations under this Rule and revised emission allocations made under Rule .2509 of

this Section shall remain with the source. If a source is retired, the owner or operator of the source shall follow the procedures in 40 CFR 60.4105. The allocations of a retired source shall remain with the owner or operator of the retired source until a reallocation occurs under Rule .2509 of this Section when the allocation shall be removed and given to other sources if the retired source is still retired.

(g) The Director shall comply with the timing requirements for mercury allocations under 40 CFR 60.4141.



*History Note:* Authority G.S. 143-215.3(a); 143-215.65; 143-215.66; 143-215.107(a)(5), (10);  
Eff. January 1, 2007.

**15A NCAC 02D .2504 PERMITTING**

(a) The owner or operator of any Hg budget unit covered under this Section shall submit permit applications to comply with the requirements of this Section following the procedures and requirements in 40 CFR 60.4106(a), 60.4121, and 60.4122 and in Subchapter 15A NCAC 02Q.

(b) The Director shall review applications submitted under Paragraph (a) of this Rule and issue permits for compliance with this Section following the procedures and requirements in 40 CFR 60.4106(a), 60.4120, 60.4123, and 60.4124 and in Subchapter 15A NCAC 02Q.

*History Note:* Authority G.S. 143-215.3(a); 143-215.107(a)(5), (10); 143-215.108;  
Eff. January 1, 2007.

**15A NCAC 02D .2505 MONITORING, REPORTING, AND RECORDKEEPING**

(a) The owner or operator of a Hg budget unit covered under this Section shall comply with the monitoring, recordkeeping, and reporting requirements in 40 CFR 60.4106(b) and (e) and in 40 CFR 60.4170 through 60.4176.

(b) To approve or disapprove monitors used to show compliance with Rule .2503 of this Section, the Division shall follow the procedures in 40 CFR 60.4171.

*History Note:* Authority G.S. 143-215.3(a); 143-215.65; 143-215.66; 143-215.107(a)(5), (10);  
Eff. January 1, 2007.

**15A NCAC 02D .2506 DESIGNATED REPRESENTATIVE**

(a) Designated representative. The owner or operator of any Hg budget source covered under this Section shall select a designated representative according to 40 CFR 60.4110. The designated representative shall have the responsibilities and duties set out in 40 CFR 60.4110.

(b) Alternate designated representative. The owner or operator of any Hg budget source covered under this Section shall select an alternate designated representative according to 40 CFR 60.4111. The alternate designated representative shall have the responsibilities and duties set out in 40 CFR 60.4111.

(c) Changing designated representative and alternate designated representative. The owner or operator of any Hg budget source covered under this Section may change the designated representative or the alternate designated representative using 40 CFR 60.4112.

(d) Changes in owners and operators. Whenever the owner or operator of a Hg budget source covered under this Section changes, the provisions in 40 CFR 60.4112(c) shall be followed.

(e) Certificate of representation. A complete certificate of representation for a CAMR designated representative or an alternate CAMR designated representative shall meet the requirements of 40 CFR 60.4113.

(f) Objections concerning CAMR designated representative. Objections concerning CAMR designated representative shall be handled according to the procedures in 40 CFR 60.4114.

*History Note:* Authority G.S. 143-215.3(a); 143-215.107(a)(5), (10);  
Eff. January 1, 2007.

**15A NCAC 02D .2507 COMPUTATION OF TIME**

Time periods shall be determined as described in 40 CFR 60.4107.

*History Note:* Authority G.S. 143-215.3(a); 143-215.107(a)(5), (10);  
Eff. January 1, 2007.

**15A NCAC 02D .2508 NEW SOURCE GROWTH**

(a) The total mercury allowances available for allocation in the new Hg unit set-aside for each control period in 2010 through 2017 shall be 1,813 ounces; the total mercury allowance available for allocations in each control period in 2018 and thereafter shall be 429 ounces. Except for the reference to 40 CFR 60.4142(b), the procedures in 40 CFR 4142(c)(2) through (4) shall be used to create allocations for Hg units covered under this Section that commence operations on or after January 1, 2001 and that are not covered in the table in Rule .2503 of this Section.

(b) The number of allowances allocated to a Hg unit under this Rule shall not exceed the Hg unit's actual emissions of mercury.

(c) New Hg unit allowances in Paragraph (a) of this Rule that are not allocated in a given year shall be distributed to Hg units covered in the table in Rule .2503 of this Section according to the provisions of 40 CFR 4142(d), except that the divisor used in calculating individual Hg unit allocations shall be:

- (1) 1,813 ounces for each control period in 2010 through 2017, and
- (2) 429 ounces for each control period in 2018 and thereafter.

*History Note:* Authority G.S. 143-215.3(a); 143-215.107(a)(5), (10);  
Eff. January 1, 2007.

**15A NCAC 02D .2509 PERIODIC REVIEW AND REALLOCATIONS**

(a) In 2010 and every five years thereafter, the Environmental Management Commission shall review the emission allocations of Hg units covered under Rules .2503 of this Section and new Hg units covered under this Section that have been permitted but are not named in Rule .2503 of this Section and decide if any revisions are needed. In making this decision the Environmental Management Commission shall consider the following:

- (1) the size of the allocation pool for new Hg unit growth under Rule .2508 of this Section;
- (2) the amount of emissions from Hg units receiving allocations under Rule .2508 of this Section;

- (3) the amount of emissions allocations available through the trading program under Rule .2510 of this Section;
- (4) the impact of reallocation on existing Hg units;
- (5) the impact of reallocations on Hg units receiving allocations under Rule .2508 of this Section;
- (6) impact of future growth; and
- (7) other relevant information on the impacts of reallocation.

(b) The Division of Air Quality shall report to the Commission in July 2008 and July 2012. Each report shall provide the Commission and public updated information on the regulation of mercury emissions. The 2008 report shall include the information under Subparagraphs (1) through (12) of this Paragraph, where available. The 2012 report shall include all the following information:

- (1) actual emissions from units covered under this Section since 2010 and all other principal sources of mercury;
- (2) estimates of the amounts of the different species of mercury being emitted;
- (3) a mercury balance for North Carolina, including imported, exported, and in-state mercury emissions and the fate and transport of mercury in the air and waters of the State;
- (4) projected mercury emissions for 2015, 2018, 2023, and 2025;
- (5) the amount of new source growth and projected new units growth through 2025;
- (6) the state of mercury control technology, including technological and economic feasibility;
- (7) an assessment of cost and performance of mercury control technology as it may be applied to uncontrolled sources of mercury in North Carolina, including both coal-fired electric steam generating units and other sources that emit mercury and including an assessment of technology used to satisfy requirements of the Clean Smokestacks Act (G.S. 143-215.107D) and other requirements for controlling nitrogen oxide and sulfur dioxide emissions.
- (8) a recommendation of mercury control technology, including the cost and expected reductions in mercury;
- (9) results of studies and monitoring on mercury and its species in fish in North Carolina, including an evaluation of the impact of reduced mercury emissions from coal-fired power plants on the levels of mercury observed in fish tissue;
- (10) a summary of mercury-related health problems in North Carolina, including accumulation of mercury in humans, toxicity, and mercury exposures from non-air emitting sources; and
- (11) results of studies on mercury deposition, applying monitoring techniques, back

trajectory analysis, source attribution methodology, and any other relevant methodologies to assess the role of coal-fired units in North Carolina deposition.

(12) recommendations, if any, on rule revisions.

(c) Based on the 2012 report, the Commission shall review mercury control requirements and decide if any rule changes are needed.

(d) Any changes made as a result of the review under Paragraph (a) or report under Paragraph (b) of this Section shall be made through rulemaking.

(e) The Director shall report to the Commission in 2018 and 2023 on the state of mercury control technology, including the mercury removal efficiency of available technology, the cost of installation and operation, and changes in fish tissue concentrations.

*History Note: Authority G.S. 143-215.3(a); 143-215.107(a)(5), (10); Eff. January 1, 2007.*

#### **15A NCAC 02D .2510 TRADING PROGRAM AND BANKING**

(a) EPA to administer. The United States Environmental Protection Agency (EPA) shall administer the allowance tracking system according to the procedures in 40 CFR 60.4151 through 60.4162.

(b) Compliance account. The owners or operators of each Hg budget source covered under this Section shall have a compliance account in the EPA administered tracking system that satisfies the requirements of 40 CFR 60.4151(a).

(c) General account. Any person may apply to open a general account to hold and transfer allowances by using the procedures and meeting the requirements in 40 CFR 60.4151(b) and may close that account using the procedures in 40 CFR 60.4157.

(d) Allowance transfers. Any person who has a compliance or general account established under 40 CFR 60.4151 may transfer allowances using the procedures in 40 CFR 60.4160.

(e) Submittal of information. Persons with accounts shall submit information to EPA following the requirement of 40 CFR 60.4152.

(f) Banking. Any person who has a compliance account or a general account may bank allowances for future use or transfer under 40 CFR 60.4155.

(g) Appeal Procedures. The appeal procedures for decisions of the Administrator are set forth in 40 CFR 60.4108

*History Note: Authority G.S. 143-215.3(a); 143-215.107(a)(5), (10); Eff. January 1, 2007.*

#### **15A NCAC 02D .2511 MERCURY EMISSION LIMITS**

(a) Initial reductions. Initial reductions in mercury emissions shall be achieved as a co-benefit of installing controls for nitrogen oxide (NOx) and sulfur dioxide (SO2) emissions pursuant to G.S. 143-215.107D. No later than December 31, 2013, Duke Energy and Progress Energy shall install controls for nitrogen oxide (NOx) and sulfur dioxide (SO2) emissions under their respective plans for compliance with G.S. 143-215.107D.

Duke Energy and Progress Energy shall each monitor mercury emissions at no fewer than four boilers identified for control pursuant to G.S. 143-215.107D consistent with the requirements of Paragraphs (d) and (e) of this Rule to document the reductions in mercury emissions realized as a result of installing controls for nitrogen oxide and sulfur dioxide emissions.

(b) Mercury control plans. Duke Energy and Progress Energy shall each submit a mercury control plan to the Director by January 1, 2013. The plan shall identify the technology proposed for use at each unit owned or operated by the utility; the schedule for installation and operation of mercury controls at each unit; and shall identify any units that will be shut down. For purposes of this Rule, controls for nitrogen oxide and sulfur dioxide installed in compliance with G.S. 143-215.107D are considered to be mercury controls. The plan shall provide for installation and operation of mercury controls on all units at the earliest date that is technically and economically feasible. Any unit that has not installed controls as specified in an approved mercury control plan by December 31, 2017 shall shut down unless the Commission has approved additional mercury reductions at a facility that has achieved initial mercury reductions under G.S. 143-215.107D in lieu of installing controls at the unit under the criteria set out in Paragraph (c) of this Rule.

(c) Review and approval of plans. The Director shall review the mercury control plans submitted pursuant to Paragraph (b) of this Rule and shall recommend that the Commission approve the plans, disapprove the plans or conditionally approve the plans. The Commission shall only approve a mercury control plan if it finds that the plan achieves the maximum level of reductions in mercury emissions at each unit that is technically and economically feasible without reliance on mercury allowances obtained through the allowance trading system under Rule .2510. Reductions in mercury are technically feasible if control technology exists that can reduce mercury emissions beyond the level achieved by an electrostatic precipitator for that particular unit. Economic feasibility is determined by considering environmental and health impacts; capital cost of compliance; annual incremental compliance cost; and impacts on local, regional and state economy. The Commission may approve additional mercury reductions at a unit that has achieved initial mercury reductions under G.S. 143-215.107D in lieu of installing mercury controls at a unit that has no mercury controls if the Commission finds that:

- (1) installation of controls at the unit is not economically and technically feasible; and
- (2) continued operation of the unit without mercury controls will not cause or contribute to mercury-related health problems.

(d) Source testing. Duke Energy and Progress Energy shall each test several of its boilers in North Carolina, but no less than four boilers in North Carolina each, for mercury emissions that represent boiler types and control device configurations in North Carolina. The tests shall be conducted before installation of sulfur dioxide control devices and after the installation of sulfur dioxide control devices, or if the unit has a sulfur dioxide control device already installed, the test shall be conducted before the sulfur dioxide control device and after the sulfur dioxide control device. All testing shall occur between the effective date of this Rule and January 1, 2009. Either continuous emission monitors

that comply with Rule .2505 of this Section or Method 101 or 102 of 40 CFR Part 61 Appendix B shall be used to measure mercury emissions. Each company shall submit a testing plan within nine months from the effective date of this Rule to the Director for his approval. The plan shall include:

- (1) the identity of the boilers to be tested and an explanation of why they were selected,
- (2) a schedule for testing the boilers, and
- (3) a testing protocol including testing procedures.

(e) Approval of testing. The Director shall approve the testing plan submitted under Paragraph (d) of this Rule if he finds that:

- (1) the elements required under Paragraph (d) of this Rule have been submitted,
- (2) the boilers selected represent the boiler types and control device configurations that the company has in North Carolina, and
- (3) the testing protocol and procedures are appropriate for the testing to be done.

(f) New sources. Any coal-fired electric steam generating unit to which this Rule applies and which begins construction after the effective date of this Rule shall install and operate best available control technology for mercury. For purposes of this Rule, "best available control technology" means an emissions limitation based on the maximum degree of reduction of mercury from coal-fired electric steam generating units that is achievable for such units taking into account energy, environmental, and economic impacts and other costs. The Director shall identify best available mercury control technology on a case by case basis. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60, 61, or 63.

(g) If implementation of the mercury control plan approved by the Commission under this Rule does not result in a level of reductions sufficient to meet the allocations under Rule .2503 of this Section, the utilities may acquire allowances for any excess emissions.

*History Note: Authority G.S. 143-215.3(a); 143-215.107(a)(5); 143-215.107D; Eff. January 1, 2007.*

## **15A NCAC 02H .1020 UNIVERSAL STORMWATER MANAGEMENT PROGRAM**

(a) Adoption of the Universal Stormwater Management Program (USMP) shall be made at the option of a local government by adopting an ordinance that complies with the requirements of this Rule and the requirements of 15A NCAC 02B .0104(f). The Environmental Management Commission shall approve local ordinances if it determines that the requirements of the local ordinance equal or exceed the provisions of this Rule. A model ordinance for the Universal Stormwater Management Program shall be available from the Division of Water Quality (DWQ). Administration and implementation of the USMP shall be the responsibility of the adopting local government within its jurisdiction. Local governments located within one of the 20 Coastal Counties may elect to have the Division of Water Quality administer and implement the Universal Stormwater Management Program,

either whole or in part, within their jurisdiction following their adoption of the program. Adoption of the USMP may not satisfy water quality requirements associated with the protection of threatened or endangered species or those requirements associated with a Total Maximum Daily Load (TMDL). The requirements of the USMP shall supercede and replace all other existing post-construction stormwater requirements within that jurisdiction, as specified in Paragraph (b) of this Rule.

(b) With the exceptions noted in Paragraph (c) of this Rule, the requirements specified in this Rule shall replace the following DWQ stormwater control requirements:

- (1) Water Supply (WS) Watershed II (WS II) (15A NCAC 02B .0214(3)(b)(i));
- (2) WS Watershed II Critical Area (WS II CA) (15A NCAC 02B .0214(3)(b)(ii));
- (3) WS Watershed III (WS III) (15A NCAC 02B .0215(3)(b)(i));
- (4) WS Watershed III Critical Area (WS III CA) (15A NCAC 02B .0215(3)(b)(ii));
- (5) WS Watershed IV (WS IV) (15A NCAC 02B .0216(3)(b)(i));
- (6) WS Watershed IV Critical Area (WS IV CA) (15A NCAC 02B .0216(3)(b)(ii));
- (7) High Quality Waters (HQW) for Freshwaters (15A NCAC 02H .1006);
- (8) High Quality Waters (HQW) for Saltwaters (15A NCAC 02H .1006);
- (9) Outstanding Resource Waters (ORW) for Freshwaters (15A NCAC 02H .1007);
- (10) Outstanding Resource Waters (ORW) for Saltwaters (15A NCAC 02H .1007);
- (11) Shellfishing (SA) (15A NCAC 02H .1005(2));
- (12) Post-Construction Requirements of the Phase 2 Program (S.L. 2006-246);
- (13) Coastal Counties Stormwater Requirements in 15A NCAC 02H .1005(3);
- (14) Stormwater Controls for 401 Certifications under 15A NCAC 02H .0500;
- (15) Catawba Buffer Rules (15A NCAC 02B .0243 and 02B .0244); and
- (16) Urban Stormwater Management Requirements of the Randleman Lake Water Supply Watershed Rules (15A NCAC 02B .0251).

(c) As mandated in 15A NCAC 02H .0506(b)(5) and (c)(5), the Division Director may review and require amendments to proposed stormwater control plans submitted under the provisions of the 401 Certification process in order to ensure that the proposed activity will not violate water quality standards. Adoption of the Universal Stormwater Management Program does not affect the requirements specified in 15A NCAC 02B .0214(3)(b)(i)(I), 02B .0214(3)(b)(ii)(C) and (D), 15A NCAC 02B .0215(3)(b)(i)(I), 02B .0215(3)(b)(ii)(C) and (D), and 15A NCAC 02B .0216(3)(b)(ii)(C) and (D). The Catawba Buffer Rules shall be superceded in those areas where the buffers are contained within the jurisdiction of another stormwater program listed in Paragraph (b) of this Rule and the requirements of that program are replaced by the USMP. For the watershed that drains to Lake James, which is not contained within the jurisdiction of another stormwater program, the Catawba Buffer

Rules shall be superceded if the USMP is implemented in the entire area within five miles of the normal pool elevation of Lake James. The implementation of the USMP shall supercede the Urban Stormwater Management Requirements of the Randleman Lake Water Supply Watershed in 15A NCAC 02B .0251, but USMP implementation does not affect the Randleman Lake Water Supply Watershed; Protection and Maintenance of Riparian Areas requirements specified in 15A NCAC 02B .0250.

(d) Coastal Counties Requirements. All development activities located in one of the 20 Coastal Counties that disturb 10,000 square feet or more of land, including projects that disturb less than 10,000 square feet of land that are part of a larger common plan of development or sale, shall control the runoff from the first one and one half inch of rainfall to the level specified in Paragraph (f) of this Rule. In addition, all impervious surfaces, except for roads, paths, and water dependent structures, shall be located at least 30 feet landward of all perennial and intermittent surface waters. In addition to the other requirements specified in this Paragraph, all development activities that are located within 575 feet of waters designated by the Environmental Management Commission as shellfishing waters shall be limited to a maximum impervious surface density of 36 percent. Redevelopment activities that meet the provisions of 15A NCAC 02H .1002(14) shall not be required to comply with the requirements of this Paragraph.

(e) Non-Coastal Counties Requirements. All residential development activity that is located in one of the 80 Non-Coastal Counties that disturbs one acre or more of land, including residential development that disturbs less than one acre of land that is part of a larger common plan of development or sale, and all non-residential development activity that is located in one of the 80 Non-Coastal Counties that disturbs ½ acre or more of land, including non-residential development that disturbs less than ½ acre of land that is part of a larger common plan of development or sale, shall control the runoff from the first one inch of rainfall as specified in Paragraph (f) of this Rule. Except as allowed in this Paragraph, no new impervious or partially pervious surfaces, except for roads, paths, and water dependent structures, shall be allowed within the one percent Annual Chance Floodplain as delineated by the North Carolina Floodplain Mapping Program in the Division of Emergency Management. For perennial and intermittent streams that do not have a floodplain delineated by the Floodplain Mapping Program, all development activities subject to this Rule shall be located at least 30 feet landward of all perennial and intermittent surface waters. In addition to the other requirements specified in this Paragraph, all development activities that are located within the area designated by the Environmental Management Commission as a Critical Area of a Water Supply Watershed shall be limited to a maximum impervious surface density of 36 percent. Redevelopment of residential structures within the one percent Annual Chance Floodplain that meets the provisions of 15A NCAC 02H .1002(14) is allowed. Redevelopment of non-residential structures within the one percent Annual Chance Floodplain that meets the provisions of 15A NCAC 02H .1002(14) is allowed provided that less than ½ acre is disturbed during the redevelopment activity. Redevelopment activities outside of the one percent Annual Chance Floodplain that meet

the provisions of 15A NCAC 02H .1002(14) shall not be required to comply with the requirements of this Paragraph.

(f) Structural stormwater controls required under Paragraphs (d) and (e) shall meet the following criteria:

- (1) Remove an 85 percent average annual amount of Total Suspended Solids.
- (2) For detention ponds draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.
- (3) Discharge the storage volume at a rate equal or less than the pre-development discharge rate for the 1-year, 24-hour storm.
- (4) Meet the General Engineering Design Criteria set forth in 15A NCAC 02H .1008(c).

(g) For the purposes of this Rule, a surface water shall be present if the feature is shown on either the most recent complete version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Relief from this requirement shall be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 02B .0233 (3)(a).

(h) Local governments that implement the Universal Stormwater Management Program shall require recorded deed restrictions and protective covenants that ensure development activities will maintain the project consistent with approved plans.

(i) Local governments that implement the Universal Stormwater Management Program shall require an operation and maintenance plan that ensures the operation of the structural stormwater control measures required by the program. The operation and maintenance plan shall require the owner of each structural control to submit a maintenance inspection report on each structural stormwater control measure annually to the local program.

(j) In addition to the other measures required in this Rule, all development activities located in one of the 20 Coastal Counties that disturb 10,000 square feet or more of land within ½ mile and draining to SA waters shall:

- (1) Use stormwater control measures that result in fecal coliform die off and that control to the maximum extent practicable sources of fecal coliform while incorporating the requirements specified in Paragraph (f) of this Rule.
- (2) Prohibit new points of stormwater discharge to SA waters or expansion (increase in the volume of stormwater flow through conveyances or increase in capacity of conveyances) of existing stormwater conveyance systems that drain to SA waters. Any modification or redesign of a stormwater conveyance system within the contributing drainage basin must not increase the net amount or rate of stormwater discharge through existing outfalls to SA waters. Diffuse flow of stormwater at a non-erosive velocity to a vegetated buffer or other natural

area capable of providing effective infiltration of the runoff from the 1-year, 24-hour storm shall not be considered a direct point of stormwater discharge. Consideration shall be given to soil type, slope, vegetation, and existing hydrology when evaluating infiltration effectiveness.

(k) In addition to the other measures required in this Rule, development activities draining to trout (Tr) waters shall use stormwater control measures that avoid an increase in the receiving water temperature, while still incorporating the requirements specified in Paragraph (f) of this Rule.

(l) The Division, upon determination that a local government is failing to implement or enforce the approved local stormwater program, shall notify the local government in writing of the local program inadequacies. If the local government has not corrected the deficiencies within 90 days of receipt of written notification from the Division, then the Division shall implement and enforce the provisions of this Rule.

(m) Development activities conducted within a jurisdiction where the USMP has been implemented may take credit for the nutrient reductions achieved by utilizing diffuse flow in the one percent Annual Chance Floodplain to comply with the nutrient loading limits specified within NSW Rules where the one percent Annual Chance Floodplain exceeds the 50-foot Riparian Buffers. Development activities occurring where the USMP has been implemented but there is no delineated one percent Annual Chance Floodplain may take credit for the nutrient reductions achieved by utilizing diffuse flow into a vegetated filter strip that exceeds the 50-foot Riparian Buffer by at least 30 feet and has a slope of five degrees, or less.

(n) The following special provisions of the Universal Stormwater Management Program apply only to federal facilities and Department of Defense (DoD) installations. Federal facilities and DoD installations may adopt the Universal Stormwater Management Program within their boundaries by submitting a letter to the Chairman of the Environmental Management Commission that states that the facility in question has adopted controls that comply with the requirements of this Rule and with the requirements of 15A NCAC 02B .0104(f). In lieu of the protective covenants and deed restrictions required in Paragraph (h) of this Rule, federal facilities and DoD installations that choose to adopt the USMP within their boundaries shall incorporate specific restrictions and conditions into base master plans, or other appropriate instruments, to ensure that development activities regulated under this Rule will be maintained in a manner consistent with the approved plans.

(o) Implementation of this Universal Stormwater Management Program does not affect any other rule or requirement not specifically cited in this Rule.

*History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a); Eff. January 1, 2007.*

**15A NCAC 02Q .0306 PERMITS REQUIRING PUBLIC PARTICIPATION**

(a) The Director shall provide for public notice for comments with an opportunity for the public to request a public hearing on draft permits for the following:

- (1) any source that may be designated by the Director based on public interest relevant to air quality;
- (2) a source to which 15A NCAC 02D .0530 or .0531 applies;
- (3) a source whose emission limitation is based on a good engineering practice stack height that exceeds the height defined in 15A NCAC 02D .0533(a)(4)(A), (B), or (C);
- (4) a source required to have controls more stringent than the applicable emission standards in 15A NCAC 02D .0500 according to 15A NCAC 02D .0501 when necessary to comply with an ambient air quality standard under 15A NCAC 02D .0400;
- (5) alternative controls different than the applicable emission standards in 15A NCAC 02D .0900 according to 15A NCAC 02D .0952;
- (6) a limitation on the quantity of solvent-borne ink that may be used by a printing unit or printing system according to 15A NCAC 02D .0936;
- (7) an allowance of a particulate emission rate of 0.08 grains per dry standard cubic foot for an incinerator constructed before July 1, 1987, in accordance with 15A NCAC 02D .1204(c)(2)(B) and .1208 (b)(2)(B);
- (8) an alternative mix of controls under 15A NCAC 02D .0501(f);
- (9) a source that is subject to the requirements of 15A NCAC 02D .1109 or .1112;
- (10) a source seeking exemption from the 20-percent opacity standard in 15A NCAC 02D .0521 under 15A NCAC 2D .0521(f);
- (11) a source using an alternative monitoring procedure or methodology under 15A NCAC 02D .0606(g) or .0608(g); or
- (12) the owner or operator requests that the draft permit go to public notice with an opportunity to request a public hearing.

(b) On the Division's website, the Director shall post a copy of the draft permit that changes classification for a facility by placing a physical or operational limitation in it to avoid the applicability of rules in 15A NCAC 02Q .0500. Along with the draft permit, the Director shall also post a public notice for comments with an opportunity to request a public hearing on that draft permit. The public notice shall contain the information specified in 15A NCAC 02Q .0307(c) and shall allow at least 30 days for public comment.

(c) If EPA requires the State to submit a permit as part of the North Carolina State Implementation Plan for Air Quality (SIP) and if the Commission approves a permit containing any of the conditions described in Paragraph (a) of this Rule as a part of the SIP, the Director shall submit the permit to the EPA on behalf of

the Commission for inclusion as part of the federally approved SIP.

*History Note: Authority G.S. 143-215.3(a)(1),(3); 143-215.108; 143-215.114A; 143-215.114B; 143-215.114C; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. January 1, 2007; August 1, 2004; July 1, 2000; July 1, 1999; July 1, 1998.*

#### **15A NCAC 02Q .0503 DEFINITIONS**

For the purposes of this Section, the definitions in G.S. 143-212 and 143-213 and the following definitions apply:

- (1) "Affected States" means all states or local air pollution control agencies whose areas of jurisdiction are:
  - (a) contiguous to North Carolina and located less than  $D=Q/12.5$  from the facility, where:
    - (i)  $Q$  = emissions of the pollutant emitted at the highest permitted rate in tons per year, and
    - (ii)  $D$  = distance from the facility to the contiguous state or local air pollution control agency in miles
 unless the applicant can demonstrate to the satisfaction of the Director that the ambient impact in the contiguous states or local air pollution control agencies is less than the incremental ambient levels in 15A NCAC 02D .0532(c)(5); or
  - (b) within 50 miles of the permitted facility.
- (2) "Complete application" means an application that provides all information described under 40 CFR 70.5(c) and such other information that is necessary to determine compliance with all applicable requirements.
- (3) "Draft permit" means the version of a permit that the Division offers public participation under Rule .0521 of this Section or affected State review under Rule .0522 of this Section.
- (4) "Emissions allowable under the permit" means a federally enforceable permit term or condition determined at issuance to be an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the facility has assumed to avoid an applicable requirement to which the facility would otherwise be subject.
- (5) "Final permit" means the version of a permit that the Director issues that has completed all review procedures required under this Section

- if the permittee does not file a petition under Article 3 of G.S. 150B.
- (6) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.
- (7) "Insignificant activities because of category" means:
- (a) mobile sources;
  - (b) air-conditioning units used for human comfort that are not subject to applicable requirements under Title VI of the federal Clean Air Act and do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process;
  - (c) ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process;
  - (d) heating units used for human comfort that have a heat input of less than 10,000,000 Btu per hour and that do not provide heat for any manufacturing or other industrial process;
  - (e) noncommercial food preparation;
  - (f) consumer use of office equipment and products;
  - (g) janitorial services and consumer use of janitorial products;
  - (h) internal combustion engines used for landscaping purposes;
  - (i) new residential wood heaters subject to 40 CFR Part 60, Subpart AAA; and
  - (j) demolition and renovation activities covered solely under 40 CFR Part 61, Subpart M.
- (8) "Insignificant activities because of size or production rate" means any activity whose emissions would not violate any applicable emissions standard and whose potential emission of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide before air pollution control devices, i.e., potential uncontrolled emissions, are each no more than five tons per year and whose potential emissions of hazardous air pollutants before air pollution control devices, are each below 1000 pounds per year.
- (9) "Minor facility" means any facility that is not a major facility.
- (10) "Operation" means the utilization of equipment that emits regulated pollutants.
- (11) "Permit renewal" means the process by which a permit is reissued at the end of its term.
- (12) "Permit revision" means any permit modification under Rule .0515, .0516, or .0517 of this Section or any administrative permit amendment under Rule .0514 of this Section.
- (13) "Proposed permit" means the version of a permit that the Director proposes to issue and forwards to EPA for review under Rule .0522 of this Section.
- (14) "Relevant source" means only those sources that are subject to applicable requirements.
- (15) "Responsible official" means a responsible official as defined under 40 CFR 70.2.
- (16) "Section 502(b)(10) changes" means changes that contravene an express permit term or condition. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.
- (17) "Synthetic minor facility" means a facility that would otherwise be required to follow the procedures of this Section except that the potential to emit is restricted by one or more federally enforceable physical or operational limitations, including air pollution control equipment and restrictions on hours or operation, the type or amount of material combusted, stored, or processed, or similar parameters.
- (18) "Timely" means:
- (a) for initial permit submittals under Rule .0506 of this Section, before the end of the time period specified for submittal of an application for the respective Standard Industrial Classification;
  - (b) for a new facility, one year after commencing operation;
  - (c) for renewal of a permit previously issued under this Section, nine months before the expiration of that permit;
  - (d) for a minor modification under Rule .0515 of this Section, before commencing the modification;
  - (e) for a significant modification under Rule .0516 of this Section where the change would not contravene or conflict with a condition in the existing permit, 12 months after commencing operation;
  - (f) for reopening for cause under Rule .0517 of this Section, as specified by the Director in the request for additional information by the Director;

- (g) for requests for additional information, as specified by the Director in the request for additional information by the Director; or
- (h) for modifications made under Section 112(j) of the federal Clean Air Act, 18 months after EPA fails to promulgate a standard for that category of source under Section 112 of the federal Clean Air Act by the date established pursuant to Section 112(e)(1) or (3) of the federal Clean Air Act.

*History Note: Authority G.S. 143-215.3(a)(1); 143-212; 143-213;*

*Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*

*Eff. July 1, 1994;*

*Amended Eff. July 1, 1996;*

*Temporary Amendment Eff. December 1, 1999;*

*Amended Eff. January 1, 2007; July 1, 2000.*

#### **15A NCAC 02Q .0508 PERMIT CONTENT**

(a) The permit shall specify and reference the origin and authority for each term or condition and shall identify any differences in form as compared to the applicable requirement on which the term or condition is based.

(b) The permit shall specify emission limitations and standards, including operational requirements and limitations, that assure compliance with all applicable requirements at the time of permit issuance.

(c) Where an applicable requirement of the federal Clean Air Act is more stringent than an applicable requirement of rules promulgated pursuant to Title IV, both provisions shall be placed in the permit. The permit shall state that both provisions are enforceable by EPA.

(d) The permit for sources using an alternative emission limit established under 15A NCAC 02D .0501(f) or 15A NCAC 02D .0952 shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(e) The expiration date contained in the permit shall be for a fixed term of five years for sources covered under Title IV and for a term of no more than five years from the date of issuance for all other sources including solid waste incineration units combusting municipal waste subject to standards under Section 129(e) of the federal Clean Air Act.

(f) The permit shall contain monitoring and related recordkeeping and reporting requirements as specified in 40 CFR 70.6(a)(3) and 70.6(c)(1) including conditions requiring:

- (1) the permittee to submit reports of any required monitoring at least every six months. The permittee shall submit reports:
  - (A) on official forms obtained from the Division at the address in Rule .0104 of this Subchapter,

(B) in a manner as specified by a permit condition, or

(C) on other forms that contain the information required on official forms provided by the Division or as specified by a permit condition; and

(2) the permittee to report:

(A) malfunctions, emergencies, and other upset conditions as prescribed in 15A NCAC 02D .0524, .0535, .1110, or .1111;

(B) deviations quarterly from permit requirements not covered under 15A NCAC 02D .0524, .0535, .1110, or .1111. The permittee shall include the probable cause of such deviation and any corrective actions or preventive measures taken;

(3) the responsible official to certify all deviations from permit requirements.

(g) At the request of the permittee, the Director shall allow records to be maintained in computerized form in lieu of maintaining paper records if computerized records contain the same information as the paper records would contain.

(h) The permit for facilities covered under 15A NCAC 02D .2100, Risk Management Program, shall contain:

(1) a statement listing 15A NCAC 02D .2100 as an applicable requirement;

(2) conditions that require the owner or operator of the facility to submit:

(A) a compliance schedule for meeting the requirements of 15A NCAC 02D .2100 by the dates provided in 15A NCAC 02D .2101(a); or

(B) as part of the compliance certification under Paragraph (m) of this Rule, a certification statement that the source is in compliance with all requirements of 15A NCAC 02D .2100, including the registration and submission of the risk management plan.

The content of the risk management plan need not itself be incorporated as a permit term or condition.

(i) The permit shall:

(1) contain a condition prohibiting emissions exceeding any allowances that a facility lawfully holds under Title IV; but shall not limit the number of allowances held by a permittee, but the permittee may not use allowances as a defense to noncompliance with any other applicable requirement;

(2) contain a severability clause so that various permit requirements will continue to be valid in the event of a challenge to any other portion of the permit;

(3) state that noncompliance with any condition of the permit is grounds for enforcement action; for permit termination, revocation and



- reissuance, or modification; or for denial of a permit renewal application;
  - (4) state that the permittee may not use as a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit;
  - (5) state that the Director may reopen, modify, revoke and reissue, or terminate the permit for reasons specified in Rule .0517 or .0519 of this Section;
  - (6) state that the filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, notification of planned changes, or anticipated noncompliance does not stay any permit condition;
  - (7) specify the conditions under which the permit shall be reopened before the expiration of the permit;
  - (8) state that the permit does not convey any property rights of any sort, or any exclusive privileges;
  - (9) state that the permittee shall furnish to the Division, in a timely manner;
    - (A) any reasonable information that the Director may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit, and
    - (B) copies of records required to be kept by the permit when such copies are requested by the Director.

(For information claimed to be confidential, the permittee may furnish such records directly to EPA along with a claim of confidentiality.)
  - (10) contain a provision to ensure that the permittee pays fees required under Section .0200 of this Subchapter;
  - (11) contain a condition that authorizes the permittee to make Section 502(b)(10) changes, off-permit changes, or emission trades in accordance with Rule .0523 of this Section;
  - (12) include all applicable requirements for all sources covered under the permit;
  - (13) include fugitive emissions, if regulated, in the same manner as stack emissions;
  - (14) contain a condition requiring annual reporting of actual emissions as required under Rule .0207 of this Subchapter;
  - (15) include all sources including insignificant activities; and
  - (16) contain such other provisions as the Director considers appropriate.
- (j) The permit shall state the terms and conditions for reasonably anticipated operating scenarios identified by the applicant in the application. These terms and conditions shall:
- (1) require the permittee, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the operating scenario under which it is operating;
  - (2) extend the permit shield described in Rule .0512 of this Section to all terms and conditions under each such operating scenario; and
  - (3) ensure that each operating scenario meets all applicable requirements of Subchapter 02D of this Chapter and of this Section.
- (k) The permit shall identify which terms and conditions are enforceable by:
- (1) both EPA and the Division;
  - (2) the Division only;
  - (3) EPA only; and
  - (4) citizens under the federal Clean Air Act.
- (l) The permit shall state that the permittee shall allow personnel of the Division to:
- (1) enter the permittee's premises where the permitted facility is located or emissions-related activity is conducted, or where records are kept under the conditions of the permit;
  - (2) have access to and copy, at reasonable times, any records that are required to be kept under the conditions of the permit;
  - (3) inspect at reasonable times and using reasonable safety practices any source, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and
  - (4) sample or monitor substances or parameters, using reasonable safety practices, for the purpose of assuring compliance with the permit or applicable requirements at reasonable times.
- (m) When a compliance schedule is required under 40 CFR 70.5(c)(8) or under a rule contained in Subchapter 02D of this Chapter, the permit shall contain the compliance schedule and shall state that the permittee shall submit at least semiannually, or more frequently if specified in the applicable requirement, a progress report. The progress report shall contain:
- (1) dates for achieving the activities, milestones, or compliance required in the compliance schedule, and dates when such activities, milestones, or compliance were achieved; and
  - (2) an explanation of why any dates in the compliance schedule were not or will not be met, and any preventive or corrective measures adopted.
- (n) The permit shall contain requirements for compliance certification with the terms and conditions in the permit that are enforceable by EPA under Title V of the federal Clean Air Act, including emissions limitations, standards, or work practices. The permit shall specify:

- (1) the frequency (not less than annually or more frequently as specified in the applicable requirements or by the Director) of submissions of compliance certifications;
  - (2) a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices; and
  - (3) a requirement that the compliance certification include:
    - (A) the identification of each term or condition of the permit that is the basis of the certification;
    - (B) the status of compliance with the terms and conditions of the permit for the period covered by the certification, based on the methods or means designated in 40 CFR 70.6(c)(5)(iii)(B). The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR 64 occurred;
    - (C) whether compliance was continuous or intermittent;
    - (D) the identification of the method(s) or other means used by the owner and operator for determining the compliance status with each term and condition during the certification period; these methods shall include, the methods and means required under 40 CFR Part 70.6(a)(3); and
    - (E) such other facts as the Director may require to determine the compliance status of the source;
  - (4) that all compliance certifications be submitted to EPA as well as to the Division.
  - (3) requires more frequent monitoring or reporting by the permittee;
  - (4) changes test dates or construction dates provided that no applicable requirements are violated by the change in test dates or construction dates;
  - (5) moves terms and conditions from the State-enforceable only portion of a permit to the State-and-federal- enforceable portion of the permit provided that terms and conditions being moved have become federally enforceable through Section 110, 111, or 112 or other parts of the federal Clean Air Act;
  - (6) moves terms and conditions from the federal-enforceable only portion of a permit to the State-and-federal-enforceable portion of the permit; or
  - (7) changes the permit number without changing any portion of the permit that is federally enforceable that would not otherwise qualify as an administrative amendment.
- (b) In making administrative permit amendments, the Director:
- (1) shall take final action on a request for an administrative permit amendment within 60 days after receiving such request,
  - (2) may make administrative amendments without providing notice to the public or any affected State(s) provided he designates any such permit revision as having been made pursuant to this Rule, and
  - (3) shall submit a copy of the revised permit to EPA.
- (c) The permittee may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.
- (d) Upon taking final action granting a request for an administrative permit amendment, the Director shall allow coverage by the permit shield under Rule .0512 of this Section for the administrative permit amendments made.
- (e) Administrative amendments for sources covered under Title IV shall be governed by rules in Section .0400 of this Subchapter.
- (f) This Rule shall not be used to make changes to the state-enforceable only part of a Title V permit. For the state-enforceable only part of a Title V permit, Rule .0316 of this Subchapter shall be used for administrative permit amendments.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(10); 143-215.108;*  
*Temporary Rule Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner;*  
*Eff. July 1, 1994;*  
*Amended Eff. July 1, 1996;*  
*Temporary Amendment Eff. December 1, 1999;*  
*Amended Eff. January 1, 2007; December 1, 2005; April 1, 2001; July 1, 2000.*

#### **15A NCAC 02Q .0514 ADMINISTRATIVE PERMIT AMENDMENTS**

- (a) An "administrative permit amendment" means a permit revision that:
- (1) corrects typographical errors;
  - (2) identifies a change in the name, address or telephone number of any individual identified

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;*  
*Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*  
*Eff. July 1, 1994;*  
*Amended Eff. January 1, 2007; July 1, 1997.*

#### **15A NCAC 02T .0915 LOCAL PROGRAM APPROVAL**

(a) Municipalities, counties, local boards or commissions, water and sewer authorities, or groups of municipalities and counties may apply to the Division for approval of programs for permitting construction, modification, and operation of reclaimed water distribution lines and permitting users under their authority. Construction of and modifications to treatment works, including pump stations for reclaimed water distribution, require Division approval. Permits issued by approved local programs serve in place of permits issued by the Division.

(b) Applications. Applications for approval of local programs must provide adequate information to assure compliance with the requirements of this Subchapter and the following:

- (1) The program application shall include two copies of the permit application forms, intended permits including types of uses, minimum design criteria (specifications), flow chart of permitting, inspection and certification procedures, and other relevant documents to be used in administering the local program.
- (2) Certification that the local authority has procedures in place for processing permit applications, setting permit requirements, enforcement, and penalties that are compatible with those for permits issued by the Division.
- (3) Any future amendments to the requirements of this Subchapter shall be incorporated into the local program within 60 days of the effective date of the amendments.
- (4) A North Carolina registered Professional Engineer shall be on the staff of the local program or retained as a consultant to review unusual situations or designs and to answer questions that arise in the review of proposed projects. The local program shall also provide staff or retain a consultant to review all other non-engineering related program areas.
- (5) Each project permitted by the local program shall be inspected for compliance with the requirements of the local program at least once during construction.

(c) Approval of Local Programs. The staff of the Division shall acknowledge receipt of an application for a local program in writing, review the application, notify the applicant of additional information that may be required, and make a recommendation to the Commission on the acceptability of the proposed local program.

(d) All permitting actions, bypasses from distribution lines, enforcement actions, and monitoring of the distribution system shall be summarized and submitted to the Division on a quarterly basis on forms provided by the Division. The report shall also provide a listing and summary of all enforcement actions taken or pending during the quarter. The quarters begin on January 1, April 1, July 1 and October 1. The report shall be submitted within 30 days after the end of each quarter.

(e) A copy of all program documents such as specifications, permit applications, permit shells and shell certification forms shall be submitted to the Division on an annual basis along with a summary of any other program changes. Program changes to note include staffing, processing fees, and ordinance revisions.

(f) Modification of a Local Program. After a local program has been approved by the Commission, any modification of the program procedures or requirements specified in this Rule must be approved by the Director to assure that the procedures and requirements remain at least as stringent as the state-wide requirements in this Subchapter.

(g) Appeal of Local Decisions. Appeal of individual permit denials or issuance with conditions the permit applicant finds unacceptable shall be made according to the approved local ordinance. The Commission shall not consider individual permit denials or issuance with conditions to which a Permittee objects. This Paragraph does not alter the enforcement authority of the Commission as specified in G.S. 143-215.1(f).

*History Note:* Authority G.S. 143-215.1; 143-215.3(a); S.L. 2006-250;

*Eff. January 1, 2007.*

#### **15A NCAC 07B .0801 PUBLIC HEARING AND LOCAL ADOPTION REQUIREMENTS**

(a) Public Hearing Requirements. The local government shall provide documentation to DCM that it has followed the process required in G.S. 113A-110; and such notice shall include per Rule .0802(b)(3), the disclosure of the public opportunity to provide written comment following local adoption of the Land Use Plan.

(b) Final Plan Content. The final decision on local policies and all contents of the CAMA Land Use Plan consistent with the CAMA land use planning rules shall be made by the elected body of each participating local government.

(c) Transmittal to the CRC. The local government shall provide the Executive Secretary of the CRC with as many copies of the locally adopted land use plan as the Executive Secretary requests, and a certified statement of the local government adoption action no earlier than 45 days and no later than 30 days prior to the next CRC meeting. If the local government fails to submit the requested copies of the locally adopted land use plan and certified statement to the Executive Secretary within the specified timeframe, the local government may resubmit documents within the specified timeframe for consideration at the following CRC meeting.

*History Note:* Authority G.S. 113A-107(a); 113A-110; 113A-124;

*Eff. August 1, 2002;*

*Amended Eff. January 1, 2007; February 1, 2006.*

#### **15A NCAC 13A .0107 STDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE - PART 262**

(a) 40 CFR 262.10 through 262.12 (Subpart A), "General," are incorporated by reference including subsequent amendments and editions.

(b) 40 CFR 262.20 through 262.23 (Subpart B), "The Manifest," are incorporated by reference including subsequent amendments and editions.

(c) 40 CFR 262.30 through 262.34 (Subpart C), "Pre-Transport Requirements," are incorporated by reference including subsequent amendments and editions.

- (d) 40 CFR 262.40 through 262.44 (Subpart D), "Recordkeeping and Reporting," are incorporated by reference including subsequent amendments and editions. In addition, a generator shall keep records of inspections and results of inspections required by Section 262.34 for at least three years from the date of the inspection.
- (e) 40 CFR 262.50 through 262.58 (Subpart E), "Exports of Hazardous Waste," are incorporated by reference including subsequent amendments and editions.
- (f) 40 CFR 262.60 (Subpart F), "Imports of Hazardous Waste," is incorporated by reference including subsequent amendments and editions.
- (g) 40 CFR 262.70 (Subpart G), "Farmers," is incorporated by reference including subsequent amendments and editions.
- (h) 40 CFR 262.80 through 262.89 (Subpart H), "Transfrontier Shipments of Hazardous Waste for Recovery within the OECD," are incorporated by reference including subsequent amendments and editions, except that 40 CFR 262.89(e) is not incorporated by reference.
- (i) The appendix to 40 CFR Part 262 is incorporated by reference including subsequent amendments and editions.

*History Note: Authority G.S. 130A-294(c); 150B-21.6; Eff. November 19, 1980; Amended Eff. December 1, 1988; June 1, 1988; August 1, 1987; May 1, 1987; Transferred and Recodified from 10 NCAC 10F .0030 Eff. April 4, 1990; Amended Eff. August 1, 1990; Recodified from 15A NCAC 13A .0008 Eff. August 30, 1990; Amended Eff. April 1, 1993; October 1, 1990; Recodified from 15A NCAC 13A .0007 Eff. December 20, 1996; Amended Eff. January 1, 2007; April 1, 2001; August 1, 1998.*

## **TITLE 18 – DEPARTMENT OF SECRETARY OF STATE**

### **18 NCAC 07C .0101 SCOPE**

- (a) The rules in this Subchapter implement G.S. 10B, Article 2, the Electronic Notary Act. and G.S. 47-16.1.
- (b) The rules in this Subchapter are adopted pursuant to the provisions of Subchapter I of Chapter 96 of Title 15 of the United States Code, Electronic Records and Signatures in Commerce.

*History Note: Authority G.S. 10B-125(b); 47-16.5; 47-16.7; 147-36; 15 USC 7002; Eff. January 1, 2007.*

### **18 NCAC 07C .0102 DEFINITIONS**

In addition to terms defined in Article 1 of Chapter 10B of the General Statutes and Subchapter 07B of this Chapter, and for purposes of Article 2 of Chapter 10B of the General Statutes and this Subchapter:

- (1) "Applicant" means a person applying for registration as a North Carolina electronic notary.

- (2) "Approved Electronic Notary Solution Provider" means a person or entity approved to provide an Electronic Notarization System by the Department pursuant to Article 2 of Chapter 10B of the General Statutes and Article 1A of Chapter 47 of the General Statutes.
- (3) "Biometric Authentication" means proving the identity of a user by requiring verification of the user's identity through technologies that require measurement and analysis of one or more human physiological or behavioral characteristics of the user in order to access and use an electronic notarization system. Biometric authentication technologies include fingerprint scanning devices, retinal scanning devices, and handwriting analysis devices.
- (4) "Department" means the North Carolina Department of the Secretary of State. Unless specifically noted in rule text, for the purposes of this Subchapter "Department" means the notary public section of the Department's certification and filing division.
- (5) "Electronic Notarization System" means a set of applications, programs, hardware, software, or technology designed to enable a notary to perform electronic notarizations.
- (6) "Independently Verifiable" means capable of government or third-party authentication of a notarial act, a notary's identity, and a notary's relevant authority.
- (7) "Password Authentication" means requiring the user to enter a secret word, phrase, or symbol set in order to access and use an electronic notarization system.
- (8) "Token Authentication" means requiring use of a physical device in addition to a password or personal identification number ("PIN" number) in order to access and use an electronic notarization system. Physical devices used in token authentication technologies include magnetic cards or "smart cards" and Universal Serial Bus (USB) memory sticks or "USB keys".
- (9) "Under the exclusive control of the notary", for the purposes of the Department's interpretation of the requirements of G.S. 10B-126(b), means "under the notary public's sole control" as defined in this subchapter.
- (10) "Under the notary public's sole control" means accessible by and attributable solely to the notary to the exclusion of all other persons and entities, either through being in the direct physical custody of the notary or through being secured with one or more biometric, password, token, or other authentication technologies in an electronic notarization system provided by an approved electronic

notary solution provider approved pursuant to the Act and this Subchapter.

*History Note:* Authority G.S. 10B-125(b), 10B-126(d); 47-16.5; 47-16.7; 147-36; 15 USC 7002;  
Eff. January 1, 2007.

**18 NCAC 07C .0201 APPLICATION**

- (a) Qualifications. An applicant shall provide:
- (1) All information required for registration pursuant to G.S. 10B-106(d);
  - (2) Verification that the applicant holds a valid North Carolina notary commission and continues to meet the qualifications to hold the notary commission;
  - (3) Verification that the applicant is in compliance with all provisions of the Notary Act;
  - (4) Any other information requested by the Department to prove the qualifications of the applicant.
- (b) Submission. The applicant shall:
- (1) Complete the registration form on line;
  - (2) Print the form;
  - (3) Have the form notarized; and
  - (4) Submit the form by:
    - (A) U.S. mail;
    - (B) In person delivery; or
    - (D) Courier service.

*History Note:* Authority G.S. 10B-125(b), 10B-126(d) ; 47-16.5; 47-16.7; 147-36; 15 USC 7002;  
Eff. January 1, 2007.

**18 NCAC 07C .0202 OATH OF OFFICE AND DELIVERY OF COMMISSION**

- (a) The applicant shall take the oath in the Register of Deeds office within 45 days of the issue date on the electronic notary oath notification letter.
- (b) Before taking the oath of office, an applicant shall present to the Register of Deeds evidence of the applicant's identity as defined in G.S. 10B-3(22).
- (c) After administering the oath of office, the Register of Deeds shall deliver the electronic notary registration certificate to the electronic notary.
- (d) The applicant's electronic notary registration shall not be effective until the applicant takes the oath.

*History Note:* Authority G.S. 10B-125(b), 10B-126(d); 47-16.5; 47-16.7; 147-36; 15 USC 7002;  
Eff. January 1, 2007.

**18 NCAC 07C .0203 RE-REGISTRATION**

A notary applying to re-register as an electronic notary shall comply with application procedures found in the Act and this Subchapter.

*History Note:* Authority G.S. 10B-125, 10B-126; 47-16.5; 47-16.7; 147-36; 15 USC 7002;  
Eff. January 1, 2007.

**18 NCAC 07C .0301 APPROVED COURSE OF STUDY FOR ELECTRONIC NOTARIES PUBLIC**

- (a) The Department shall administer the training course and testing for applicants for electronic notary registration.
- (b) Upon the Secretary's determination of a need for additional instructors, the Department may train certified notary public instructors who are also registered as electronic notaries public to administer the training course and testing for applicants for electronic notary registration.

*History Note:* Authority G.S. 10B-107; 10B-125, 10B-126; 47-16.5; 47-16.7; 147-36; 15 USC 7002;  
Eff. January 1, 2007.

**18 NCAC 07C .0401 ELECTRONIC NOTARY SIGNATURE**

- (a) The electronic notary signature shall be independently verifiable and unique to the electronic notary.
- (b) The electronic notary signature shall be retained under the electronic notary's sole control.
- (c) When the electronic notary performs an electronic notarization, the electronic signature used by the electronic notary must be accessible by and attributable solely to the electronic notary to the exclusion of all other persons and entities for the entire time necessary to perform the electronic notarization.
- (d) The electronic notary signature shall be attached or logically associated with the document, linking the data in such a manner that any subsequent alterations to the underlying document or electronic notary certificate are observable through visual examination.
- (e) An image of the electronic notary's handwritten signature shall appear on any visual or printed representation of an electronic notary certificate regardless of the technology being used to affix the electronic notary's electronic signature.

*History Note:* Authority G.S. 10B-125(b), 10B-126(d); 47-16.5; 47-16.7; 147-36; 15 USC 7002;  
Eff. January 1, 2007.

**18 NCAC 07C .0402 ELECTRONIC NOTARY SEAL**

- (a) The electronic notary seal shall be independently verifiable and unique to the electronic notary.
- (b) The electronic notary seal shall be retained under the electronic notary's sole control.
- (c) When the electronic notary performs an electronic notarization, the electronic seal used by the electronic notary shall be accessible by and attributable solely to the electronic notary to the exclusion of all other persons and entities for the entire time necessary to perform the electronic notarization.
- (d) The electronic notary seal shall be attached or logically associated with the document, linking the data in such a manner that any subsequent alterations to the underlying document or electronic notary certificate are observable through visual examination.
- (e) An image of the electronic notary's electronic seal shall appear on any visual or printed representation of the electronic

notary certificate regardless of the technology being used to affix the electronic notary's electronic seal.

(f) The perimeter of the electronic notary seal shall contain a border such that the physical appearance of the seal replicates the appearance of an inked seal on paper.

(g) The electronic notary seal must have, within its border, the electronic notary's name exactly as commissioned, the words "Electronic Notary Public", the words "North Carolina" or "N.C.", and the county of commission including the word "County" or "Co.".

*History Note: Authority G.S. 10B-125(b); 10B-126(d); 47-16.5; 47-16.7; 147-36; 15 USC 7002; Eff. January 1, 2007.*

**18 NCAC 07C .0403 PHYSICAL PRESENCE  
REQUIREMENT FOR ELECTRONIC NOTARIZATION**

When an electronic notary performs an electronic notarization, the principal and the electronic notary shall be in each other's physical presence during the entire electronic notarization so that the principal and the electronic notary can see, hear, communicate with, and give identification documents as required under G.S. 10B-3(22) to each other without the use of electronic devices such as telephones, computers, video cameras, or facsimile machines.

*History Note: Authority G.S. 10B-116(1); 10B-125(b); 10B-126(d); 47-16.5; 47-16.7; 147-36; 15 USC 7002; Eff. January 1, 2007.*

**18 NCAC 07C .0501 ELECTRONIC NOTARY  
SOLUTION PROVIDER APPLICATION**

(a) Any person or entity applying to the Department for designation as an approved electronic notary solution provider must complete and submit an application to the Department for review and approval before authorizing any electronic notary seals or electronic signatures to North Carolina electronic notaries. The application shall include the following information:

- (1) Hardware and software specifications and requirements for the provider's electronic notarization system,
- (2) A description of the type(s) of technology used in the provider's electronic notarization system, and
- (3) A demonstration of how the technology is used to perform an electronic notarization.

(b) An electronic notary solution provider may appeal the Department's rejection of the provider's application for designation as an approved electronic notary solution provider as provided under Article 3 of Chapter 150B of the General Statutes.

*History Note: Authority G.S. 10B-125(b); 10B-126(d); 47-16.5; 47-16.7; 147-36; 15 USC 7002; Eff. January 1, 2007.*

**18 NCAC 07C .0502 CRITERIA FOR APPROVAL OF  
ELECTRONIC NOTARY SOLUTION PROVIDERS**

Each applicant and each approved electronic notary solution provider shall:

- (1) Provide a free and readily available viewer/reader so as to enable all parties relying on the electronically notarized record or document to view the electronic notary signature and the electronic notary seal without incurring any cost;
- (2) Comply with the laws, policies, and rules that govern North Carolina notaries;
- (3) Provide an electronic notarization system or solution that complies with the technical specifications of the rules and standards that govern electronic notarization processes and procedures in North Carolina;
- (4) Require such of the provider's principals or employees to take the mandatory electronic notary education course online and pass the required examination as is necessary to ensure the provider possesses sufficient familiarity with North Carolina's electronic notary laws and requirements;
- (5) Require notaries to present the NC Secretary of State's Electronic Notary Certificate to Perform Electronic Notary Acts prior to authorizing an electronic notary seal and signature;
- (6) Verify the authorization of a North Carolina notary to perform electronic notary acts by logging on to the Department's website and comparing the name, notary commission number and commission expiration date with the information on the Electronic Notary Certificate to Perform Electronic Notary Acts prior to authorizing an electronic notary seal and signature;
- (7) Provide prorated fees to align the usage and cost of the electronic notary system or solution with the commission term limit of the electronic notary purchasing the electronic notary seal and signature;
- (8) Suspend the use of any electronic notarization system or solution for any notary whose commission has been revoked or suspended by the North Carolina Secretary of State; and
- (9) Submit an exemplary of the electronic notary signature and the electronic notary seal to the Department for each electronic notary who subscribes to the provider's electronic notary solution.

*History Note: Authority G.S. 10B-125(b); 10B-126(d); 47-16.5; 47-16.7; 147-36; 15 USC 7002; Eff. January 1, 2007.*

**18 NCAC 07C .0503 ELECTRONIC NOTARY  
SOLUTION PROVIDER CHANGES**

(a) An electronic notary solution provider shall notify the Department within 45 days of changes, modifications or updates to information previously submitted to the Department.

(b) An approved electronic notary solution provider shall obtain approval of the Department pursuant to the Act and this Subchapter before making available to North Carolina electronic notaries any updates or subsequent versions of the provider's electronic notarization system.

*History Note: Authority G.S. 10B-125(b); 10B-126(d); 47-16.5; 47-16.7; 147-36; 15 USC 7002; Eff. January 1, 2007.*

#### **18 NCAC 07C .0601 SEPARATE ATTESTATIONS**

Each electronic signature requiring notarization and attestation in the form of an acknowledgment shall be individually affixed to the electronic document by the principal signer and shall be acknowledged separately by the principal signer, except in the following situation:

- (1) The notarized document is executed on behalf of an entity as defined in G.S. 55-1-40(9)(a) or (c); and
- (2) The notarized document does not adversely affect the claim, right or obligation of another.

*History Note: Authority G.S. 10B-125(b); 10B-126(d); 47-16.5; 47-16.7; 147-36; 15 USC 7002; Eff. January 1, 2007.*

#### **18 NCAC 07C .0602 ELECTRONIC NOTARY SEALS**

The electronic notary seal is the property of the electronic notary and shall be subject to laws governing private property.

*History Note: Authority G.S. 10B-125(b); 10B-126(d); 47-16.5; 47-16.7; 147-36; 15 USC 7002; Eff. January 1, 2007.*

#### **18 NCAC 07C .0603 EMPLOYERS OF ELECTRONIC NOTARIES**

(a) Neither the employer nor any of the employer's employees or agents shall use or permit the use of an electronic notary seal or signature by anyone other than the electronic notary to whom it is registered.

(b) Upon the cessation of employment of an electronic notary, the employer of the notary shall:

- (1) Relinquish control of the electronic notary seal;
- (2) Transfer possession of the electronic notary seal to the electronic notary; or
- (3) Eliminate the ability of any other person to use the former employee's electronic notary seal if the electronic notarization system used by the employer does not permit transfer of possession of the electronic notary seal.

*History Note: Authority G.S. 10B-125(b); 10B-126(d); 47-16.5; 47-16.7; 147-36; 15 USC 7002; Eff. January 1, 2007.*

#### **18 NCAC 07C .0604 PROTECTED ACCESS**

Access to electronic notary signatures and electronic notary seals shall be protected by the use of a password, token, biometric, or other form of authentication approved by the Department according to Article 2 of Chapter 10B of the General Statutes, and Article 1A of Chapter 47 of the General Statutes.

*History Note: Authority G.S. 10B-125(b); 10B-126(d); 47-16.5; 47-16.7; 147-36; 15 USC 7002; Eff. January 1, 2007.*

### **TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

#### **CHAPTER 8 - BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS**

##### **21 NCAC 08G .0401 CPE REQUIREMENTS FOR CPAS**

(a) In order for a CPA to receive CPE credit for a course:

- (1) the CPA must attend or complete the course;
- (2) the course must meet the requirements set out in 21 NCAC 08G .0404(a) or (c); and
- (3) the course must increase the professional competency of the CPA.

(b) The Board registers sponsors of CPE courses. A CPE course provided by a registered sponsor is presumed to meet the CPE requirements set forth in 21 NCAC 08G .0404(a) if the sponsor has indicated that the course meets those requirements. However, it is up to the individual CPAs attending the course and desiring to claim CPE credit for it to assess whether it increases their professional competency.

(c) A course that increases the professional competency of a CPA is a course in an area of accounting in which the CPA practices or is planning to practice in the near future, or in the area of professional ethics or an area related to the profession.

(d) Because of differences in the education and experience of CPAs, a course may contribute to the professional competence of one CPA but not another. Each CPA must therefore exercise judgment in selecting courses for which CPE credit is claimed and choose only those that contribute to that CPA's professional competence.

(e) Active CPAs must complete 40 CPE hours, computed in accordance with 21 NCAC 08G .0409 by December 31 of each year, except as follows:

- (1) CPAs having certificate applications approved by the Board in April-June must complete 30 CPE hours during the same calendar year.
- (2) CPAs having certificate applications approved by the Board in July-September must complete 20 CPE hours during the same calendar year.
- (3) CPAs having certificate applications approved by the Board in October-December must complete 10 CPE hours during the same calendar year.

(f) There are no CPE requirements for retired or inactive CPAs.

(g) Any CPE hours completed during the calendar year in which the certificate is approved may be used for that year's requirement even if the hours were completed before the certificate was granted. When a CPA has completed more than the required number of hours of CPE in any one calendar year, the extra hours, not in excess of 20 hours, may be carried forward and treated as hours earned in the following year. A CPA may not claim CPE credit for courses taken in any year prior to the year of certification.

(h) Any CPE hours used to satisfy the requirements for change of status as set forth in 21 NCAC 08J .0105, for reinstatement as set forth in 21 NCAC 08J .0106, or for application for a new certificate as set forth in 21 NCAC 08I .0104 may also be used to satisfy the annual CPE requirement set forth in Paragraph (e) of this Rule.

(i) It is the CPA's responsibility to maintain records substantiating the CPE credits claimed for the current year and for each of the four calendar years prior to the current year.

(j) A non-resident licensee may satisfy the annual CPE requirements including 21 NCAC 08G .0401 in the jurisdiction in which he or she is licensed and currently works or resides. If there is no annual CPE requirement in the jurisdiction in which he or she is licensed and currently works or resides, he or she must comply with Paragraph (e) of this Rule.

*History Note: Authority G.S. 93-12(8b);  
Eff. May 1, 1981;*

*Amended Eff. January 1, 2007; January 1, 2004; August 1, 1995; April 1, 1994; May 1, 1989; September 1, 1988.*

## **21 NCAC 08G .0403 QUALIFICATION OF CPE SPONSORS**

(a) The Board registers sponsors of CPE courses and not courses. The Board will maintain a list of sponsors which have agreed to conduct programs in accordance with the standards for CPE set forth in this Subchapter. Such sponsors shall indicate their agreement by signing a CPE program sponsor agreement form provided by the Board. These sponsors are registered sponsors.

(b) Notwithstanding Paragraph (a) of this Rule, sponsors of continuing education programs which are listed in good standing on the National Registry of CPE Sponsors maintained by NASBA are considered to be registered CPE sponsors with the Board. These sponsors are not required to sign a CPE program sponsor agreement form with this Board.

(c) In the CPE program sponsor agreement with the Board, the registered sponsor shall agree to:

- (1) allow the Board to audit courses offered by the sponsor in order to determine if the sponsor is complying with the terms of the agreement and shall refund the registration fee to the auditor if requested by the auditor;
- (2) have an individual who did not prepare the course review each course to be sure it meets the standards for CPE;
- (3) state the following in every brochure or other publication or announcement concerning a course:

- (A) the general content of the course and the specific knowledge or skill taught in the course;
  - (B) any prerequisites for the course and any advance preparation required for the course and if none, that should be stated;
  - (C) the level of the course, such as basic, intermediate, or advanced;
  - (D) the teaching methods to be used in the course;
  - (E) the amount of sponsor recommended CPE credit a CPA who takes the course could claim; and
  - (F) the date the course is offered, if the course is offered only on a certain date, and, if applicable, the location;
- (4) ensure that the instructors or presenters of the course are qualified to teach the subject matter of the course and to apply the instructional techniques used in the course;
  - (5) evaluate the performance of an instructor or presenter of a course to determine whether the instructor or presenter is suited to serve as an instructor or presenter in the future;
  - (6) encourage participation in a course only by those who have the appropriate education and experience;
  - (7) distribute course materials to participants in a timely manner;
  - (8) use physical facilities for conducting the course that are consistent with the instructional techniques used;
  - (9) assign accurately the number of CPE credits each participant may be eligible to receive by either:
    - (A) monitoring attendance at a group course; or
    - (B) testing in order to determine if the participant has learned the material presented;
  - (10) provide, before the course's conclusion, an opportunity for the attendees to evaluate the quality of the course by questionnaires, oral feedback, or other means, in order to determine whether the course's objectives have been met, its prerequisites were necessary or desirable, the facilities used were satisfactory, and the course content was appropriate for the level of the course;
  - (11) inform instructors and presenters of the results of the evaluation of their performance;
  - (12) systematically review the evaluation process to ensure its effectiveness;
  - (13) retain for five years from the date of the course presentation or completion:
    - (A) a record of participants completing course credit requirements;



- (B) an outline of the course (or equivalent);
- (C) the date and location of presentation;
- (D) the participant evaluations or summaries of evaluations;
- (E) the documentation of the instructor's qualifications; and
- (F) the number of contact hours recommended for each participant;
- (14) have a visible, continuous and identifiable contact person who is charged with the administration of the sponsor's CPE programs and has the responsibility and is accountable for assuring and demonstrating compliance with these rules by the sponsor or by any other organization working with the sponsor for the development, distribution or presentation of CPE courses;
- (15) develop and promulgate policies and procedures for the management of grievances including, but not limited to, tuition and fee refunds;
- (16) possess a budget and resources that are adequate for the activities undertaken and their continued improvement; and
- (17) provide persons completing course requirements with written proof of completion indicating the participant's name, the name of the course, the date the course was held or completed, the sponsor's name and address, and the number of CPE hours calculated and recommended in accordance with 21 NCAC 08G .0409.

(d) Failure of a registered sponsor to comply with the terms of the CPE program sponsor agreement shall be grounds for the Board to terminate the agreement, to remove the registered sponsor's name from the list of registered sponsors and to notify the public of this action.

(e) Failure of a National Registry of CPE Sponsor to comply with the terms of this Rule shall be grounds for the Board to disqualify the sponsor to be registered as a CPE sponsor with this Board and to notify NASBA and the public of this action.

*History Note: Authority G.S. 93-12(8b);*

*Eff. May 1, 1981;*

*Amended Eff. January 1, 2007; January 1, 2004; March 1, 1990; May 1, 1989; August 1, 1988; February 1, 1983.*

#### **21 NCAC 08G .0404 REQUIREMENTS FOR CPE CREDIT**

(a) A CPA shall not be granted CPE credit for a course unless the course:

- (1) is in one of the seven fields of study recognized by the Board and set forth in Paragraph (b) of this Rule;
- (2) is developed by an individual who has education and work experience in the subject matter of the course; and

(3) uses instructional techniques and materials that are current and accurate.

(b) The seven fields of study recognized by the Board are:

- (1) Accounting and Auditing
  - (A) Accountancy
  - (B) Accounting – Governmental
  - (C) Auditing
  - (D) Auditing – Governmental
- (2) Consulting Services
  - (A) Administrative Practice
  - (B) Social Environment of Business
- (3) Ethics
  - (A) Behavioral Ethics
  - (B) Regulatory Ethics
- (4) Management
  - (A) Business Law
  - (B) Business Management and Organization
  - (C) Finance
  - (D) Management Advisory Services
  - (E) Marketing
- (5) Personal Development
  - (A) Communications
  - (B) Personal Development
  - (C) Personnel/HR
- (6) Special Knowledge and Applications
  - (A) Computer Science
  - (B) Economics
  - (C) Mathematics
  - (D) Production
  - (E) Specialized Knowledge and Applications
  - (F) Statistics
- (7) Tax

(c) The following may qualify as acceptable types of continuing education programs, provided the programs comply with the requirements set forth in Paragraph (a) of this Rule:

- (1) professional development programs of national and state accounting organizations;
- (2) technical sessions at meetings of national and state accounting organizations and their chapters;
- (3) courses taken at regionally accredited colleges and universities;
- (4) educational programs that are designed and intended for continuing professional education activity conducted within an association of accounting firms; and
- (5) correspondence courses that are designed and intended for continuing professional education activity.

(d) CPE credit may be granted for teaching a CPE course or authoring a publication as long as the preparation to teach or write increased the CPA's professional competency and was in one of the seven fields of study recognized by the Board and set forth in Paragraph (b) of this Rule.

(e) CPE credit shall not be granted for a self-study course if the material that the CPA must study to take the examination is not designed for CPE purposes. This includes periodicals, guides,

magazines, subscription services, books, reference manuals and supplements which contain an examination to test the comprehension of the material read.

(f) A CPA may claim credit for a course offered by a non-registered sponsor provided that the course meets the requirements of 21 NCAC 08G .0403(c), 21 NCAC 08G .0404, and 21 NCAC 08G .0409. The CPA shall maintain documentation proving that the course met these standards.

*History Note: Authority G.S. 93-12(8b);*

*Eff. May 1, 1981;*

*Amended Eff. January 1, 2007; January 1, 2004; August 1, 1998; February 1, 1996; March 1, 1990; May 1, 1989; August 1, 1988; February 1, 1983.*

## **21 NCAC 08G .0406 COMPLIANCE WITH CPE REQUIREMENTS**

(a) All active CPAs shall file with the Board a completed CPE reporting form by the July 1 renewal date of each year.

(b) If a CPA fails to complete the CPE requirements prior to the end of the previous calendar year but the CPA has completed them by June 30, the Board may:

- (1) issue a letter of warning for the first such failure within a five calendar year period; and
- (2) deny the renewal of the CPA's certificate for a period of not less than 30 days and until the CPA meets the reinstatement requirements set forth in 21 NCAC 08J .0106 for the second such failure within a five calendar year period.

*History Note: Authority G.S. 93-12(8b); 93-12(9)(e);*

*Eff. May 1, 1981;*

*Amended Eff. January 1, 2007; January 1, 2004; April 1, 1994; March 1, 1990; May 1, 1989; October 1, 1988.*

## **21 NCAC 08G .0409 COMPUTATION OF CPE CREDITS**

(a) Group Courses: Non-College. CPE credit for a group course that is not part of a college curriculum shall be given based on contact hours. A contact hour shall be 50 minutes of instruction. One-half credits shall be equal to 25 minutes after the first credit hour has been earned in a formal learning activity. For example, a group course lasting 100 minutes shall be two contact hours and thus two CPE credits. A group course lasting 75 minutes shall be only one and one-half contact hours and thus one and one-half CPE credits. When individual segments of a group course shall be less than 50 minutes, the sum of the individual segments shall be added to determine the number of contact hours. For example, five 30-minute presentations shall be 150 minutes, which shall be three contact hours and three CPE credits. No credit shall be allowed for a segment unless the participant completes the entire segment.

(b) Completing a College Course. CPE credit for completing a college course in the college curriculum shall be granted based on the number of credit hours the college gives the CPA for completing the course. One semester hour of college credit shall be 15 CPE credits; one quarter hour of college credit shall be 10 CPE credits; and one continuing education unit (CEU) shall be

10 CPE credits. However, under no circumstances shall CPE credit be given to a CPA who audits a college course.

(c) Self Study. CPE credit for a self-study course shall be given based on the average number of contact hours needed to complete the course. The average completion time shall be allowed for CPE credit. A sponsor must determine, on the basis of pre-tests, the average number of contact hours it takes to complete a course. CPE credit for self-study courses shall be limited so that a CPA completes at least eight hours of non-self study each year.

(d) Instructing a CPE Course. CPE credit for teaching or presenting a CPE course for CPAs shall be given based on the number of contact hours spent in preparing and presenting the course. No more than 50 percent of the CPE credits required for a year shall be credits for preparing for and presenting CPE courses. CPE credit for preparing for and presenting a course shall be allowed only once a year for a course presented more than once in the same year by the same CPA.

(e) Authoring a Publication. CPE credit for published articles and books shall be given based on the number of contact hours the CPA spent writing the article or book. No more than 25 percent of a CPA's required CPE credits for a year shall be credits for published articles or books. An article written for a CPA's client or business newsletter is not applicable for this CPE credit.

(f) Instructing a College Course. CPE credit for instructing a graduate level college course shall be given based on the number of credit hours the college gives a student for successfully completing the course, using the calculation set forth in Paragraph (b) of this Rule. Credit shall not be given for instructing an undergraduate level course. In addition, no more than 50 percent of the CPE credits required for a year shall be credits for instructing a college course and, if CPE credit shall also be claimed under Paragraph (d) of this Rule, no more than 50 percent of the CPE credits required for a year shall be credits claimed under Paragraph (d) and this Paragraph. CPE credit for instructing a college course shall be allowed only once for a course presented more than once in the same year by the same CPA.

*History Note: Authority G.S. 93-12(8b);*

*Eff. May 1, 1989;*

*Amended Eff. January 1, 2007; January 1, 2004; February 1, 1996; April 1, 1994; March 1, 1990.*

## **21 NCAC 08G .0410 PROFESSIONAL ETHICS AND CONDUCT CPE**

(a) As part of the annual CPE requirement, all active CPAs shall complete CPE on professional ethics and conduct as set out in 21 NCAC 08N. They shall complete either two hours in a group study format or four hours in a self-study format. These courses shall be approved by the Board pursuant to 21 NCAC 08G .0400. This CPE shall be offered by a CPE sponsor registered with the Board pursuant to 21 NCAC 08G .0403(a) or (b).

(b) A non-resident licensee whose primary office is in North Carolina must comply with Paragraph (a) of this Rule. All other non-resident licensees may satisfy Paragraph (a) of this Rule by completing the ethics requirements in the jurisdiction in which he or she is licensed as a CPA and works or resides. If there is

no ethics CPE requirement in the jurisdiction where he or she is licensed and currently works or resides, he or she must comply with Paragraph (a) of this Rule.

*History Note: Authority G.S. 93-12(8b);*

*Eff. January 1, 2005;*

*Amended Eff. January 1, 2007; January 1, 2006.*

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## **CHAPTER 32 - BOARD OF MEDICAL EXAMINERS**

### **21 NCAC 32M .0104 PROCESS FOR APPROVAL TO PRACTICE (A) PRIOR TO THE PERFORMANCE OF ANY MEDICAL ACTS, A NURSE PRACTITIONER SHALL:**

(a) Prior to the performance of any medical acts, a nurse practitioner shall:

- (1) meet registration requirements as specified in 21 NCAC 32M .0103 of this Section;
- (2) submit an application for approval to practice on forms provided by the Board of Nursing and the Medical Board;
- (3) submit any additional information necessary to evaluate the application as requested; and
- (4) have a collaborative practice agreement with a primary supervising physician.

(b) A nurse practitioner seeking approval to practice who has not practiced as a nurse practitioner in more than five years shall complete a nurse practitioner refresher course approved by the Board of Nursing in accordance with Paragraphs (o) and (p) of 21 NCAC 36 .0220 and consisting of common conditions and their management directly related to the nurse practitioner's area of education and certification.

(c) The nurse practitioner shall not practice until notification of approval to practice is received from the Boards.

(d) The nurse practitioner's approval to practice is terminated when the nurse practitioner discontinues working within the approved nurse practitioner collaborative practice agreement and the nurse practitioner shall notify the Boards in writing. The Boards may extend the nurse practitioner's approval to practice in cases of emergency such as sudden injury, illness or death of the primary supervising physician.

(e) Applications for approval to practice in North Carolina shall be submitted to the Board of Nursing and then approved by both Boards as follows:

- (1) the Board of Nursing shall verify compliance with Rule .0103 of this Subchapter and Paragraph (a) of this Rule; and
- (2) the Medical Board shall verify that the designated primary supervising physician holds a valid license to practice medicine in North Carolina and compliance with Subparagraph (a) of this Rule.

(f) Applications for approval of changes in practice arrangements for a nurse practitioner currently approved to practice in North Carolina:

- (1) addition or change of primary supervising physician shall be submitted to both Boards; and
- (2) request for change(s) in the scope of practice shall be submitted to the Joint Subcommittee.

(g) Interim status for a nurse practitioner applicant shall be granted to a registered nurse who has met the registration requirements as set forth in Rule .0103 and .0105 of this Subchapter with the following limitations:

- (1) no prescribing privileges;
- (2) primary or back-up physicians shall be continuously available for ongoing supervision, collaboration, consultation and countersigning of notations of medical acts in all patient charts within two working days of nurse practitioner applicant-patient contact;
- (3) face-to-face consultation with the primary supervising physician shall be weekly with documentation of consultation consistent with Rule .0110(e)(3) of this Subchapter; and
- (4) shall not exceed six months.

(h) A registered nurse who was previously approved to practice as a nurse practitioner in this state who reapplies for approval to practice shall:

- (1) meet the nurse practitioner approval requirements as stipulated in Rule .0108(c) of this Subchapter; and
- (2) complete the appropriate application.

(i) Volunteer Approval to Practice. Both Boards may grant approval to practice in a volunteer capacity to a nurse practitioner who has met the qualifications to practice as a nurse practitioner in North Carolina.

(j) The nurse practitioner shall pay the appropriate fee as outlined in Rule .0115 of this Subchapter.

(k) A Nurse Practitioner approved under this Subchapter shall keep proof of current licensure, registration and approval available for inspection at each practice site upon request by agents of either Board.

*History Note: Authority G.S. 90-18(c)(14); 90-18.2; 90-171.20(7); 90-171.23(b); 90-171.42;*

*Eff. January 1, 1991;*

*Paragraph (b)(1) was recodified from 21 NCAC 32M .0104 Eff. January 1, 1996;*

*Amended Eff. December 1, 2006; May 1, 1999; January 1, 1996; Recodified from 21 NCAC 32M .0103 Eff. August 1, 2004;*

*Amended Eff. January 1, 2007; August 1, 2004.*

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## **CHAPTER 36 - BOARD OF NURSING**

### **21 NCAC 36 .0217 REVOCATION, SUSPENSION, OR DENIAL OF LICENSE**

(a) The definitions contained in G.S. 90-171.20 and G.S. 150B-2 (01), (2), (2b), (3), (4), (5), (8), (8a), and (8b) apply. In addition, the following definitions apply:

- (1) "Investigation" means an exploration of the events and circumstances related to reported

information in an effort to determine if there is a violation of any provisions of this Act or any rule promulgated by the Board.

- (2) "Administrative Law Counsel" means an attorney whom the Board of Nursing has retained to serve as procedural officer for contested cases.
- (3) "Prosecuting Attorney" means the attorney retained by the Board of Nursing to prepare and prosecute contested cases.

(b) A nursing license which has been forfeited under G.S. 15A-1331A may not be reinstated until the licensee has successfully complied with the court's requirements, has petitioned the Board for reinstatement, has appeared before the Licensure Committee, and has had reinstatement approved. The license may initially be reinstated with restrictions.

(c) Behaviors and activities which may result in disciplinary action by the Board include the following:

- (1) drug or alcohol abuse;
- (2) illegally obtaining, possessing or distributing drugs or alcohol for personal or other use, or other violations of G.S. 90-86 to 90-113.8;
- (3) commission of any crime which bears on a licensee's fitness to practice nursing as set out in G.S. 90-171.48(a)(2);
- (4) failure to make available to another health care professional any client information crucial to the safety of the client's health care;
- (5) delegating responsibilities to a person when the licensee delegating knows or has reason to know that the competency of that person is impaired by physical or psychological ailments, or by alcohol or other pharmacological agents, prescribed or not;
- (6) practicing or offering to practice beyond the scope permitted by law;
- (7) accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform;
- (8) performing, without adequate supervision, professional services which the licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a person's life or health is in danger;
- (9) abandoning or neglecting a client who is in need of nursing care, without making reasonable arrangements for the continuation of such care;
- (10) harassing, abusing, or intimidating a client either physically or verbally;
- (11) failure to maintain an accurate record for each client which records all pertinent health care information as defined in Rule .0224(f)(2) or .0225(f)(2);
- (12) failure to exercise supervision over persons who are authorized to practice only under the supervision of the licensed professional;

- (13) exercising undue influence on the client, including the promotion of the sale of services, appliances, or drugs for the financial gain of the practitioner or of a third party;
- (14) directly or indirectly offering, giving, soliciting, or receiving or agreeing to receive, any fee or other consideration to or from a third party for the referral of a client, or other violations of G.S. 90-401;
- (15) failure to file a report, or filing a false report, required by law or by the Board, or impeding or obstructing such filing or inducing another person to do so;
- (16) revealing identifiable data, or information obtained in a professional capacity, without prior consent of the client, except as authorized or required by law;
- (17) guaranteeing that a cure will result from the performance of professional services;
- (18) altering a license, using a license that has been altered or permitting or allowing another person to use his or her license for the purpose of nursing. Altering is defined to include changing the expiration date, certification number, or any other information appearing on the license;
- (19) delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such a person is not qualified by training, by experience, or by licensure;
- (20) violating any term of probation, condition, or limitation imposed on the licensee by the Board;
- (21) accepting responsibility for client care while impaired by alcohol or other pharmacological agents;
- (22) falsifying a client's record or the controlled substance records of the agency; or
- (23) engaging in any activities of a sexual nature with a client including kissing, fondling or touching while responsible for the care of that individual.

(d) When a person licensed to practice nursing as a licensed practical nurse or as a registered nurse is also licensed in another jurisdiction and that other jurisdiction takes disciplinary action against the licensee, the North Carolina Board of Nursing may summarily impose the same or lesser disciplinary action upon receipt of the other jurisdiction's action. The licensee may request a hearing. At the hearing the issues will be limited to:

- (1) whether the person against whom action was taken by the other jurisdiction and the North Carolina licensee are the same person;
- (2) whether the conduct found by the other jurisdiction also violates the North Carolina Nursing Practice Act; and
- (3) whether the sanction imposed by the other jurisdiction is lawful under North Carolina law.

(e) Before the North Carolina Board of Nursing makes a final decision in any contested case, the person, applicant or licensee affected by such decision shall be afforded an administrative hearing pursuant to the provisions of G.S. 150B, Article 3A.

- (1) The Paragraphs contained in this Rule shall apply to conduct of all contested cases heard before or for the North Carolina Board of Nursing.
- (2) The following general statutes, rules, and procedures apply unless another specific statute or rule of the North Carolina Board of Nursing provides otherwise: Rules of Civil Procedure as contained in G.S. 1A-1 and Rules of Evidence pursuant to G.S. Chapter 8C; G.S. 90-86 through 90-113.8; 21 NCAC 36 .0224 - .0225; Article 3A, Chapter 150B; and Rule 6 of the General Rules of Practice for Superior and District Court.
- (3) Every document filed with the Board of Nursing shall be signed by the person, applicant, licensee, or his attorney who prepares the document and shall contain his name, title/position, address, and telephone number. If the individual involved is a licensed nurse the nursing license certificate number shall appear on all correspondence with the Board of Nursing.

(f) In accordance with G.S. 150B-3(c) a license may be summarily suspended if the public health, safety, or welfare requires emergency action. This determination is delegated to the Chairman or Executive Director of the Board pursuant to G.S. 90-171.23(b)(3). Such a finding shall be incorporated with the order of the Board of Nursing and the order is effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and continues to be effective during the proceedings. Failure to receive the order because of refusal of service or unknown address does not invalidate the order. Proceedings shall be commenced in a timely manner.

(g) Board staff shall issue a Letter of Charges only upon completion of an investigation, by authorized Board staff, of a written or verbal complaint and review with legal counsel or prosecuting attorney or Executive Director.

- (1) Subsequent to an investigation and validation of a complaint, a Letter of Charges shall be sent on behalf of the Board of Nursing to the person who is the subject of the complaint.
  - (A) The Letter of Charges shall be served in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure.
  - (B) The Letter of Charges serves as the Board's formal notification to the person that an allegation of possible violation(s) of the Nursing Practice Act has been initiated.
  - (C) The Letter of Charges does not in and of itself constitute a contested case.
- (2) The Letter of Charges shall include the following:

- (A) a short and plain statement of the factual allegations;
- (B) a citation of the relevant sections of the statutes or rules involved;
- (C) notification that a settlement conference will be scheduled upon request;
- (D) explanation of the procedure used to govern the settlement conference;
- (E) notification that if a settlement conference is not requested, or if held, does not result in resolution of the case, an administrative hearing shall be scheduled; and
- (F) if applicable, any sanction or remediation in accordance with Board-adopted policy may be included.

- (3) A case becomes a contested case after the person disputes the allegations contained in the Letter of Charges, requests an administrative hearing, or refuses to accept a settlement offer extended by the Board of Nursing.

(h) No Board member shall discuss with any person the merits of any case pending before the Board of Nursing. Any Board member who has direct knowledge about a case prior to the commencement of the proceeding shall disqualify himself from any participation with the majority of the Board of Nursing hearing the case.

(i) A settlement conference, if requested by the person, shall be held for the purpose of attempting to resolve a dispute through informal procedures prior to the commencement of formal administrative proceedings.

- (1) The conference shall be held in the offices of the Board of Nursing, unless another site is designated by mutual agreement of all involved parties.
- (2) All parties shall attend or be represented at the settlement conference. The parties shall be prepared to discuss the alleged violations and the incidents on which these are based.
- (3) Prior to the commencement of the settlement conference, a form shall be signed by the person which invalidates all previous offers made to the person by the Board.
- (4) At the conclusion of the day during which the settlement conference is held, a form shall be signed by all parties which indicates whether the settlement offer is accepted or rejected. Subsequent to this decision:
  - (A) if a settlement is reached, the Board of Nursing shall forward a written settlement agreement containing all conditions of the settlement to the other party(ies); or
  - (B) if a settlement cannot be reached, the case shall proceed to a formal administrative hearing.

(j) Disposition may be made of any contested case or an issue in a contested case by stipulation, agreement, or consent order at any time prior to or during the hearing of a contested case.

(k) The Board of Nursing shall give the parties in a contested case a Notice of Hearing not less than 15 calendar days before the hearing. The Notice shall be given in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure. The notice shall include:

- (1) Acknowledgment of service, or attempted service, of the Letter of Charges in compliance with Part (g)(1)(A) of this Rule;
- (2) Date, time, and place of the hearing;
- (3) Notification of the right of a party to represent himself or to be represented by an attorney;
- (4) A statement that, pursuant to Paragraph (n) of this Rule, subpoenas may be requested by the licensee to compel the attendance of witnesses or the production of documents;
- (5) A statement advising the licensee that a notice of representation, containing the name of licensee's counsel, if any, shall be filed with the Board of Nursing not less than 10 calendar days prior to the scheduled date of the hearing;
- (6) A statement advising the licensee that a list of all witnesses for the licensee shall be filed with the Board of Nursing not less than 10 calendar days prior to the scheduled date of the hearing; and
- (7) A statement advising the licensee that failure to appear at the hearing may result in the allegations of the Letter of Charges being taken as true and that the Board may proceed on that assumption.

(l) Pre-hearing conferences may be held to simplify the issues to be determined, to obtain stipulations in regards to testimony or exhibits, to obtain stipulations of agreement on nondisputed facts or the application of particular laws, to consider the proposed witnesses for each party, to identify and exchange documentary evidence intended to be introduced at the hearing, and to consider such other matters that may be necessary or advisable for the efficient and expeditious conduct of the hearing.

- (1) The pre-hearing conference shall be conducted in the offices of the Board of Nursing, unless another site is designated by mutual agreement of all parties.
- (2) The pre-hearing conference shall be an informal proceeding and shall be conducted by a Board-designated administrative law counsel.
- (3) All agreements, stipulations, amendments, or other matters resulting from the pre-hearing conference shall be in writing, signed by all parties, and introduced into the record at the beginning of the formal administrative hearing.

(m) Administrative hearings conducted before a majority of Board members shall be held in Wake County or, by mutual consent in another location when a majority of the Board has convened in that location for the purpose of conducting business.

For those proceedings conducted by an Administrative Law Judge the venue shall be determined in accordance with G. S. 150B-38(e). All hearings conducted by the Board of Nursing shall be open to the public.

(n) The Board of Nursing, through its Executive Director, may issue subpoenas for the Board or a licensee, in preparation for, or in the conduct of, a contested case.

- (1) Subpoenas may be issued for the appearance of witnesses or the production of documents or information, either at the hearing or for the purposes of discovery.
- (2) Requests by a licensee for subpoenas shall be made in writing to the Executive Director and shall include the following:
  - (A) the full name and home or business address of all persons to be subpoenaed; and
  - (B) the identification, with specificity, of any documents or information being sought.
- (3) Subpoenas shall include the date, time, and place of the hearing and the name and address of the party requesting the subpoena. In the case of subpoenas for the purpose of discovery, the subpoena shall include the date, time, and place for responding to the subpoena.
- (4) Subpoenas shall be served as provided by the Rules of Civil Procedure, G.S. 1A-1. The cost of service, fees, and expenses of any witnesses or documents subpoenaed shall be paid by the party requesting the witnesses.

(o) All motions related to a contested case, except motions for continuance and those made during the hearing, shall be in writing and submitted to the Board of Nursing at least 10 calendar days before the hearing. Pre-hearing motions shall be heard at a pre-hearing conference or at the contested case hearing prior to the commencement of testimony. The designated administrative law counsel shall hear the motions and the response from the non-moving party pursuant to Rule 6 of the General Rules of Practice for the Superior and District Courts and rule on such motions. If the pre-hearing motions are heard by an Administrative Law Judge from Office of Administrative Hearings the provisions of G.S. 150B-40(e) shall govern the proceedings.

(p) Motions for a continuance of a hearing may be granted upon a showing of good cause. Motions for a continuance must be in writing and received in the office of the Board of Nursing no less than seven calendar days before the hearing date. In determining whether good cause exists, consideration will be given to the ability of the party requesting a continuance to proceed effectively without a continuance. A motion for a continuance filed less than seven calendar days from the date of the hearing shall be denied unless the reason for the motion could not have been ascertained earlier. Motions for continuance filed prior to the date of the hearing shall be ruled on by the Administrative Law Counsel of the Board. All other motions for continuance shall be ruled on by the majority of the

Board members or Administrative Law Counsel sitting at hearing.

(q) All hearings by the Board of Nursing shall be conducted by a majority of members of the Board of Nursing, except as provided in Subparagraph (1) of this Paragraph. The Board of Nursing shall designate one of its members to preside at the hearing. The Board of Nursing shall designate an administrative law counsel who shall advise the presiding officer. The seated members of the Board of Nursing shall hear all evidence, make findings of fact and conclusions of law, and issue an order reflecting a majority decision of the Board.

- (1) When a majority of the members of the Board of Nursing is unable or elects not to hear a contested case, the Board of Nursing shall request the designation of an administrative law judge from the Office of Administrative Hearings to preside at the hearing. The provisions of G.S. 150B, Article 3A and 21 NCAC 36 .0217 shall govern a contested case in which an administrative law judge is designated as the Hearing Officer.
- (2) In the event that any party or attorney or other representative of a party engages in conduct which obstructs the proceedings or would constitute contempt if done in the General Court of Justice, the Board may apply to the applicable superior court for an order to show cause why the person(s) should not be held in contempt of the Board and its processes.
- (3) During a hearing, if it appears in the interest of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the Board of Nursing may continue the hearing to a future date to allow for the additional testimony to be taken by deposition or to be presented orally. In such situations and to such extent as possible, the seated members of the Board of Nursing and the designated administrative law counsel shall receive the additional testimony. In the event that new members of the Board or a different administrative law counsel must participate, a copy of the transcript of the hearing shall be provided to them prior to the receipt of the additional testimony.

(r) All parties have the right to present evidence, rebuttal testimony, and argument with respect to the issues of law, and to cross-examine witnesses. The North Carolina Rules of Evidence in G.S. 8C shall apply to contested case proceedings, except as provided otherwise in this Rule and G.S. 150B-41.

- (1) Sworn affidavits may be introduced by mutual agreement from all parties.
- (2) All oral testimony shall be under oath or affirmation and shall be recorded. Unless otherwise stipulated by all parties, witnesses are excluded from the hearing room until such time that they have completed their testimony and have been released.

(s) Any form or Board-approved policy or procedure referenced in this Rule, or any rules applicable to a case, are available upon request from the Board of Nursing and shall be supplied at cost.

*History Note: Authority G.S. 14-208.5; 15A-1331A; 90-171.23(b)(3)(7); 90-171.37; 90-171.47; 90-401; 150B-3(c); 150B-11; 150B-14; 150B-38 through 150B-42; Eff. February 1, 1976; Amended Eff. October 1, 1989; November 1, 1988; July 1, 1986; July 1, 1984; Temporary Amendment Eff. December 7, 1990 for a period of 180 days to expire on June 5, 1991; ARRC Objection Lodged December 20, 1990; Amended Eff. January 1, 1991; ARRC Objection Removed February 25, 1991; Temporary Amendment Eff. February 26, 1991 for a period of 35 days to expire on April 1, 1991; Amended Eff. January 1, 1996; February 1, 1995; April 1, 1991; Temporary Amendment Eff. March 5, 2001; Amended Eff. January 1, 2007; August 2, 2002.*

## **21 NCAC 36 .0220 REFRESHER COURSE**

(a) A refresher course shall be designed for those persons, previously licensed, who are not eligible for re-entry into nursing practice because their license has lapsed for five or more years.

(b) Satisfactory completion of a Board-approved refresher course is required of the person who:

- (1) requests reactivation of an inactive license and who has not held an active license for five or more years;
- (2) requests reinstatement of a lapsed license and who has not held an active license for five or more years;
- (3) requests endorsement to North Carolina who has not held an active license for five or more years;
- (4) is directed by the Board to complete such a course when the Board takes action as authorized in G.S. 90-171.37; or
- (5) needs a refresher course as a result of the license being inactive for disciplinary action and has met all eligibility requirements for reinstatement of the license.

Those persons identified in Subparagraph (4) or (5) of this Paragraph may be subject to Board-stipulated restrictions in the clinical component of the refresher course.

(c) Application for approval of a refresher course shall be completed and submitted by the provider at least 90 days prior to the expected date of enrollment and shall include evidence of complying with the rules for refresher courses. Board approval shall be secured prior to the enrollment of students. Provider approval will be granted for a period of time not to exceed five years. However, any changes in faculty, curriculum, or clinical facilities shall be approved by the Board prior to implementation as set out in the Rules of this Chapter.

(d) The Board will make site visits if necessary. A decision on an application to offer a refresher course will be given within 30 days following receipt of the application.

(e) The provider of a refresher course shall be approved by the Board as set out in these Rules. A provider may be a post-secondary educational institution, a health care institution, or other agency.

(f) Administrative responsibility for developing and implementing the course shall be vested in a registered nurse director.

(g) Instructors in the course shall be directly accountable to the nurse director. The director shall have had at least one year prior teaching experience preparing individuals for LPN or RN licensure at the post-secondary level or in a nursing staff development position. The director and each instructor shall:

- (1) be licensed to practice nursing as a registered nurse in North Carolina;
- (2) hold a baccalaureate or higher degree; and
- (3) have had at least two years experience in direct patient nursing practice as an RN.

(h) Proximity of the instructor to students is the major factor in determining faculty-student ratio for clinical learning experiences. In no case shall this ratio exceed 1:10.

(i) Course objectives shall be stated which:

- (1) show relationships between theory and practice; and
- (2) indicate behaviors consistent with the ability to safely practice nursing.

(j) The curriculum for the R.N. Refresher Course shall incorporate:

- (1) common medical-surgical conditions and management of common nursing problems associated with these conditions, including mental health principles associated with management of nursing problems;
- (2) functions of the registered nurse as defined in G.S. 90-171.20 and 21 NCAC 36 .0221, .0224, .0225 and .0401; and
- (3) instruction in and opportunities to demonstrate ability to safely practice nursing and knowledge in caring for clients with common medical-surgical problems.

(k) The curriculum for the L.P.N. Refresher Course shall incorporate:

- (1) common medical-surgical conditions and common nursing approaches to their management, including mental health principles;
- (2) functions of the licensed practical nurse as defined in G.S. 90-171.20(8) and 21 NCAC 36 .0221, .0225 and .0401; and
- (3) instruction in and opportunity to demonstrate ability to safely practice nursing and knowledge in caring for clients with common medical-surgical problems.

(l) The course shall include both theory and clinical instruction:

- (1) The R.N. Refresher Course shall include at least 240 hours of instruction, at least 120 of which shall consist of clinical learning experiences.
- (2) The L.P.N. Refresher Course shall include at least 180 hours of instruction, at least 90 of

which shall consist of clinical learning experiences.

(m) Evaluation processes shall be implemented which effectively measure the refresher student's:

- (1) knowledge and understanding of curriculum content; and
- (2) ability to provide safe nursing care to clients with common medical-surgical conditions.

(n) Clinical resources shall indicate in written contract their support and availability to provide the necessary clinical experiences.

(o) The application for approval of a refresher course shall include:

- (1) course objectives, content outline and time allocation;
- (2) didactic and clinical learning experiences including teaching methodologies, for measuring the registrant's abilities to practice nursing;
- (3) plan for evaluation of student competencies and ability to practice safe nursing;
- (4) a faculty list which includes the director and all instructors and identifies their qualifications and their functions in teaching roles; and
- (5) the projected clinical schedule.

(p) A course or combination of courses within a basic nursing curriculum may be considered a refresher course for re-entry into practice if:

- (1) such course or combination of courses equals or exceeds requirements for refresher courses;
- (2) such course or combination of courses is taught on a level commensurate with level of relicensure sought; and
- (3) the Board designee approves such course or combination of courses as a substitute for a refresher course.

(q) Individuals, previously licensed in North Carolina, presently residing outside of North Carolina, may meet these requirements by successfully completing a North Carolina approved refresher course completed in another state or country. Agencies desiring approval for conducting refresher courses shall submit applications per Paragraphs (c) through (p) of this Rule. Clinical experiences shall be in agencies approved by the comparable state/country agency to the Board of Nursing. The agency applying for refresher course approval shall submit evidence of the agency approval.

(r) Individuals enrolled in refresher courses shall identify themselves as R.N. Refresher Student (RN RS) or LPN Refresher Student (LPN RS) consistent with the course level, after signatures on records or on name pins.

(s) Upon completion of a Board-approved refresher course, the course provider shall furnish the Board with the names and North Carolina certificate numbers of those persons who have satisfactorily completed the course and are deemed safe to practice nursing at the appropriate level of licensure on the Board supplied form.

(t) Upon request, the Board shall provide:

- (1) a list of approved providers;



- (2) forms for applications for program approval; and
- (3) forms for verification of successful completion to all approved programs.

*History Note:* Authority G.S. 90-171.23(b)(3); 90-171.35; 90-171.36; 90-171.37; 90-171.38; 90-171.83;  
*Eff.* May 1, 1982;  
*Amended Eff.* January 1, 2007; July 1, 2000; June 1, 1993; April 1, 1989.

**21 NCAC 36 .0228 CLINICAL NURSE SPECIALIST PRACTICE**

(a) A registered nurse who meets the qualifications as outlined in Paragraph (b) of this Rule may be recognized by the Board as a clinical nurse specialist, and perform nursing activities at an advanced skill level as outlined in Paragraph (c) of this Rule.  
 (b) In order to be recognized as a Clinical Nurse Specialist, the individual shall have an unencumbered license to practice as a registered nurse in North Carolina and meet the following qualifications:

- (1) As of January 1, 2006 has completed a master's level or higher educational program in a clinical nursing specialty as defined in 21 NCAC 36 .0120(26) and consistent with G.S. 90-171.21(d)(4); and
- (2) Maintains current certification from a national credentialing body in the clinical nursing specialty approved by the Board of Nursing, as defined in Paragraph (e) of this Rule and 21 NCAC 36 .0120(26).

(c) Clinical nurse specialist scope of practice incorporates the basic components of nursing practice as defined in Rule .0224 of this Section as well as the understanding and application of nursing principles at an advanced level in his/her area of clinical nursing specialization which includes:

- (1) assessing clients' health status, synthesizing and analyzing multiple sources of data, and identifying alternative possibilities as to the nature of a healthcare problem;
- (2) diagnosing and managing clients' acute and chronic health problems within a nursing framework;
- (3) formulating strategies to promote wellness and prevent illness;
- (4) prescribing and implementing therapeutic and corrective nursing measures;
- (5) planning for situations beyond the clinical nurse specialist's expertise, and consulting with or referring clients to other health care providers as appropriate;
- (6) promoting and practicing in collegial and collaborative relationships with clients, families, other health care professionals and individuals whose decisions influence the health of individual clients, families and communities;

- (7) initiating, establishing and utilizing measures to evaluate health care outcomes and modify nursing practice decisions;
- (8) assuming leadership for the application of research findings for the improvement of health care outcomes; and
- (9) integrating education, consultation, management, leadership and research into the advanced clinical nursing specialist role.

(d) The registered nurse who seeks recognition by the Board as a clinical nurse specialist shall:

- (1) complete the appropriate application, which shall include:
  - (A) evidence of the appropriate masters, post-master's certificate or doctoral degree as set out in Subparagraph (b)(1) of this Rule; and
  - (B) evidence of current certification in a clinical nursing specialty from a national credentialing body as set out in Subparagraph (b)(2) of this Rule;
- (2) submit a processing fee of twenty-five dollars (\$25.00) to cover the costs of duplicating and distributing the application materials; and
- (3) submit evidence of initial certification and recertification at the time such occurs in order to maintain Board of Nursing recognition consistent with Paragraphs (b) and (e) of this Rule.

(e) The Board of Nursing may approve those national credentialing bodies offering certification and recertification in a clinical nursing specialty which have established the following minimum requirements:

- (1) an unencumbered registered nurse license;
- (2) certification as a clinical nurse specialist is limited to masters, post-master's certificate or doctoral prepared applicant effective January 1, 2010; and
- (3) 500 hours of clinical experience as a registered nurse in a graduate program in the clinical nursing specialty. For a dual track graduate program, if less than 500 hours per track, a requirement that there must be documentation of any crossover which would justify less than an additional 500 hours for the second track.

*History Note:* Authority G.S. 90-171.20(4); 90-171.20(7); 90-171.21(d)(4); 90-171.23(b); 90-171.27(b); 90-171.42(b);  
*Eff.* April 1, 1996;  
*Amended Eff.* January 1, 2007; November 1, 2005; August 1, 2005; April 1, 2003.

**21 NCAC 36 .0804 PROCESS FOR APPROVAL TO PRACTICE**

(a) Prior to the performance of any medical acts, a nurse practitioner shall:

- (1) meet registration requirements as specified in 21 NCAC 36 .0803 of this Section;

- (2) submit an application for approval to practice on forms provided by the Board of Nursing and the Medical Board.
- (3) submit any additional information necessary to evaluate the application as requested; and
- (4) have a collaborative practice agreement with a primary supervising physician.

(b) A nurse practitioner seeking approval to practice who has not practiced as a nurse practitioner in more than five years shall complete a nurse practitioner refresher course approved by the Board of Nursing in accordance with Paragraphs (o) and (p) of 21 NCAC 36 .0220 and consisting of common conditions and their management directly related to the nurse practitioner's area of education and certification.

(c) The nurse practitioner shall not practice until notification of approval to practice is received from the Boards.

(d) The nurse practitioner's approval to practice is terminated when the nurse practitioner discontinues working within the approved nurse practitioner collaborative practice agreement, or experiences an interruption in her/his registered nurse licensure status, and the nurse practitioner shall notify both Boards in writing. The Boards may extend the nurse practitioner's approval to practice in cases of emergency such as injury, sudden illness or death of the primary supervising physician.

(e) Applications for approval to practice in North Carolina shall be submitted to the Board of Nursing and then approved by both Boards as follows:

- (1) the Board of Nursing shall verify compliance with Rule .0803 and Paragraph (a) of this Rule; and
- (2) the Medical Board shall verify that the designated primary supervising physician holds a valid license to practice medicine in North Carolina and compliance with Paragraph (a) of this Rule.

(f) Applications for approval of changes in practice arrangements for a nurse practitioner currently approved to practice in North Carolina:

- (1) addition or change of primary supervising physician shall be submitted to both Boards; and
- (2) request for change(s) in the scope of practice shall be submitted to the Joint Subcommittee.

(g) Interim status for a nurse practitioner applicant shall be granted to: a registered nurse who has met the registration requirements as set forth in Rules .0803 and .0805 of this Section with the following limitations:

- (1) no prescribing privileges;
- (2) primary or back-up physicians shall be continuously available for ongoing supervision, collaboration, consultation and countersigning of notations of medical acts in all patient charts within two working days of nurse practitioner applicant-patient contact;
- (3) face-to-face consultation with the primary supervising physician shall be weekly with documentation of consultation consistent with Rule .0810(e)(3) of this Section; and
- (4) shall not exceed six months.

(h) A registered nurse who was previously approved to practice as a nurse practitioner in this state who reapplies for approval to practice shall:

- (1) meet the nurse practitioner approval requirements as stipulated in Rule .0808(c) of this Section; and
- (2) complete the appropriate application.

(i) Volunteer Approval to Practice. Both Boards may grant approval to practice in a volunteer capacity to a nurse practitioner who has met the qualifications to practice as a nurse practitioner in North Carolina.

(j) The nurse practitioner shall pay the appropriate fee as outlined in Rule .0813 of this Section.

(k) A Nurse Practitioner approved under this Section shall keep proof of current licensure, registration and approval available for inspection at each practice site upon request by agents of either Board.

*History Note: Authority G. S. 90-18(13), (14); 90-18.2; 90-171.20(7); 90-171.23(b);*

*Recodified from 21 NCAC 36.0227(c) Eff. August 1, 2004;*

*Amended Eff. January 1, 2007; August 1, 2004.*

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## **CHAPTER 46 - BOARD OF PHARMACY**

### **21 NCAC 46 .2506 PHARMACIST WORK CONDITIONS**

A permit holder shall not require a pharmacist to work longer than 12 continuous hours per work day. A pharmacist working longer than six continuous hours per work day shall be allowed during that time period to take a 30 minute meal break and one additional 15 minute break.

*History Note: Authority G.S. 90-85.2; 90-85.6(a); 90-85.21(a); 85-32(a);*

*Eff. Pending Legislative Review.*

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## **CHAPTER 57 – REAL ESTATE APPRAISAL BOARD**

### **21 NCAC 57A .0203 REGISTRATION, LICENSE AND CERTIFICATE RENEWAL**

(a) All registrations, licenses and certificates expire on June 30 of each year unless renewed before that time.

(b) A holder of a trainee registration, an appraiser license or certificate desiring the renewal of such registration, license or certificate shall apply for same in writing upon the form provided by the Board and shall forward the required fee of two-hundred dollars (\$200.00). Forms are available upon request to the Board. The renewal fee is not refundable under any circumstances.

(c) All trainees, licensees and certificate holders, either resident or non-resident, who are required by G.S 93E-1-7 to complete continuing education as a condition of renewal, must satisfy the continuing education requirements set forth in Rule .0204 of this Section.

(d) An applicant for renewal who initially obtained his license or certificate by reciprocity may keep that license or certificate even if the applicant has moved to a different state, as long as the North Carolina license or certificate is continuously renewed pursuant to this section. Such an applicant for renewal does not have to maintain licensure with the appraiser regulatory authority of the state upon whose qualification requirements the reciprocal license or certificate was granted.

(e) Any person who acts or holds himself out as a registered trainee, licensed or certified real estate appraiser while his trainee registration, appraiser license or certificate is expired shall be subject to disciplinary action and penalties as prescribed in G.S. 93E.

*History Note* Authority G.S. 93E-1-7(a),(b); 93E-1-10; Eff. July 1, 1994;  
Amended Eff. March 1, 2007; March 1, 2006; August 1, 2002; April 1, 1999.

## **21 NCAC 57A .0204 CONTINUING EDUCATION**

(a) All registered trainees, real estate appraiser licensees and certificate holders shall, upon the renewal of their registration, license or certificate in every odd-numbered year, present evidence satisfactory to the Board of having obtained continuing education as required by this Section. Trainees and appraisers who initially registered with the Board after January 1 of an odd numbered year are not required to show continuing education credit for renewal of their registration in that odd numbered year.

(b) Each trainee, licensee and certificate holder who must complete continuing education pursuant to .0204(a) must complete 28 hours of continuing education by June 1 of every odd numbered year. Except as provided in Paragraphs (g) and (h) of this Rule, such education must have been obtained by taking courses approved by the Board for continuing education purposes, at schools approved by the Board to offer such courses. Such education must relate to real estate appraisal and must contribute to the goal of improving the knowledge, skill and competence of trainees, and licensed and certified real estate appraisers. There is no exemption from the continuing education requirement for trainees or appraisers whose registered, licensed or certified status has been upgraded to the level of licensed residential, certified residential or certified general appraiser since the issuance or most recent renewal of their registration, license or certificate, and courses taken to satisfy the requirements of a higher level of certification may not be applied toward the continuing education requirement. Trainees, licensees and certificate holders may not take the same continuing education course more than once during the two year continuing education cycle.

(c) Each appraisal continuing education course must involve a minimum of three and one-half classroom hours of instruction on real estate appraisal or related topics such as the application of appraisal concepts and methodology to the appraisal of various types of property; specialized appraisal techniques; laws, rules or guidelines relating to appraisal; standards of practice and ethics; building construction; financial or investment analysis; land use planning or controls; feasibility analysis; statistics; accounting; or similar topics. The trainee, license or certificate holder must have attended at least 90 percent of the scheduled

classroom hours for the course in order to receive credit for the course.

(d) Each trainee, licensee and certificate holder who is required to complete continuing education pursuant to .0204(a) must, as part of the 28 hours of continuing education required in .0204(b) of this section, complete the seven hour National USPAP update course, as required by the Appraiser Qualifications Board of the Appraisal Foundation, or its equivalent, prior to June 1 of every odd numbered year.

(e) A licensee who elects to take approved continuing education courses in excess of the requirement shall not carry over into the subsequent years any continuing education credit.

(f) Course sponsors must provide a prescribed certificate of course completion to each trainee, licensee and certificate holder satisfactorily completing a course. In addition, course sponsors must send directly to the Board a certified roster of all who successfully completed the course. This roster must be sent within 15 days of completion of the course, but not later than June 15 of each year. In order to renew a registration, license or certificate in a timely manner, the Board must receive proper proof of satisfaction of the continuing education requirement prior to processing a registration, license or certificate renewal application. If proper proof of having satisfied the continuing education requirement is not provided, the registration, license or certificate shall expire and the trainee, licensee or certificate holder shall be subject to the provisions of Rules .0203(e) and .0206 of this Section.

(g) A current or former trainee, licensee or certificate holder may request that the Board grant continuing education credit for a course taken by the trainee, licensee or certificate holder that is not approved by the Board, or for appraisal education activity equivalent to a Board-approved course, by making such request and submitting a non-refundable fee of fifty dollars (\$50.00) for each course or type of appraisal education activity to be evaluated. Continuing education credit for a non-approved course shall be granted only if the trainee, licensee or certificate holder provides satisfactory proof of course completion and the Board finds that the course satisfies the requirements for approval of appraisal continuing education courses with regard to subject matter, course length, instructor qualifications, and student attendance. Appraisal education activities for which credit may be awarded include, but are not limited to, teaching appraisal courses, authorship of appraisal textbooks, and development of instructional materials on appraisal subjects. Trainees or licensed or certified appraisers who have taught an appraisal course or courses approved by the Board for continuing education credit shall be deemed to have taken an equivalent course and shall not be subject to the fifty (\$50.00) fee, provided they submit verification satisfactory to the Board of having taught the course(s). A trainee, licensee or certificate holder who teaches a Board-approved continuing education course may not receive continuing education credit for the same course more than once every three years, regardless of how often he teaches the course. Requests for equivalent approval for continuing education credit must be received by June 15 of an odd-numbered year to be credited towards the continuing education requirement for that odd-numbered year.

(h) A trainee, licensee or certificate holder may receive continuing education credit by taking any of the Board-approved

prelicensing or precertification courses or their approved equivalents. These courses cannot be used for both continuing education credit and for credit for licensing purposes. In order to receive continuing education credit for these courses, the examination must be taken. Trainee, licensees and certificate holders who wish to use a prelicensing course for continuing education credit must comply with the provisions of 21 NCAC 57B .0604.

(i) A trainee, licensee or certificate holder who resides in another state and is currently licensed by the appraiser certification board of that state may satisfy the requirements of this section by providing a current letter of good standing from the resident state showing that the licensee has met all continuing education requirements in the resident state. A trainee, licensee or certificate holder who resides in North Carolina must comply with the requirements of this section regardless of how the registration, license or certificate was obtained.

(j) A trainee, licensee or certificate holder who returns from active military duty on or after February 1 of an odd-numbered year will be allowed to renew his or her registration, license or certificate in that odd-numbered year even if the required continuing education is not completed by June 1 of that year. All required continuing education must be completed within 180 days of when the trainee, licensee or certificate holder returns from active duty. Failure to complete the required continuing education within 180 days will be grounds for revocation.

*History Note:* Authority G.S. 93E-1-7(a); 93E-1-10; Eff. July 1, 1994;  
Amended Eff. March 1, 2007; March 1, 2006; July 1, 2005; July 1, 2003; August 1, 2002; April 1, 1999.

**21 NCAC 57A .0206 EXPIRED REGISTRATION, LICENSE OR CERTIFICATE**

(a) Expired registrations, licenses and certificates may be reinstated within 12 months after expiration upon proper application, payment to the Board of the renewal and late filing fees as set out in G.S. 93E-1-7 and provision of proof of having obtained the continuing education that would have been required had the registration, license or certificate been continuously renewed.

(b) If the registration, license or certificate has been expired for more than 12 months, but less than 24 months, an applicant may apply for reinstatement. In order to be considered for reinstatement, the applicant must pay the filing fee as set out in G.S. 93E-1-7 and include in the application proof that the applicant has obtained the continuing education that would have been required had the registration, license or certificate been continuously renewed. In addition, the Board may consider whether the applicant for reinstatement has any prior or current disciplinary actions, and may examine the applicant's fitness for registration, licensure or certification before granting the request for reinstatement.

(c) An application for reinstatement shall not be granted if the registration, license or certificate has been expired for more than 24 months.

(d) Reinstatement is effective the date it is issued by the Board. It is not retroactive.

(e) A trainee or appraiser whose registration, license or certification has expired and who is returning from active military duty will be allowed to renew his or her registration, license or certificate when the trainee or appraiser returns from active duty without payment of a late filing fee as long as the trainee, licensee or certificate holder renews the registration, license or certificate within 180 days of when the trainee, licensee or certificate holder returns from active duty.

*History Note* Authority G.S. 93E-1-6(b); 93E-1-7; 93E-1-10;  
Eff. July 1, 1994;  
Amended Eff. March 1, 2007; July 1, 2005; August 1, 2002; April 1, 1999.

**21 NCAC 57A .0209 NATIONAL APPRAISER REGISTRY**

Licensees and certificate holders who are qualified for enrollment in the national roster or registry of licensed and certified real estate appraisers may apply for enrollment or for the renewal or reinstatement of such enrollment upon a Board form. The application form must be accompanied by a fee of twenty dollars (\$20.00) plus any additional fee that may be required by the appropriate federal agency or instrumentality.

*History Note:* Authority G.S. 93E-1-10; 93E-1-11(d);  
Eff. July 1, 1994;  
Amended Eff. March 1, 2007; August 1, 2002.

**21 NCAC 57A .0210 TEMPORARY PRACTICE**

(a) A real estate appraiser who does not reside in North Carolina and who is licensed or certified by the appraiser licensing or certifying agency in another state may apply to receive temporary appraiser licensing or certification privileges in this State by filing a notarized application with the Board.

(b) Upon filing a completed application accompanied by a fee of one hundred fifty dollars (\$150.00) and otherwise satisfying the Appraisal Board as to his or her qualifications, eligibility and moral fitness for temporary licensing or certification privileges, an applicant shall be granted a temporary practice permit by the Board authorizing the applicant to perform in this State the appraisal assignment described in such application, provided that the length of time projected by the applicant for completion of the assignment is reasonable given the scope and complexity of the assignment. The fee must be paid by money order, certified check or cashier's check. As part of the examination for moral fitness, the Board may consider whether an applicant's trainee registration or appraiser license or certification is or has been subject to discipline in their resident state or any other state, and may consider all other information outlined in Rule .0202 of this Section.

(c) Privileges granted under the provisions of this Rule shall expire upon the expiration date set forth in the temporary practice permit. However, upon a showing by the permittee satisfactory to the Appraisal Board that, notwithstanding the permittee's diligent attention to the appraisal assignment, additional time is needed to complete the assignment, the Board shall extend the temporary practice privileges granted under the

permittee's temporary practice permit to afford him additional time to complete the appraisal assignment.

(d) Persons granted temporary practice privileges under this Rule shall not advertise or otherwise hold themselves out as being a North Carolina trainee or licensed or certified appraiser.

(e) A trainee may apply for a temporary practice permit and the provisions of Sections (a), (b), (c) and (d) above shall apply. The supervising appraiser for the trainee must be a North Carolina licensed or certified appraiser. If not, the supervising appraiser must be licensed or certified as a real estate appraiser in another state and must also receive a temporary practice permit for the same assignment as the trainee. The term "trainee" shall include apprentices and others who are licensed and regulated by a state agency to perform real estate appraisals under the supervision of a licensed or certified appraiser.

(f) An applicant for a temporary practice permit shall not begin performing any appraisal work in this State until the temporary practice permit has been issued by the Board.

*History Note: Authority G.S. 93E-1-9(c) and (d); 93E-1-10; Title XI, Section 1122(a); 12 U.S.C. 3351(a); Eff. July 1, 1994;*

*Amended Eff. March 1, 2007; July 1, 2005; July 1, 2003; August 1, 2002; April 1, 1999.*

**21 NCAC 57A .0211 NONRESIDENT TRAINEE  
REGISTRATION, APPRAISER LICENSURE AND  
CERTIFICATION**

(a) Applicants for registration, licensure or certification who are not residents of North Carolina must file an application as stated in Rule .0101 of this Subchapter. In addition, nonresident applicants must also consent to service of process in this state and file an affidavit of residency with the application. If the applicant is licensed by the appraiser licensing board of the applicant's resident state, the applicant must also file with the application a letter of good standing from the appraiser licensing board of the resident state, which was issued under seal by that licensing board no later than 30 days prior to the date application is made in this state

(b) Applicants who are licensed by and reside in a state with which the Appraisal Board has entered into an agreement of reciprocity and who are applying for the same level of licensure as they hold in their resident state will not have to complete an experience log, take further education or take an examination provided the applicant is in good standing in the reciprocal state as evidenced by the letter of good standing from the appraiser licensing board of the resident state.

(c) Applicants for registration, licensure or certification who are not residents of a reciprocal state but who are in good standing in their resident state and who are applying for the same level of licensure as they hold in their resident state will not be required to take additional education or show an experience log. They will be required to take the requisite examination for their level of licensure.

(d) Applicants for registration, licensure or certification who have been residents of another state and who are registered, licensed or certified in that other state but have moved to North Carolina may apply for registration, licensure or certification

under this section within 90 days of the date they moved to North Carolina.

*History Note: Authority G.S. 93E-1-9(a) and (b); 93E-1-10; Title XI, Section 1122(a); 12 U.S.C. 3351(a); Eff. March 1, 2007.*

**21 NCAC 57A .0302 SUBJECT MATTER AND  
PASSING SCORES**

(a) The examination for trainee registration, licensure as a licensed real estate appraiser and for certification as a certified residential real estate appraiser shall test applicants on the following subject areas:

- (1) Influences on Real Estate Value;
- (2) Legal Considerations in Appraisal;
- (3) Types of Value;
- (4) Economic Principles;
- (5) Real Estate Markets and Analysis;
- (6) Valuation Process;
- (7) Property Description;
- (8) Highest and Best Use Analysis;
- (9) Appraisal Statistical Concepts;
- (10) Sales Comparison approach;
- (11) Site Value;
- (12) Cost Approach;
- (13) Income Approach (Gross Rent Multipliers, Estimation of Income and Expenses, Operating Expense ratios);
- (14) Valuation of Partial Interests; and
- (15) Appraisal Standards and Ethics.

(b) In addition to the subject areas listed in Paragraph (a) of this Rule, the examination for certification as a certified general real estate appraiser shall test applicants on the following subject areas:

- (1) Direct Capitalization;
- (2) Cash Flow Estimates;
- (3) Measures of Cash Flow; and
- (4) Discounted Cash Flow Analysis.

(c) Prior to taking the examination, applicants will be informed of the score required to pass. Applicants who pass the examination will be notified only that they have passed. Applicants who have failed will be informed of their actual score.

*History Note: Authority G.S. 93E-1-6(c); 93E-1-10; Eff. July 1, 1994;*  
*Amended Eff. March 1, 2007; April 1, 1999.*

**21 NCAC 57A .0405 APPRAISAL REPORTS**

(a) Each written appraisal report prepared by or under the supervision of a licensed or certified real estate appraiser shall bear the signature of the licensed or certified appraiser, the license or certificate number of the licensee or certificate holder in whose name the appraisal report is issued, and the designation "licensed residential real estate appraiser," "certified residential real estate appraiser," or "certified general real estate appraiser," or "certified residential/general real estate appraiser," as applicable. Each such appraisal report shall also indicate whether or not the licensed or certified appraiser has personally

inspected the property, and shall identify any other person who assists in the appraisal process other than by providing clerical assistance. Appraisers shall personally affix their signature to their appraisal reports and shall not allow any other person or entity to affix their signature. Trainees are not required to affix their signatures to appraisal reports, but if they do so, they must personally affix their signature and shall not allow any other person or entity to affix their signature.

(b) Every licensed and certified real estate appraiser shall affix or stamp to all appraisal reports a seal which shall set forth the name and license or certificate number of the appraiser in whose name the appraisal report is issued and shall identify the appraiser as a "licensed residential real estate appraiser", a "certified residential real estate appraiser", or as a "certified general real estate appraiser" or "certified residential/general real estate appraiser", as applicable. The seal must be legible, must conform to the seal authorized by the Board at time of initial licensure or certification, and must be a minimum of 1 inch in diameter. Appraisers shall personally affix their seal to their appraisal reports and shall not allow any other person or entity to affix their seal. Registered trainees are prohibited from using a seal on appraisal reports.

(c) A licensed or certified real estate appraiser who signs an appraisal report prepared by another person, in any capacity, shall be fully responsible for the content and conclusions of the report.

(d) A written appraisal report shall be issued on all real estate appraisals performed in connection with federally related transactions.

(e) Appraisers shall keep a log of all appraisals performed. The log shall contain, at a minimum, the appraiser's license or certificate number, the street address of the subject property, the date the report was signed, the name of anyone assisting in the preparation of the report and the name of the client. These logs shall be updated at least every 30 days.

*History Note: Authority G.S. 93E-1-10;*

*Eff. July 1, 1994;*

*Amended Eff. March 1, 2007; March 1, 2006; July 1, 2003; August 1, 2002; April 1, 1999.*

## **21 NCAC 57A .0407 SUPERVISION OF TRAINEES**

(a) A licensed or certified real estate appraiser may engage a registered trainee to assist in the performance of real estate appraisals, provided that the licensed or certified real estate appraiser:

- (1) has been licensed or certified for at least two years;
- (2) has no more than one trainee working under his or her supervision at any one time, if the supervisor is a licensed real estate appraiser, or two trainees if the supervisor is a certified real estate appraiser. Prior to the date any trainee begins performing appraisals under his or her supervision, the supervisor must inform the Board of the name of the trainee. The supervisor must also inform the Board when a trainee is no longer working under his or her supervision.

- (3) actively and personally supervises the trainee. The supervisor must accompany the trainee on the inspections of the subject property on the first 50 appraisal assignments for which the trainee will perform more than 75% of the work. After that point, the trainee may perform the inspections without the presence of the supervisor provided that the trainee is competent to perform those inspections, and provided that the subject property is less than 50 miles from the supervisor's primary business location. The supervisor must accompany the trainee on all inspections of subject properties that are located more than 50 miles from the supervisor's primary business location;
- (4) reviews all appraisal reports and supporting data used in connection with appraisals in which the services of a trainee is utilized;
- (5) complies with all provisions of Rule .0405 of this Section regarding appraisal reports;
- (6) prepares and furnishes to each trainee, whose services were utilized in connection with the appraisal, a report describing the nature and extent of assistance rendered by the trainee in connection with the appraisal, and places a copy of such report in the supporting file for the appraisal within 30 days of the date the appraisal report was signed. In addition, the supervisor must make available to the trainee a copy of every appraisal report where the trainee performs more than 75% of the work on the appraisal; and
- (7) has not received any disciplinary action regarding his or her appraisal license or certificate from the State of North Carolina or any other state within the previous two years. For the purposes of this Section, disciplinary action means an active suspension or a revocation.

(b) The trainee must maintain a log on a form prescribed by the Board that includes, but is not limited to, each appraisal performed by the trainee, the type of property appraised, type of appraisal performed, complete street address of the subject property, the date the report was signed, the points claimed, the name of the supervisor for that appraisal, the supervisor's license or certificate number, and whether the supervisor accompanied the trainee on the inspection of the subject. The log must show all appraisals performed by the trainee and must be updated at least every 30 days.

(c) An appraiser who wishes to supervise a trainee must attend an education program offered by the Appraisal Board regarding the role of a supervisor either before such supervision begins, or within 90 days after such supervision begins. If the supervisor does not take the class within 90 days after the supervision begins, the trainee may no longer work under the supervision of that supervisor until the class is taken.

(d) Trainees must assure that the supervisor has properly completed and sent the Supervisor Declaration Form to the

Appraisal Board on or before the day the trainee begins assisting the supervising appraiser. Trainees shall not receive appraisal experience credit for appraisals performed in violation of this Section.

(e) Supervising appraisers shall not be employed by a trainee or by a company, firm or partnership in which the trainee has a controlling interest.

*History Note: Authority G.S. 93E-1-3(b); 93E-1-10; Eff. July 1, 1994; Amended Eff. March 1, 2007; March 1, 2006; July 1, 2005; August 1, 2002; April 1, 1999.*

## **21 NCAC 57B .0210 COURSE RECORDS**

Schools and course sponsors must:

- (1) retain on file for five years copies of all grade and attendance records for each approved course and must make such records available to the Board upon request;
- (2) retain on file for two years a master copy of each final course examination, and such file copy shall indicate the answer key, course title, course dates and name of instructor. Examination file copies shall be made available to the Board upon request;
- (3) within 15 days of course completion, but not later than June 15 of each year, submit to the Board a roster of all students who satisfactorily completed the course along with the course evaluations. Rosters and evaluations must be sent together by mail, not by fax or other electronic means; and
- (4) participate in the Board's course and instructor evaluation program. Schools and course sponsors shall provide each student with a course evaluation form upon completion of the course, and shall tally the results of the evaluation forms onto one form. Schools and course sponsors shall send the completed course evaluation forms and the tally to the Board together with the roster required by Item (3) of this Rule.

*History Note: Authority G.S. 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. March 1, 2007; July 1, 2005; July 1, 2003; August 1, 2002.*

## **21 NCAC 57B .0306 INSTRUCTOR REQUIREMENTS**

(a) Except as indicated in Paragraph (b) of this Rule, all appraisal preclicensing and precertification courses or courses deemed equivalent by the Board shall be taught by instructors who possess the fitness for licensure required of applicants for trainee registration or real estate appraiser licensure or certification and either the minimum appraisal education and experience qualifications listed in this Rule or other qualifications that are found by the Board to be equivalent to those listed. These qualification requirements shall be met on a continuing basis. The minimum qualifications are as follows:

- (1) Residential appraiser courses: 120 classroom hours of real estate appraisal education equivalent to the residential appraiser education courses prescribed in Rules .0101 and .0102 of this Subchapter and two years' full-time experience as a certified residential or general real estate appraiser within the previous five years. At least one-half of such experience must be in residential property appraising.
  - (2) General appraiser courses: 180 classroom hours of real estate appraisal education equivalent to the general appraiser education courses prescribed in Rules .0101, .0102 and .0103 of this Subchapter and three years' full-time experience as a general real estate appraiser within the previous five years. At least one-half of such experience must be in income property appraising. Instructors must also be a certified general real estate appraiser and have been so certified for at least five years.
  - (3) USPAP: certification by the Appraiser Qualifications Board of the Appraisal Foundation as an instructor for the National USPAP Course.
- (b) Guest lecturers who do not possess the qualifications stated in Paragraph (a) of this Rule may be utilized to teach collectively up to one-fourth of any course, provided that each guest lecturer possesses education and experience directly related to the particular subject area the lecturer is teaching.
- (c) Instructors shall conduct themselves in a professional manner when performing their instructional duties and shall conduct their classes in a manner that demonstrates knowledge of the subject matter being taught and mastery of the following basic teaching skills:
- (1) The ability to communicate effectively through speech, including the ability to speak clearly at an appropriate rate of speed and with appropriate grammar and vocabulary;
  - (2) The ability to present instruction in a thorough, accurate, logical, orderly, and understandable manner, to utilize illustrative examples as appropriate, and to respond appropriately to questions from students;
  - (3) The ability to effectively utilize varied instructive techniques other than straight lecture, such as class discussion or other techniques;
  - (4) The ability to effectively utilize instructional aids to enhance learning;
  - (5) The ability to maintain an effective learning environment and control of a class; and
  - (6) The ability to interact with adult students in a manner that encourages students to learn, that demonstrates an understanding of students' backgrounds, that avoids offending the sensibilities of students, and that avoids

personal criticism of any other person, agency or organization.

(d) Upon request of the Board, an instructor or proposed instructor must submit to the Board a videotape or DVD in a manner and format which depicts the instructor teaching portions of a precertification course specified by the Board and which demonstrates that the instructor possesses the basic teaching skills described in Paragraph (c) of this Rule.

(e) The inquiry into fitness shall include consideration of whether the instructor has ever had any disciplinary action taken on his or her appraisal license or certificate or any other professional license or certificate in North Carolina or any other state, or whether the instructor has ever been convicted of or pleaded guilty to any criminal act. This inquiry may include consideration of whether disciplinary action or criminal charges are pending.

(f) Instructors shall not have received any disciplinary action regarding his or her appraisal license or certificate from the State of North Carolina or any other state within the previous two years. For the purposes of this Section, disciplinary action means a reprimand, suspension (whether active or inactive) or a revocation.

(g) Proposed precertification or precertification instructors who do not meet the minimum appraisal education and experience qualifications listed in Paragraph (a) of this Rule, and who seek to have their qualifications determined by the Board to be equivalent to the qualifications listed in Paragraph (a) of this Rule, must supply the Board with copies of sample appraisal reports or other evidence of experience.

(h) Persons desiring to become instructors for precertification and precertification courses must file an application for approval with the Board. Board approval of instructors expires on the next December 31 following the date of issuance. Instructors who wish to renew their approval must file an application for renewal of approval annually on or before December 1. There is no fee for application for or renewal of instructor approval. Once an instructor has been approved to teach a specific precertification or precertification course, that person may teach the course at any school or for any course sponsor approved by the Appraisal Board to offer precertification and precertification courses.

*History Note: Authority G.S. 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. March 1, 2007; March 1, 2006; July 1, 2005; July 1, 2003; August 1, 2002.*

## **21 NCAC 57B .0603 CRITERIA FOR COURSE APPROVAL**

The following requirements must be satisfied in order for course sponsors to obtain approval of a course for appraiser continuing education credit:

- (1) The subject matter of the course must comply with the requirements of Rule .0204 of Subchapter 57A and the information to be provided in the course must be both accurate and current.
- (2) The course must involve a minimum of three and one-half classroom hours of instruction on acceptable subject matter. A classroom hour

consists of 50 minutes of classroom instruction and 10 minutes of break time. Instruction must be given for the full number of hours for which credit is given. Instructors may not accumulate unused break time to end the class early.

(3) The course instructor(s) must:

- (a) possess the fitness for licensure required of applicants for trainee registration, real estate appraiser licensure or certification; and
- (b) either:
  - (i) two years' full-time experience that is directly related to the subject matter to be taught;
  - (ii) a baccalaureate or higher degree in a field that is directly related to the subject matter to be taught;
  - (iii) two years' full-time experience teaching the subject matter to be taught; or
  - (iv) an equivalent combination of such education and experience.

(4) If two or more instructors shall be utilized to teach a course during the approval period and the course shall be taught in states other than North Carolina, it is sufficient for the course sponsor to show that it has minimum instructor requirements comparable to these requirements. The inquiry into fitness shall include consideration of whether the instructor has had any disciplinary action taken on his or her appraisal license or any other professional license in North Carolina or any other state, or whether the instructor has been convicted of or pleaded guilty to any criminal act.

(5) The course must be one involving a qualified instructor who, except as noted in Item (6) of this Rule, shall be physically present in the classroom at all times and who shall personally provide the instruction for the course. The course instructor may utilize videotape instruction, remote television instruction or similar types of instruction by other persons to enhance or supplement his personal instruction; however, such other persons shall not be considered to be the course instructor and the course instructor must be physically present when such indirect instruction by other persons is being utilized. No portion of the course may consist of correspondence instruction. The instructor must comply with Rule .0306(c) of this Subchapter. Instructors for the National USPAP courses must be certified by the



- Appraiser Qualifications Board of the Appraisal Foundation.
- (6) A trainee or appraiser may receive up to 14 hours of credit every two years in the period ending on June 1 of each odd numbered year for participation in a course on a computer disk or on-line via the Internet. A sponsor seeking approval of a computer-based education course must submit a complete copy of the course on the medium that is to be utilized and must make available at the sponsor's expense all hardware and software necessary for the Board to review the submitted course. In the case of an internet-based course, the Board must be provided access to the course via the internet at a date and time satisfactory to the Board and shall not be charged any fee for such access. To be approved for credit, a computer-based continuing education course must meet all of the conditions imposed by the Rules in this Subchapter in advance, except where otherwise noted. The course must be interactive, permitting the participant to communicate, via telephone, electronic mail, or a website bulletin board, with the presenter and other participants. The sponsor of an on-line course must have a reliable method for recording and verifying attendance. The sponsor of a course on a computer disk must demonstrate that there is a reliable method for the user or the sponsor to record and verify participation in the course. A participant may periodically log on and off of a computer-based continuing education course provided the total time spent participating in the course is equal to or exceeds the credit hours assigned to the program. The course design and delivery mechanism for an on-line course offered on the Internet must have received approval from the International Distance Education Certification Center (IDECC). A course completion certificate must be forwarded to the student as stated in Rule .0607 of this Section, and a course roster must be sent to the Appraisal Board in accordance with Rule .0608 of this Section.
- (7) The course must be an educational program intended to improve the knowledge, skill and competence of trainees, and licensed and certified real estate appraisers. Activities not eligible for approval as a continuing education course include in-house training programs of a firm, organization or agency, trade conferences or similar activities.
- (8) The course sponsor must certify that the course shall be conducted in accordance with the operational requirements stated in Rule .0606 of this Section and that the course sponsor will comply with all other applicable rules contained in this Section.
- (9) The course title may not include the words "Uniform Standards of Professional Appraisal Practice" or "USPAP" unless the course is either the 15 hour National USPAP course or the 7 hour National USPAP update course. If the course is the 7 hour National USPAP course, the course title must state which edition of USPAP will be taught in that specific course.
- (10) Each course must utilize a textbook or course materials that have been approved by the Board.
- History Note: Authority G.S. 93E-1-8(c); 93E-1-10; Eff. July 1, 1994; Amended Eff. March 1, 2007; March 1, 2006; July 1, 2005; July 1, 2003; August 1, 2002.*
- 21 NCAC 57B .0604 PRELICENSING AND PRECERTIFICATION COURSES**
- (a) Appraisal prelicensing or precertification courses conducted by North Carolina approved schools or by appraisal trade organizations which are approved as equivalent to the North Carolina prelicensing and precertification courses may be separately approved as appraisal continuing education courses. Trainees, licensed and certified appraisers may obtain continuing education credit for these courses only to the extent permitted by Rule .0204 of Subchapter 57A. Appraisal trade organizations must at all times assure compliance with Rules .0606, .0607, and .0608 of this Section in order to retain such approval for these courses.
- (b) It is presumed that any person taking any of the prelicensing or precertification courses is doing so for registration, licensure or certification purposes. If the person wishes to obtain continuing education credit for the course, he or she must request such credit in writing and must send the original course completion certificate or course attendance certificate with the request.
- History Note: Authority G.S. 93E-1-8(c); 93E-1-10; Eff. July 1, 1994; Amended Eff. March 1, 2007; July 1, 2005; August 1, 2002.*
- 21 NCAC 57B .0606 COURSE OPERATIONAL REQUIREMENTS**
- Course sponsors must at all times assure compliance with the criteria for course approval stated in Rule .0603 of this Section and must also comply with the following requirements relating to scheduling, advertising and conducting approved appraisal continuing education courses:
- (1) Courses must be scheduled and conducted in a manner that limits class sessions to a maximum of eight classroom hours in any given day and that includes appropriate breaks for each class session. A classroom hour consists of 50 minutes of classroom instruction and ten minutes of break time. For any class

- meeting that exceeds 50 minutes in duration, breaks at the rate of ten minutes per hour must be scheduled and taken at reasonable times.
- (2) Course sponsors must not utilize advertising of any type that is false or misleading in any respect. If the number of continuing education credit hours awarded by the Board for a course is less than the number of scheduled classroom hours for the course, any course advertisement or promotional materials which indicate that the course is approved for appraiser continuing education credit in North Carolina must specify the number of continuing education credit hours awarded by the Board for the course.
  - (3) Course sponsors must, upon request, provide any prospective student a description of the course content sufficient to give the prospective student a general understanding of the instruction to be provided in the course.
  - (4) Courses must be conducted in a facility that provides an appropriate learning environment. At a minimum, the classroom must be of sufficient size to accommodate comfortably all enrolled students, must contain a student desk or sufficient worktable space for each student, must have adequate light, heat, cooling and ventilation, and must be free of distractions that would disrupt class sessions. Sponsors are required to comply with all applicable local, state and federal laws and regulations regarding safety, health and sanitation. Sponsors shall furnish the Board with inspection reports from appropriate local building, health and fire inspectors upon the request of the Board.
  - (5) The course sponsor must require students to attend at least 90 percent of the scheduled classroom hours in order to satisfactorily complete the course, even if the number of continuing education credit hours awarded by the Board for the course is less than the number of scheduled classroom hours. Attendance must be monitored during all class sessions to assure compliance with the attendance requirement. Instruction must be given for the number of hours for which credit is given. Instructors may not accumulate unused break time to end the class early.
  - (6) Instructors must require reasonable student attentiveness during class sessions. Students must not be permitted to engage in activities that are not related to the instruction being provided.
  - (7) Course sponsors for which an application fee is required by Rules .0602(b) and .0611(b) of this Section must fairly administer course cancellation and fee refund policies. In the event a scheduled course is canceled, reasonable efforts must be made to notify preregistered students of the cancellation and all prepaid fees received from such preregistered students must be refunded within 30 days of the date of cancellation or, with the student's permission, applied toward the fees for another course.
  - (8) Upon request of the Board, the course sponsor must submit to the Board a videotape in a manner and format which depicts the instructor teaching portions of any continuing education course specified by the Board and which demonstrates that the instructor possesses the basic teaching skills described in Rule .0306(c) of this Section.
  - (9) Course sponsors shall provide the Board with the dates and locations of all classes the sponsor is or will be offering in the State of North Carolina at least 30 calendar days before such class is offered, unless circumstances beyond the control of the course sponsor require that the course be rescheduled. If the dates or location of the classes change after such information is provided to the Board, the course sponsor must notify the Board of such changes.
  - (10) Course sponsors must participate in the Board's course and instructor evaluation program. Course sponsors must require that students complete a course evaluation form upon completion of the course, and shall tally the results of the evaluations onto one form. Course sponsors must also send the completed course evaluation forms and the tally to the Board together with the roster required pursuant to 21 NCAC 57B .0608.
  - (11) Persons desiring to become instructors for continuing education courses must file an application for approval with the Board. Board approval of instructors expires on the next December 31 following the date of issuance. Instructors who wish to renew their approval must file an application for renewal of approval annually on or before December 1. There is no fee for application for or renewal of instructor approval. Once an instructor has been approved to teach a specific course, that person may teach the course for any course sponsor approved by the Appraisal Board to offer continuing education courses.

*History Note: Authority G.S. 93E-1-8(c); 93E-1-10; Eff. July 1, 1994; Amended Eff. March 1, 2007; July 1, 2005; August 1, 2002.*

**21 NCAC 57B .0611 RENEWAL OF APPROVAL AND FEES**

- (a) Board approval of appraisal continuing education courses expires on the next December 31 following the date of issuance.

In order to assure continuous approval, applications for renewal of Board approval, accompanied by the prescribed renewal fee, must be filed with the Board annually on or before December 1. All applications for renewal of course approval received on or before December 1, which are incomplete as of that date, as well as all applications for renewal of course approval submitted after December 1, shall be treated as original applications for approval of continuing education courses.

(b) The annual fee for renewal of Board approval shall be fifty dollars (\$50.00) for each course for which renewal of approval is requested, provided that no fee is required for course sponsors that are exempted from original application fees by Rule .0602(b) of this Section. The fee is non-refundable.

*History Note: Authority G.S. 93E-1-8(c),(d); 93E-1-10;*

*Eff. July 1, 1994;*

*Amended Eff. March 1, 2007; August 1, 2002.*

## 21 NCAC 61 .0103 DEFINITIONS

The definitions of terms contained in G.S. 90-648 apply to this Chapter. In addition, the following definitions apply with regard to these Rules:

- (1) Assessment means a clinical evaluation of the individual patient and the suitability and efficacy of a respiratory care procedure or treatment, including an assessment of the suitability and efficacy of equipment for the individual patient if equipment is to be used in the procedure or treatment. Assessment can be performed by physician, Respiratory Care Practitioner (RCP) or other licensed health care provider within their scope of practice.
- (2) Respiratory care includes any acts, tests, procedures, treatments or modalities that are routinely taught in educational programs or in continuing education programs for respiratory care practitioners and are routinely performed in respiratory care practice settings.
- (3) The practice of respiratory care includes the application of a range of evaluation and treatment procedures related to the observing and monitoring of signs and symptoms, general behavior, and general physical response to respiratory care treatment and diagnostic testing, including the determination of whether such signs, symptoms, reactions, behavior, or general response exhibit abnormal characteristics. In addition to the general activities identified in G.S. 90-648(10), each of the following specific activities constitutes the practice of Respiratory care:
  - (a) the performance of pulmonary diagnostic and sleep related testing,
  - (b) the administration of pharmacologic agents related to respiratory care procedures,
  - (c) establishment and maintenance of arterial lines for hemodynamic monitoring,

- (d) therapeutic evaluation and assessment relating to mechanical or physiological ventilatory support, including positive pressure support apparatus,
- (e) airway clearance techniques, postural drainage and chest percussion,
- (f) assistance with bronchoscopy,
- (g) asthma and respiratory disease management,
- (h) cardiopulmonary rehabilitation,
- (i) alleviating respiratory impairment and functional limitation by designing, implementing, and modifying therapeutic care plans, patient instruction in respiratory care, functional training in self-care and home respiratory care management, and the promotion and maintenance of respiratory care fitness, health, and quality of life,
- (k) those advanced practice procedures that are recognized by the Board in Declaratory Rulings as being within the scope of respiratory care, when performed by an RCP with appropriate training.

*History Note: Authority G.S. 90-652;*

*Temporary Adoption Eff. October 15, 2001;*

*Eff. August 1, 2002;*

*Amended Eff. January 1, 2007; March 1, 2006.*

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## CHAPTER 65 – THERAPEUTIC RECREATION CERTIFICATION BOARD

### 21 NCAC 65 .0205 SUPERVISION OF A LICENSED RECREATIONAL THERAPY ASSISTANT

(a) The Licensed Recreational Therapy Assistant (LRTA) must perform duties and functions under the clinical supervision of the Licensed Recreational Therapist (LRT). Once the LRT determines the LRTA has demonstrated competence to provide specific interventions, documentation, and to make recommendations for program modification, the LRTA shall practice as defined and described in the most recent version of ATRA Standards for the Practice of Therapeutic Recreation and Self-Assessment Guide.

(b) Clinical supervision, as defined in the glossary of the ATRA Standards of Practice, must be performed in accordance with a written agency policy that includes, at minimum, the following elements:

- (1) The Licensed Recreational Therapist must:
  - (A) Determine the recreational therapy treatment plan and the elements of that plan appropriate for delegation to a licensed recreational therapy assistant (LRTA);

- (B) Determine whether licensed recreational therapy assistants acting under his or her supervision possess the competence to perform the delegated duties;
  - (C) Delegate responsibilities to the LRTA that are consistent with assessed competencies and within the overall LRTA scope of practice as defined and described in the most recent version of the ATRA Standards for the Practice of Therapeutic Recreation and Self-Assessment Guide;
  - (D) Review chart documentation, reexamine and reassess the patient or client and revise the recreational therapy treatment plan as warranted;
  - (E) Establish the recreational therapy discharge plan;
  - (F) Determine whether co-signature of chart documentation done by the LRTA is necessary for safe and effective care and treatment;
  - (G) Be immediately available directly or by telecommunication to the LRTA; and
  - (H) Be limited to clinically supervising only the number of LRTAs as is appropriate for providing safe and effective patient or client intervention at all times.
- (2) A Licensed Recreational Therapy Assistant must:
- (A) Assist in the practice of recreational therapy only to the extent allowed by the supervising LRT;
  - (B) Assist in the assessment of patient or client needs to the extent defined by the most recent version of the ATRA Standards for the Practice of Therapeutic Recreation and Self-Assessment Guide and described in written agency policy;
  - (C) Make modifications of the recreational therapy treatment programs that are consistent with the recreational therapy treatment plan and under the supervision of the LRT;
  - (D) Engage in off-site patient or client related functions that are appropriate for the LRTA's qualifications and assessed competency in consideration of the functional status of the patient or client; and
  - (E) Document care provided in accordance with written agency policy.
- (3) Prohibited Practice:

- (A) A LRTA must not engage in practices of a LRT as defined and described in the most recent version of the ATRA Standards for the Practice of Therapeutic Recreation and Self-Assessment Guide and any subsequent changes and amendments. A copy can be purchased from ATRA at: <http://www.atra-tr.org>; and
- (B) A LRTA must not engage in acts beyond the scope of practice delegated by the supervising LRT.

*History Note: Authority G.S. 90C-22(3);  
Temporary Adoption Eff. December 1, 2005;  
Eff. January 1, 2007.*

**21 NCAC 65 .0401 APPLICATION PROCEDURES  
FOR LICENSED RECREATIONAL THERAPIST AND  
LICENSED RECREATIONAL THERAPY ASSISTANT**

- (a) An applicant for licensure may request, in writing or by website access, a current application package from the North Carolina Board of Recreational Therapy Licensure.
- (b) All materials must be postmarked by the application deadline, the 15<sup>th</sup> of each month, and posted on the Board website.
- (c) All items must be provided to constitute a full application package, including:
  - (1) A current head and shoulders color photograph of the applicant;
  - (2) The initial application for licensure fee as stated in Rule .0500 of this Chapter; and
  - (3) Official transcripts from each college or university attended.
- (d) The Board shall review each application to determine an applicant's eligibility for licensure as a Recreational Therapist or a Recreational Therapy Assistant. The Board shall notify the applicant in writing if the applicant is ineligible for licensure. The Board may require supplemental information to the application to determine the facts governing qualifications and competency of an applicant. The procedure for gathering such information may include an interview of the applicant by the Board.
- (e) The individual who is issued a license shall be issued a license number. Should that number be retired for any reason (such as death or failure to renew the license) that number shall not be re-issued.
- (f) A licensure card and certificate bearing the current name of the licensee, licensee number and the expiration date shall be issued to each person having an active license.
- (g) The Board shall mail any notices to a licensee at the last known address.
- (h) A license issued by the Board is the property of the Board and must be surrendered by the licensee to the Board upon demand according to these Rules.

*History Note: Authority G.S. 90C-27(a)(2), (b)(2); 90C-24(a)(3); 90C-32;  
Temporary Adoption Eff. December 1, 2005;*

*Eff. January 1, 2007.*

**21 NCAC 65 .0601 CONTINUING EDUCATION REQUIREMENTS FOR LICENSED RECREATIONAL THERAPIST AND LICENSED RECREATIONAL THERAPY ASSISTANT**

(a) During the two-year licensing period, a recreational therapist or recreational therapy assistant who is licensed by the North Carolina Board of Recreation Therapy Licensure shall complete continuing education as outlined below. Candidates for license renewal must complete a minimum of 20 points of continuing education to renew the license. Content of continuing education must be directly related to the practice of recreational therapy or therapeutic recreation and must be consistent with the current Job Analysis conducted by the National Council for Therapeutic Recreation Certification. A licensee shall acquire credit through continuing education courses, academic courses, and professional publications and presentations.

(b) Point Values will be awarded as the following:

One CEP (Continuing Education Point) = one contact hour

0.1 CEU (Continuing Education Unit) = one contact hour

10 CEPs = 10 contact hours = 1.0 CEU

(c) Continuing education is accepted if provided by an organization that adheres to the National or International Council on Continuing Education Standards or by other approved providers of continuing education as defined by Board. The content of the continuing education experiences must be linked directly to the knowledge areas from the most recent National Job Analysis Study conducted by the National Council for Therapeutic Recreation Certification and any subsequent amendments or changes.

(d) Academic Courses: Credit equivalents for completing academic coursework are: three semester hours equals 45 CEPs or 4.5 CEUs.

(e) Professional Publications and Presentations: No more than 10 CEPs in the area of professional publications and presentations shall be accepted for each renewal period according to the following point value: Repeat presentations are limited to the current renewal cycle and does not apply to their use in subsequent cycles.

Editorials	one CEP
Articles on original research	six CEPs
Professional newsletter article	one CEP
Editing a textbook	three CEPs
Authoring a textbook chapter	four CEPs
Journal article	four CEPs
Journal reviews or book review	one CEP
Poster presentation	one CEP
Research abstract	one CEP
Textbook	eight CEPs
Unpublished masters or doctoral thesis	four CEPs
Presentations at professional meetings	two CEPs
Field placement supervision	three CEPs

(f) Credit shall not be given for repeat or multiple presentations of same seminar, publication, in-service, original paper or poster presentation during the renewal cycle.

(g) Field placement supervisors shall be granted credit for supervision of no more than two field placement students during the renewal cycle.

*History Note: Authority G.S. 90C-2; 90C-24(a)(3); Temporary Adoption Eff. December 1, 2005; Eff. January 1, 2007.*

**21 NCAC 65 .0602 RENEWAL REQUIREMENTS FOR LICENSED RECREATIONAL THERAPIST AND LICENSED RECREATIONAL THERAPY ASSISTANT**

(a) A renewal notice shall be mailed to the licensee 60 days prior to the expiration date at their last known address.

(b) Licenses issued shall be subject to renewal every two years upon completion of continuing education requirements as defined in Rule .0601.

(c) Each Licensee must complete and submit a renewal application package. All materials must be postmarked by December 15<sup>th</sup> of the year prior to the applicant's expiration date printed on their license. The renewal application package must be submitted to the Board and must be accompanied by the proper fees.

(d) Unless a person has advised the Board that he or she does not intend to renew the license, a renewal notification shall be sent to the person's last known home address.

*History Note: Authority G.S. 90C-2; 90C-24(a)(3); Eff. January 1, 2007.*

**21 NCAC 65 .0603 CHANGE OF ADDRESS REQUIREMENTS FOR LICENSED RECREATIONAL THERAPIST AND LICENSED RECREATIONAL THERAPY ASSISTANT**

Each licensee must notify the Board within 30 days of a change of name, work or home address. The licensee requesting a name change shall provide to the Board a copy of a current government issued identification and a copy of a marriage certificate, marriage license, divorce decree or evidence of legal change of name.

*History Note: Authority G.S. 90C-2; 90C-24(a)(3); 90C-29; Eff. January 1, 2007.*

**21 NCAC 65 .1001 INVESTIGATIONS OF SUSPECTED VIOLATIONS AND COMPLAINTS**

(a) It is the policy of the Board to investigate reports of suspected malpractice, violations of Chapter 90C, complaints, reports of discipline by an employer and sanctions imposed by a credentialing organization or a professional association to protect the health, safety and welfare of recreational therapy consumers.

(b) The Board may require information from the licensee regarding any disciplinary action taken by an employer or any sanctions issued to the licensee by a credentialing board or by a professional association. If this information indicates suspected malpractice or ethical violations the Board will investigate the

matter in the same manner as a complaint and may, if the facts indicate that malpractice or ethical violation has occurred, issue sanctions or otherwise discipline the licensee.

(c) A complaint regarding a violation of the G.S. 90C or Rules and Regulations must be submitted in writing and must document:

- (1) The name of the licensee or other person involved;
- (2) A description of the alleged behavior or incident; and
- (3) The name, mailing address, email address and phone number of the person filing the complaint.

(d) An incomplete complaint may be corrected and resubmitted.

(e) Action on a complaint, a report of a suspected violation of any provision of Chapter 90C, or a report of discipline by an employer or sanction by a credentialing organization or a professional association consists of the following:

- (1) The Board shall receive and acknowledge complaints, open a file and initiate complaint tracking.
- (2) Complaints will be screened to determine jurisdiction and the type of response appropriate for the complaint.
- (3) Investigation:
  - (A) If the facts do not clearly indicate a Chapter 90C violation, and the complaint can be handled without an investigation, the Board shall request that the licensee cease conduct that could result in a violation.
  - (B) If the facts clearly indicate a Chapter 90C violation, the Board shall initiate an investigation. The Board may utilize additional personnel such as licensees, law enforcement officials, or other technical personnel that may be required in a particular case. If a Board member is utilized in the investigation, care must be taken to observe due process by separating (1) investigation, (2) prosecution, and (3) hearings and final decision-making. No Board member shall participate in more than one of these three steps in the enforcement process.
  - (C) A confidential report of each investigation shall be prepared for the Board's review.
- (4) Formal and Informal Hearings:
  - (A) The Board, after review of an investigative file, may schedule an informal meeting.
  - (B) If the matter cannot be resolved informally, then a formal hearing shall be held.
  - (C) Members of the Board shall not have communication with parties outside of the hearing about the case.

(5) Final Orders: As soon as possible, but at least within 60 days, the Board will issue its final decision in writing specifying the date on which it will take effect. The Board will serve one copy of the decision to each party to the hearing.

(6) Compliance: The Board Chair will initiate a follow-up inquiry to determine that the orders of the Board are being obeyed.

(7) Formal hearings shall be conducted in accordance with G.S. 150B-38 et seq.

(f) The following disciplinary sanctions regarding recreational therapists and recreational therapy assistants may, among others, be utilized by the Board:

- (1) Denial of Application;
- (2) Letter of Reprimand;
- (3) Required remedial education;
- (4) Probation;
- (5) Suspension of license;
- (6) Refusal of License Renewal;
- (7) Revocation of license;
- (8) Injunction.

(g) The Board may request information from professional associations, professional review organizations, hospitals, clinics or other institutions in which a licensee performs professional services, on possible chemical abuse, or incompetent or unethical behavior.

(h) The Board will provide notice of sanction taken by it to other public entities as necessary to ensure that other state boards, enforcement authorities, and accrediting agencies receive the names of licensees disciplined.

*History Note: Authority G.S. 90-24(8); 90C-32; 90C-24(a)(3);*

*Temporary Adoption Eff. December 1, 2005;*

*Eff. January 1, 2007.*

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## TITLE 25 – OFFICE OF STATE PERSONNEL

### **25 NCAC 01C .1007 UNAVAILABILITY WHEN LEAVE IS EXHAUSTED**

(a) 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.

(b) Prior to separation, the employing agency shall notify the employee in writing, of the proposed separation, the efforts undertaken to avoid separation and why the efforts were unsuccessful.

(c) 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. 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. 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, that reasonable efforts were undertaken to avoid separation, and the reason the efforts were unsuccessful.

**(d) Definitions:**

- (1) Unavailability is defined as the employee's inability to return to all of the position's essential duties and work schedule due to a medical condition or the vagueness of a medical prognosis; or the employee and the agency cannot reach agreement on a return to work arrangement that meets both the needs of the agency and the employee's medical condition; and
- (2) Applicable leave credits is defined as the sick, vacation and bonus leave the employee chose to exhaust prior to going on leave without pay.

*History Note* Authority G.S. 126-4(7a); 126-35;  
*Eff. November 1, 1989;*  
*Recodified from 25 NCAC 01D .0519 Eff. December 29, 2003;*  
*Amended Eff. January 1, 2007; October 1, 2004.*

**25 NCAC 01D .0912 REDEPLOYMENT**

(a) A redeployment is the movement of an employee, without a break in service, from one position to another position within the same agency or the movement of an employee, or an employee and a position, from one agency to another when the move is due to an enterprise-wide project that results in the need to utilize an employee's competencies for greater effectiveness in another area of an agency or in another agency. The following shall apply:

- (1) The employee's salary rate shall not be reduced. When necessary, management may maintain the employee's current class by working the employee against the position; and
- (2) The redeployment of an employee is not a grievable issue under G.S.126-34.

(b) The receiving agency does not have to post a vacant position to accommodate a redeployment arrangement.

*History Note:* Authority 126-4;  
*Eff. January 1, 2007.*

**25 NCAC 01H .0602 POSTING AND ANNOUNCEMENT OF VACANCIES**

*History Note:* Authority G.S. 96-29; 126-4(4); 126-5(d); 126-7.1;  
*Eff. December 1, 1985;*  
*Temporary Amendment Eff. October 1, 1987, for a Period of 180 Days to Expire on March 28, 1988;*  
*ARRC Objection January 21, 1988;*  
*Curative Amended Eff. November 1, 1988;*  
*Amended Eff. August 1, 2000; August 3, 1992; June 1, 1992; March 1, 1990; November 1, 1989;*  
*Repealed Eff. February 1, 2007.*

**25 NCAC 01H .0604**

**APPLICANT INFORMATION AND APPLICATION SPECIAL APPLICANT CONSIDERATIONS: AGENCY RESPONSIBILITIES SELECTION OF APPLICANTS MINIMUM QUALIFICATIONS**

**25 NCAC 01H .0605**

**25 NCAC 01H .0606**

**25 NCAC 01H .0607**

*History Note:* Authority G.S. 96-29; 126-4(4); 128-15;  
*Temporary Amendment Eff. January 1, 1988 For a Period of 180 Days to Expire on June 28, 1988;*  
*Eff. December 1, 1985;*  
*Amended Eff. August 1, 2000; June 1, 1992; March 1, 1990; December 1, 1988; March 1, 1988; November 1, 1987;*  
*Repealed Eff. February 1, 2007.*

**25 NCAC 01H .0609 FINAL COMMITMENTS**

*History Note:* Authority G.S. 126-4(4);  
*Temporary Amendment Eff. January 1, 1988 For a Period of 180 Days to Expire on June 28, 1988;*  
*Eff. December 1, 1985;*  
*Amended Eff. March 1, 1988;*  
*Repealed Eff. February 1, 2007.*

**25 NCAC 01H .0611 PERIODS OF WAR**

*History Note:* Authority G.S. 126-4(4); 126-4(10); 128-15;  
*Eff. September 1, 1987;*  
*Repealed Eff. February 1, 2007.*

**25 NCAC 01H .0616**

**25 NCAC 01H .0617**

**AGENCY RESPONSIBILITY EMPLOYEE'S RESPONSIBILITY**

*History Note:* Authority P.L. 101-649; G.S. 126-4(4); 8 C.F.R. Parts 109 and 274a, 1987;  
*Eff. November 1, 1987;*  
*Amended Eff. August 3, 1992;*  
*Repealed Eff. February 1, 2007.*

**25 NCAC 01H .0620**

**25 NCAC 01H .0621**

**25 NCAC 01H .0622**

**VERIFICATION PROCEDURES AGENCY CERTIFICATION APPLICANT DISQUALIFICATION DISCIPLINARY ACTION DISMISSAL**

**25 NCAC 01H .0623**

**25 NCAC 01H .0624**

*History Note:* Authority G.S. 126-4; 126-30;  
*Temporary Adoption Eff. January 1, 1988 For a Period of 180 Days to Expire on June 28, 1988;*  
*Eff. March 1, 1988;*  
*Amended Eff. August 3, 1992; June 1, 1992; November 1, 1989; December 1, 1988; March 1, 1994;*  
*Repealed Eff. February 1, 2007.*

**25 NCAC 01H .0630**

**RECRUITMENT AND SELECTION POLICY**

(a) State government shall meet its workforce needs through systematic recruitment programs, selection programs, and career support programs that are designed to identify, attract, and select from the most qualified applicants for State employment, and to encourage diverse representation at all occupational levels of the workforce. The recruitment and selection process shall be consistently applied, non-discriminatory and promote open and fair competition and the hiring of a diverse workforce.

(b) While most positions are filled through systematic recruitment, it is recognized that some positions in State government are exempt from various provisions of the State Personnel Act because of the relationship between the position and the responsibility of elected or appointed officials expected to implement the public policy of the State. While these positions are exempt from various provisions of the State Personnel Act, they are subject to the following requirements:

- (1) If an individual applies for an exempt position, written notification that a position is exempt shall be given to the individual at the time the individual makes application for the exempt position. Written notification that the position is exempt may be contained in the vacancy announcement if the position is posted as exempt, or in a letter that either acknowledges acceptance of an application for an exempt position or contains an offer of employment for an exempt position or a notification that the position is exempt;
- (2) In addition, written notification that a position is exempt shall be given to an employee placed in an exempt position not less than 10 working days prior to the employee's first day in the exempt position; and
- (3) If an employee occupies a subject position that is subsequently designated as exempt, the agency shall provide written notification to the employee that the position has been designated exempt. The exemption shall apply to the employee 10 working days after receiving written notification.

*History Note:* Authority G.S. 126-4(4)(10);  
Eff. February 1, 2007.

**25 NCAC 01H .0632 APPLICANT INFORMATION AND APPLICATION**

Applicants applying for a state vacancy shall complete and submit a State Application Form (Form PD-107 or its equivalent) to the hiring authority. In completing an Application Form, persons subject to registration under the Military Selective Service Act (50 United States Code, Appx Section 453) shall certify compliance with such registration requirements to be eligible for State employment, as required by G.S. 143B-421.1. The knowing and willful failure of a subject person to certify compliance when submitting an application for consideration, or to falsely certify compliance, may be grounds for dismissal from employment.

*History Note:* Authority G.S. 96-29; 126-4(4);

*Eff. February 1, 2007.*

**25 NCAC 01H .0633 SPECIAL APPLICANT CONSIDERATIONS AND EMPLOYMENT OF RELATIVES**

(a) Priority consideration shall be given to:

- (1) Employees with career status who have received written notification of imminent separation due to reduction in force;
- (2) Eligible employees who have been removed from exempt positions, for reasons other than cause;
- (3) Eligible employees who have been removed from an exempt managerial position for a violation of G.S. 126-14.2;
- (4) Employees returning from workers' compensation leave;
- (5) Career State employees seeking promotions; and
- (6) Eligible veterans.

(b) Members of an immediate family shall not be employed within the same agency if such employment will result in one member supervising another member of the employee's immediate family, or if one member will occupy a position which has influence over another member's employment, promotion, salary administration or other related management or personnel considerations. This includes employment on a permanent, temporary or contractual basis. The term immediate family includes wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson and granddaughter. Also included is the step-, half- and in-law relationships based on the listing in this Paragraph. It also includes other people living in the same household, who share a relationship comparable to immediate family members, if either occupies a position which requires influence over the other's employment, promotion, salary administration or other related management or personnel considerations.

*History Note:* Authority G.S. 126-4(4); 128-15;  
Eff. February 1, 2007.

**25 NCAC 01H .0634 SELECTION OF APPLICANTS**

(a) All agencies shall select from the pool of the most qualified persons to fill vacant positions. Employment shall be offered based upon the job-related qualifications of applicants for employment using fair and valid selection criteria and not on political affiliation or political influence. For purposes of this rule, "political influence" occurs when political affiliation impacts the decision to hire or not to hire and the selection decision was not based on fair and valid selection criteria.

(b) Each agency shall develop and maintain a written Recruitment and Selection Plan according to guidelines provided by the Office of State Personnel. The Recruitment and Selection Plan shall provide assurances to employees and applicants that the recruitment and selection process shall be based on fair and valid selection criteria. Agency plans shall be reviewed by the Office of State Personnel and approved by the State Personnel Commission consistent with G.S. 126-14.3 and the rules in this Section. Any changes to agency plans shall also be submitted to



the Office of State Personnel for review and approval according to these Rules.

(c) Using fair and valid selection criteria, the agency shall review the credentials of each applicant in order to determine who possesses the minimum qualifications as defined in 25 NCAC 01H .0635 including selective criteria. Selective criteria are defined as additional minimum qualifications identified by the agency. From those applicants who meet the minimum qualifications, a pool of the most qualified candidates shall be identified. The pool of most qualified candidates shall be those individuals determined to be substantially more qualified than other applicants. The individual selected for the position shall be from among the most qualified applicants.

(d) Selection procedures and methods shall be validly related to the duties and responsibilities of the vacancy to be filled.

(e) The agency shall provide timely written notice of non-selection to all unsuccessful candidates in the most qualified pool.

*History Note: Authority G.S. 126-4(4); Eff. February 1, 2007.*

**25 NCAC 01H .0636 EMPLOYMENT OF ALIENS**

(a) The Immigration Reform and Control Act (IRCA) of 1986 requires that all U.S. employees be either United States citizens or aliens with proper work authorization from the Bureau of U.S. Citizenship and Immigration Services.

(b) All State agencies shall, no later than the third working day after the hire, verify the employment eligibility of all employees hired after November 6, 1986. Verification must establish both identity and employment authorization and shall follow the requirements of the IRCA.

*History Note: Authority P.L. 101-649; G.S. 126-4(4); 8 C.F.R. Parts 109 and 274a, 1987; Eff. February 1, 2007.*

**25 NCAC 01H .0637 CREDENTIALS VERIFICATION PROCEDURES**

In accordance with G.S. 126-30, for each new employee, agencies shall verify information on applications for State employment that is significantly related to the particular job responsibilities or is used to qualify or set the employee's salary, as determined by the agency. Agencies shall be responsible for obtaining written verification of applicants' post-secondary dates of enrollment, degrees awarded, professional licenses, professional registrations and professional certifications.

*History Note: Authority G.S. 126-4; 126-30; Eff. February 1, 2007.*

**25 NCAC 01H .0638 APPLICANT DISQUALIFICATION BECAUSE OF FALSE OR MISLEADING INFORMATION ON STATE APPLICATION**

When an agency discovers prior to employment that an applicant provided false or misleading information on a State application or its equivalent in order to meet position qualifications, the

applicant shall be disqualified from consideration for the position in question.

*History Note: Authority G.S. 126-4; 126-30; Eff. February 1, 2007.*

**25 NCAC 01H .0639 DISCIPLINARY ACTION BECAUSE OF FALSE OR MISLEADING INFORMATION ON STATE APPLICATION**

When an agency discovers, after employment, that an employee provided false or misleading information on a State application, or its equivalent, or concealed employment history or other required information significantly related to job responsibilities, but not used to meet minimum qualifications, disciplinary action is required and shall be administered in accordance with the following criteria:

- (1) Disciplinary action, up to and including dismissal, shall be taken.
- (2) The agency head's decision, while discretionary, shall consider: the effect of the false, misleading or concealed information on the hiring decision, the advantage gained by the employee over other applicants, the effect of the false information on the starting salary, and the advantage gained by employee in subsequent promotion and salary increases; and
- (3) Job performance shall not be considered in such cases, nor can decisions be made on the basis of race, creed, color, religion, national origin, sex, age, disability or political affiliation.

*History Note: Authority G.S. 126-4; 126-30; Eff. February 1, 2007.*

**25 NCAC 01H .0640 DISMISSAL BECAUSE OF FALSE OR MISLEADING INFORMATION ON STATE APPLICATION**

When an agency discovers that an employee was selected based on false or misleading work experience, education, registration, licensure or certification information on the State application, or its equivalent, in order to meet position qualifications, the employee shall be dismissed, regardless of length of service.

*History Note: Authority G.S. 126-4; 126-30; Eff. February 1, 2007.*

**25 NCAC 01H .0701 GENERAL PROVISIONS**

(a) It is recognized that certain applicants for positions of State employment may receive a priority over other applicants for the position. Priority consideration in certain situations may be accorded to the following applicants:

- (1) Career State employees applying for a position that is a higher salary grade (or salary grade equivalency) as provided in 25 NCAC 01H .0800;

- (2) Career State employees who have received written notification of imminent separation due to a reduction in force;
- (3) Eligible employees in positions which are designated as exempt policymaking and who have less than 10 years of cumulative State service in subject positions as provided in 25 NCAC 01H .1000;
- (4) Eligible employees in positions which are designated as exempt managerial and who have less than 10 years of cumulative State service in subject positions and who have been removed from the exempt position for reasons other than cause but not because the employee's selection violated G.S. 126-14.2, as provided in 25 NCAC 01H .1000;
- (5) Eligible employees in positions which are designated as exempt managerial and who have less than 10 years of cumulative State service and who have been removed from the exempt managerial position because the employee's selection violated G.S. 126-14.2, as provided in 25 NCAC 01H .1000; and
- (6) Eligible veterans applying for an initial position in State government, as provided in 25 NCAC 01H .1100.

(b) The priority consideration listed in Subparagraph (a)(6) of this Rule may only be asserted against substantially equal or less qualified non-veteran outside applicants or other State employees who do not fall into any of the categories listed in Subparagraphs (a)(1) – (a)(5) of this Rule.

(c) The priority consideration listed in Subparagraphs (a)(3), (a)(4) and (a)(5) of this Rule may be defeated by an employee with the priority listed in Subparagraph (a)(2) of this Rule or by a current State employee who has greater cumulative State service in positions subject to the State Personnel Act. The selected applicant must meet the minimum qualifications, including training, experience, competencies and knowledge, skills and abilities.

*History Note: G.S. 126-4;  
Eff. February 1, 2007.*

**25 NCAC 01H .0801 PROMOTIONAL PRIORITY CONSIDERATION FOR CURRENT EMPLOYEES**

(a) Promotional priority consideration shall be provided when a career State employee, as defined in G.S. 126-1.1, applies for a position that is a higher salary grade (salary grade equivalency) or has a higher statewide journey market rate and the eligible employee is in competition with outside applicants.

(b) If it is determined that an eligible employee and an outside applicant have "substantially equal qualifications," then the eligible employee must receive the job offer over an outside applicant.

(c) "Substantially equal qualifications" occur when the employer cannot make a reasonable determination that the job-related qualifications held by one applicant are significantly better suited for the position than the job-related qualifications held by another applicant.

(d) For purposes of this Rule, an outside applicant is any applicant who is not a member of the State government workforce as defined in 25 NCAC 01H .0631(c).

*History Note: Authority G.S. 126-1A; 126-4; 126-7.1;  
Temporary Adoption Eff. October 1, 1987, for a Period of 180 Days to Expire on March 28, 1988;  
ARRC Objection January 21, 1988;  
Curative Eff. November 1, 1988;  
Amended Eff. March 1, 1994;  
Recodified from 25 NCAC 01H .0625 Eff. December 29, 2003;  
Amended Eff. February 1, 2007.*

**25 NCAC 01H .0802 RELATIONSHIP TO OTHER EMPLOYMENT PRIORITY CONSIDERATIONS**

(a) Eligible exempt employees with priority consideration and employees with reduction-in-force priority status are not considered outside applicants for the purpose of promotional priority.

(b) Providing equal employment opportunity requires that hiring authorities act affirmatively in minimizing or eliminating underrepresentations of women, minorities and persons with disabilities throughout all levels of the State's workforce. Therefore, when promotional opportunities exist in occupational categories where there is an established underrepresentation of minorities, women, and persons with disabilities, and the selection decision will be made from among applicants in the existing State workforce, hiring authorities shall consider and support these equal employment opportunity needs. Affirmative recruitment efforts shall be taken, both internally and externally, to optimize the presence of the most qualified persons from the underrepresented categories in the applicant pool.

*History Note: Authority G.S. 126-4; 126-7.1; 126-16;  
Temporary Adoption Eff. October 1, 1987, for a Period of 180 Days to Expire on March 28, 1988;  
Eff. March 1, 1988;  
Amended Eff. June 1, 1992;  
Recodified from 25 NCAC 01H .0626 Eff. December 29, 2003;  
Amended Eff. February 1, 2007.*

**25 NCAC 01H .0901 POLICY AND SCOPE**

(a) The rules in this Section apply to employees notified of or separated due to a reduction in force.

(b) Priority consideration shall be provided to career State employees who have received written notification of imminent separation due to reduction in force. An employee who is separated from a time-limited appointment is not eligible for priority consideration unless the appointment extends beyond three years.

(c) A career State employee, as defined in G.S. 126-1.1, with priority consideration who has reason to believe priority consideration was denied in a selection decision may appeal directly to the State Personnel Commission through the established contested hearing process in accordance with G.S. 126-34.1(a)(5).

*History Note: Authority G.S. 126-1A; 126-5(c)(2); 126-5(d)(1); 126-7.1;*

*Eff. March 1, 1987;  
Amended Eff. December 1, 1995; March 1, 1994; June 1, 1992;  
March 1, 1991;  
Recodified from 25 NCAC 01D .0510 Eff. December 29, 2003;  
Amended Eff. February 1, 2007.*

**25 NCAC 01H .0902 REQUIREMENTS FOR  
REDUCTION-IN-FORCE PRIORITY CONSIDERATION**

Upon written notification of imminent separation through reduction in force (RIF), an employee shall receive priority consideration for a period of 12 months pursuant to G.S. 126-7.1(c1). The following conditions apply:

- (1) If the applicants for reemployment for a position include State employees currently possessing priority consideration as a result of RIF, a RIF employee with more than 10 years of service shall receive priority consideration over a RIF employee having less than 10 years of service in the same or related position classification;
- (2) For employees receiving notification of separation from trainee or flat rate positions, the salary grade for which priority is to be afforded shall be determined as follows: For employees in flat rate positions, the salary grade shall be the grade which has as its maximum a rate nearest to the flat rate salary of the eligible employee. For eligible employees in trainee status, the salary grade shall be the salary grade of the full class;
- (3) An employee notified of imminent separation through reduction in force while actively possessing priority consideration from a previous reduction in force shall retain the initial priority for the remainder of the 12-month priority period. A new priority consideration period shall then be afforded at the salary grade (or salary grade equivalency), salary rate and appointment status of the position held at the most recent notification of separation;
- (4) An employee who, after receiving formal notice of impending reduction in force, retires or applies for retirement prior to the separation date waives the right to priority consideration. An employee who applies for retirement after being separated through reduction in force may exercise priority consideration;
- (5) Priority consideration is intended to provide employment at an equal appointment status to that held at the time of notification. Acceptance of a position at a lower appointment status shall not affect priority. Employees notified of separation from permanent full-time positions shall have priority consideration to permanent full-time and permanent part-time positions. Employees notified of separation from permanent part-time positions shall have priority

consideration to permanent part-time positions only;

- (6) Employees who have priority status at the time of application for a vacant position, and who apply during the designated agency recruitment period, shall be continued as priority applicants until the selection process is complete;
- (7) An employee with priority status may not decline interviews or offers for positions within 35 miles of the employee's original work station without losing priority and any remaining severance salary continuation, if the position is at an appointment status, salary grade (or salary grade equivalency), and salary rate equal to or greater than that held at the time of notification;
- (8) An employee with priority status may accept a temporary position at any level and retain priority consideration and severance salary continuation. An employee receiving severance salary continuation shall not be employed under a contractual arrangement in any State agency, other than State universities and community colleges, until 12 months have elapsed since the separation as provided by G.S. 143-27.2;
- (9) When priority has been granted for a lower salary grade (or salary grade equivalency) or salary rate than that held at the time of notification, the employee retains priority for higher salary grades (or salary grade equivalencies) and salary rate up to and including that held at the time of the notification of separation;
- (10) An employee with priority consideration may accept employment outside State government or in a State position not subject to the State Personnel Act and retain such consideration through the 12-month priority period;
- (11) Priority consideration is terminated when an eligible employee:
  - (a) refuses an interview or offer for a position within 35 miles of the employee's original workstation if the position is at an appointment status and salary grade (or salary grade equivalency) and salary rate equal to or greater than that held at the time of notification;
  - (b) accepts a position equal to or greater than the salary grade (or salary grade equivalency), salary rate and appointment status of the position held at the time of notification; or
  - (c) has received 12 months priority consideration;

- (12) Priority consideration for employees notified of or separated through reduction in force does not include priority to any exempt positions;
- (13) When an employee with priority status accepts a position at a lower salary grade (or salary grade equivalency) or salary rate and is subsequently terminated by disciplinary action, any remaining priority consideration ceases; and
- (14) An employee with priority status may be required to serve a new probationary period only when:
  - (a) the essential duties and responsibilities of the position into which the employee is being reemployed are significantly different from those of the position held at the time of reduction-in-force notification;
  - (b) the prior, documented performance history of the employee indicates performance failings; or
  - (c) the prior, documented unacceptable personal conduct of the employee would make a probationary period a prudent protection of agency interests.

A decision by an agency to require a new probationary period shall not, however, nullify the employee's right to a future period of priority reemployment status should that employee receive reduction-in-force notification again while serving in probationary status.

*History Note:* Authority G.S. 126-4(6),(10);  
*Eff. March 1, 1987;*  
*Amended Eff. December 1, 1995; April 1, 1993; June 1, 1992;*  
*January 1, 1990;*  
*Recodified from 25 NCAC 01D .0511 Eff. December 29, 2003;*  
*Amended Eff. February 1, 2007.*

**25 NCAC 01H .0903 REEMPLOYMENT AFTER  
 PRORIOITY EXPIRATION**

*History Note:* Authority G.S. 126-4(6),(10);  
*Eff. March 1, 1987;*  
*Recodified from 25 NCAC 01D .0514 Eff. December 29, 2003;*  
*Repealed Eff. February 1, 2007.*

**25 NCAC 01H .0904 AGENCY AND EMPLOYEE  
 RESPONSIBILITIES**

- (a) The employing agency shall notify the employee of impending separation as soon as possible in accordance with G.S. 126-7.1(a1), and inform the employee of the priority consideration to be afforded. An employee shall file a completed state application with the employee's agency within 30 days of receipt of written notification of separation. It is the agency's responsibility to submit such an employee's completed

state application to the Office of State Personnel. If the employee does not want assistance in finding another State job, the agency shall obtain a written statement from the employee to that effect, and provide a copy to the Office of State Personnel.

- (b) The agency shall notify the Office of State Personnel when:
  - (1) an eligible employee accepts a position that satisfies the priority, consideration;
  - (2) an employee with priority status due to reduction in force is offered a lateral transfer or promotion and refuses, unless the position offered is more than 35 miles from the employee's original workstation; or
  - (3) other conditions that would satisfy or terminate an eligible employee's priority consideration are discovered.

*History Note:* Authority G.S. 126-4(6),(10);  
*Eff. March 1, 1987;*  
*Amended Eff. December 1, 1995; June 1, 1992; November 1, 1988;*  
*Recodified from 25 NCAC 01D .0515 Eff. December 29, 2003;*  
*Amended Eff. February 1, 2007.*

**25 NCAC 01H .0905 OFFICE OF STATE  
 PERSONNEL RESPONSIBILITIES**

- (a) The Office of State Personnel shall provide a priority referral system such that priority consideration may be granted.
- (b) The Office of State Personnel shall also provide outplacement assistance to separated employees who wish to seek employment in the private sector. Such assistance includes resumé preparation, personal marketing, and interview skills, along with Employment Security Commission coordination for placement referral.

*History Note:* Authority G.S. 126-4(6),(10);  
*Eff. March 1, 1987;*  
*Recodified from 25 NCAC 01D .0516 Eff. December 29, 2003;*  
*Amended Eff. February 1, 2007.*

**25 NCAC 01H .1002 CUMULATIVE STATE SERVICE**

*History Note:* Authority G.S. 126-4(6),(10);  
*Eff. March 1, 1987;*  
*Recodified from 25 NCAC 01D .0513 Eff. December 29, 2003;*  
*Repealed Eff. February 1, 2007.*

**25 NCAC 01H .1003 AGENCY AND EMPLOYEE  
 RESPONSIBILITIES**

- (a) The employing agency shall inform the employee of the priority consideration to be afforded. To receive the advantage of the statutory priority, an employee must file a completed state application with the employee's agency within 30 days of separation. It is the agency's responsibility to submit such an employee's completed state application to the Office of State Personnel immediately. If the employee does not want assistance in finding another State job, the agency shall obtain a written statement from the employee to that effect, and provide a copy to the Office of State Personnel.
- (b) The Agency shall notify the Office of State Personnel when:

- (1) an eligible employee accepts a position that satisfies the priority consideration, or
- (2) an eligible employee separated from a position designated as exempt exercises priority and then refuses an employment offer, or
- (3) other conditions that would satisfy or terminate an eligible employee's priority consideration are discovered.

*History Note:* Authority G.S. 126-4(6),(10);  
Eff. February 1, 2007.

**25 NCAC 01H .1004 OFFICE OF STATE  
PERSONNEL RESPONSIBILITIES**

The Office of State Personnel shall provide a priority referral system such that priority consideration may be granted.

*History Note:* Authority G.S. 126-4(6),(10);  
Eff. February 1, 2007.

**25 NCAC 01H .1005 MANDATORY RIGHT TO A  
POSITION**

(a) A State employee removed from an exempt policymaking position for reasons other than cause with 10 or more years of cumulative service in subject positions, including the immediately preceding 12 months prior to placement in the exempt policymaking position, shall be reassigned to a subject position within the same agency, or if necessary within another agency, at the same salary grade (or salary grade equivalency) and salary rate as their most recent subject position, including all across-the-board legislative increases since placement in the position designated as exempt policymaking. The reassignment must be within a 35-mile radius of the exempt position from which separated. If an employee is offered a reassignment that meets these criteria and refuses to accept, the mandatory right to a position is terminated.

(b) A State employee removed from an exempt managerial position for reasons other than cause, but not because the employee's selection violated G.S. 126-14.2, with 10 or more years of cumulative service in subject positions, including the immediately preceding 12 months prior to placement in the exempt managerial position, shall be reassigned to a subject position within the same agency, or if necessary within another agency, at the same salary grade (or salary grade equivalency) and salary rate as their most recent subject position, including all across-the-board legislative increases since placement in the position designated as exempt managerial. The reassignment must be within a 35-mile radius of the exempt managerial position from which separated. If an employee is offered a reassignment that meets these criteria and refuses to accept, the mandatory right to a position is terminated.

(c) A career State employee removed from an exempt managerial position because the employee's selection violated G.S. 126-14.2 with 10 or more years service shall be placed in a comparable position at the same salary grade (or salary grade equivalency) and salary equal to that held in the most recent position.

(d) If an employee does not receive notice as described in 25 NCAC 01H .0630(b), the employee remains subject to the State

Personnel Act until 10 working days after the employee receives written notification of the exempt status. If the employee is removed from the position designated as exempt, the employee shall be placed in a position at the same salary grade (or salary grade equivalency) and salary equal to that held in the most recent subject position.

*History Note:* Authority G.S. 126-1.1; 126-5;  
Eff. February 1, 2007.

**25 NCAC 01H .1101 VETERANS' PREFERENCE  
POLICY STATEMENT**

Eligible veterans shall be granted preference in employment with every state agency in accordance with Article 13 of G.S. 126.

*History Note:* Authority G.S. 126-4(4); 128-15;  
Eff. September 1, 1987;  
Recodified from 25 NCAC 01H .0610 Eff. October 5, 2004;  
Amended Eff. February 1, 2007.

**25 NCAC 01H .1102 CLAIMING VETERANS'  
PREFERENCE**

In order to claim veterans' preference, all eligible persons shall submit a State Application for Employment (PD-107 or its equivalent) to the appointing authority. Appointing authorities are responsible for verifying eligibility and may request additional documentation as is necessary to ascertain eligibility. Eligible veterans shall meet the minimum qualifications, as defined in 25 NCAC 01H .0635, for the position.

*History Note:* Authority G.S. 126-4(4); 126-4(10); 128-15;  
Eff. September 1, 1987;  
Recodified from 25 NCAC 01H .0612 Eff. October, 5, 2004;  
Amended Eff. February 1, 2007.

**25 NCAC 01H .1103 ALLEGATION OF DENIAL OF  
VETERANS' PREFERENCE**

Any claim or allegation that veterans' preference has not been accorded to an eligible veteran shall be filed with the State Personnel Commission through the established contested case procedures of the Office of Administrative Hearings. Such claims shall be filed in a manner consistent with the requirements of G.S. 150B-23 and G.S. 126-38. Such claims shall be heard as contested cases pursuant to G.S. 150B, Article 3. The State Personnel Commission may, upon a finding that veterans' preference was denied in violation of these Rules, order the hiring or reinstatement of any affected person, as well as any other remedy necessary to correct the violation.

*History Note:* Authority G.S. 126-4(10); 126-4(11); 126-34.1(b)(4); 126-37; 126-38; 150B-2(2); 150B, Article 3;  
Eff. September 1, 1987;  
Recodified from 25 NCAC 01H .0613 Eff. October 5, 2004;  
Amended Eff. February 1, 2007.

**21 NCAC 01H .1104 APPLICATION OF THE  
VETERANS' PREFERENCE**

- (a) The preference to be accorded eligible veterans shall apply in initial selection and reduction in force situations only.
- (b) In initial selection procedures, where numerically scored examinations are used in determining the relative ranking of candidates, 10 points shall be awarded to eligible veterans.
- (c) In initial selection, where structured interview, assessment center, in-basket, or any other procedure, not numerically scored, is used to qualitatively assess the relative ranking of candidates, the veteran who has met the minimum qualification requirements for the vacancy, and who has less than four years of related military experience beyond that necessary to minimally qualify, shall also receive additional experience credit for up to four years of unrelated military service.
- (d) The amount of additional experience credit to be granted for unrelated military service in individual cases shall be determined as follows. First, determine the amount of related military service possessed by the eligible veteran beyond that required to meet the minimum qualifications. If the total of such experience equals or exceeds four years, the additional credit for unrelated military service does not apply. If the total of such experience is less than four years, the veteran shall receive direct experience credit for unrelated military service in an amount not to exceed the difference between the eligible veteran's related military service and the four-year maximum credit that may be granted.
- (e) After applying the preference, the qualified veteran shall be hired when the veteran's overall qualifications are substantially equal to the non-veterans in the applicant pool as provided in 25 NCAC 01H .0701(b). Substantially equal qualifications occur when the employing agency cannot make a reasonable determination that the qualifications held by one or more applicants are significantly better suited for the position than the qualifications held by another applicant.
- (f) In reduction-in-force situations, when calculating length of service, the eligible veteran shall be accorded one year of State service for each year or fraction thereof of military service, up to a maximum of five years credit.
- (g) Spouses of disabled veterans, the surviving spouse or dependent of a veteran who died on active duty during periods of war either directly or indirectly as a result of such service, the spouses of veterans who suffer disabling injuries through service-related reasons during peacetime, and the surviving spouse or dependent of a veteran who died through service-related reasons during peacetime shall be eligible for preference in state employment if the spouse meets the minimum qualifications. The spouse or dependent shall not receive additional experience credit for the veteran's unrelated military service. The preference to be given is that the qualified spouse or dependent shall be hired when the spouse or dependent's overall qualifications are substantially equal to the non-veterans in the applicant pool. The spouse, surviving spouse or surviving dependent of that veteran may claim such employment preference without regard to whether such preference has been claimed previously by the veteran.

*History Note: Authority G.S. 126-4(4); 126-4(10); 128-15; ARRC Objection July 16, 1987; Eff. December 1, 1987; ARRC Objection Removed Eff. March 16, 1989; Recodified from 25 NCAC 01H .0614 Eff. October 5, 2004;*

*Amended Eff. February 1, 2007.*

## **25 NCAC 01H .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 are not 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 01H.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; and

- (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. Prior to separation the employing agency shall notify the employee in writing of the proposed separation, the efforts undertaken to avoid separation and why the efforts were unsuccessful. 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. 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. 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, that reasonable efforts were undertaken to avoid separation, and the reason the efforts were unsuccessful.

- (6) Definitions:

- (a) Unavailability is defined as the employee's inability to return to all of the position's essential duties and work schedule due to a medical condition or the vagueness of a medical prognosis; or the employee and the agency cannot reach agreement on a return to work arrangement that meets both the needs of the agency and the employee's medical condition; and
- (b) Applicable leave credits is defined as the sick, vacation and bonus leave the employee chose to exhaust prior to going on leave without pay.

*History Note: Authority G.S. 126-4; Eff. August 3, 1992; Amended Eff. January 1, 2007; September 1, 2004; December 1, 1994.*

*This Section contains information for the meeting of the Rules Review Commission on Thursday February 15, 2007, 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 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  
John B. Lewis  
Mary Beach Shuping  
Judson A. Welborn  
John Tart

**RULES REVIEW COMMISSION MEETING DATES**

February 15, 2007      March 15, 2007  
April 19, 2007      May 17, 2007

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Note: The following minutes have not yet been approved as final by the RRC and are subject to change until they are approved. They will be reviewed, corrected if necessary, and approved at the next monthly meeting of the RRC. If you have any questions or corrections concerning the minutes or action taken by the RRC please contact: Lisa Johnson at 919-733-3962, Joe DeLuca at 919-715-8655, or Bobby Bryan at 919-733-0928.

**RULES REVIEW COMMISSION  
JANUARY 18, 2007  
MINUTES**

The Rules Review Commission met on Thursday, January 18, 2007, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Jeff Gray, Jennie Hayman, Thomas Hilliard, John Lewis, Robert Saunders, John Tart, and Judson Welborn.

Staff members present were: Joseph DeLuca, Staff Counsel; Bobby Bryan, Rules Review Specialist; Lisa Johnson and Barbara Townsend, Administrative Assistants.

The following people attended the meeting:

Marjorie Morris	Division of Medical Assistance
Susan Ryan	Division of Medical Assistance
Andy Wilson	Division of Medical Assistance
Don Warner	Department of Insurance
Frank Johns	NC Bar Elder Law Section
Sam Clark	Health Care Facilities Association
Angela Floyd	Division of Medical Assistance
Jeff Warren	Division of Coastal Management
Mike Lopazanski	Division of Coastal Management
Bill Wilson	AARP
Mary Bethel	AARP
John Hoomani	Department of Labor
Peggy Oliver	Office of State Personnel
Belinda Smith	Department of Justice
Ann Wall	Secretary of State
Ellie Sprenkel	Department of Insurance
Denise Stanford	Attorney/Pharmacy Board
Bob Blum	Attorney General's Office
David McLeod	Department of Agriculture



Curtis Venable  
Molly Masich  
Mark Benton

Pisgah Legal Services  
Office of Administrative Hearings  
DHHS/DMA Senior Deputy Director

## **APPROVAL OF MINUTES**

The meeting was called to order at 10:20 a.m. with Chairman Hayman presiding. Chairman Hayman informed the Commissioners and those attending the meeting that it had come to the Rules Review Commission's attention that the Methodist Building follows the Wake County School System's closing or delay schedule. Since we would be unable to be certain that the RRC would have access to the meeting room during inclement weather, in the future the RRC will follow the same schedule. She asked agency members present to inform others who were not in attendance of this change.

Chairman Hayman also reminded the Commission that all members have a duty to avoid conflicts of interest and appearances of conflict. Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the December 14, 2006 meeting. The minutes were approved as written.

## **FOLLOW-UP MATTERS**

Residential Code R 322.1; .4502: Building Code Council - The Commission approved the rewritten rules submitted by the agency.

15A NCAC 7H .0312: Coastal Resources Commission - The Commission approved the rewritten rule submitted by the agency.

21 NCAC 57A .0201; 57B .0102 - .0103: Appraisal Board - Based on further arguments contained in a written response from the Board's attorney and further review and recommendation by the RRC reviewing attorney, the Commission rescinded its objection and approved these rules as submitted (with technical changes).

23 NCAC 3A .0113: Board of Community Colleges - No action was taken. It is anticipated that the objection to this rule will be considered at the next meeting of the Board.

25 NCAC 1H .0631; .0635: State Personnel Commission - No action was taken. It is anticipated that these rules will be considered at the next meeting of the State Personnel Commission.

## **LOG OF FILINGS**

Chairman Hayman presided over the review of the log of permanent rules. All rules were approved unanimously with the following exceptions:

18 NCAC 7A .0101; .0202; .0204-.0208; .0301-.0303: Secretary of State - These rules were withdrawn by the agency and refiled for review next month.

18A NCAC 7B .0101-.0107; .0201; .0301-.0302; .0401-.0403; .0501-.0505; .0901-.0907; .1001: Secretary of State - These rules were withdrawn by the agency and refiled for review next month.

21 NCAC 32T .0101: Medical Board - Prior to the review of the Medical Board's rules by the RRC, Commissioners Lewis and Saunders recused themselves and did not participate in any discussion or vote concerning these rules. The Commission objected to the rule due to ambiguity. In (b)(1)(C), it is not clear when the Pharmacy Board will supply a written endorsement. This objection applies to existing language in the rule.

21 NCAC 46 .1601: Board of Pharmacy - Prior to the review of the Board of Pharmacy rules by the RRC, Commissioner Saunders recused himself and did not participate in any discussion or vote concerning these rules. The Commission objected to the rule due to ambiguity. In (d)(2), it is not clear what type supporting documentation will be requested by the board.

21 NCAC 46 .1608: Board of Pharmacy - The Commission objected to the rule due to ambiguity. The meaning of (a)(3)(A) is unclear. It appears to say that to receive a permit, a place that dispenses devices and medical equipment, and dispenses oxygen must maintain 24 hours backup of oxygen in some patient's home. It is not clear who this patient is, nor how the permittee is supposed to control what he keeps in his house.

21 NCAC 46 .2613: Board of Pharmacy - The Commission objected to the rule due to ambiguity. It is not clear what this rule requires. It is not clear what is meant by "current prescriptions patient specific label". For example, what would this require of a

business that sells wheelchairs and maintains an inventory? In the second sentence, it is not clear what is meant by “receive prescription drugs”.

21 NCAC 46 .3101: Board of Pharmacy - The Commission objected to the rule due to ambiguity. In (b)(1)(C), it is not clear when the Pharmacy Board will supply a written endorsement. This objection applies to existing language in the rule.

#### **TEMPORARY RULES**

10A NCAC 21B .0314: Division of Medical Assistance - When it became apparent that Sam Clark, one of the opponents to this rule, represented a client of Chairman Hayman’s husband’s law firm she recused herself from any further participation, discussion, or vote concerning the DMA temporary rule. Commissioner Gray presided over the further review, discussion, and vote concerning the temporary rule. The Commission found that the findings of need for the rule do not meet the criteria for a temporary rule listed in G.S. 150B-21.1(a) because it has not been shown that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest. Frank Johns, Curtis Venable, Sam Clark and Mary Bethel spoke in opposition to the rule. Belinda Smith from the Attorney General’s Office represented the agency on behalf of the rule. Mark Benton from the Department also answered questions from the commission concerning the rule.

Ms. Hayman returned to chair the remainder of the meeting.

#### **STATE MEDICAL FACILITIES PLAN**

The 2007 State Medical Facilities Plan was approved.

#### **COMMISSION PROCEDURES AND OTHER BUSINESS**

Commissioner Hayman requested that the discussion of the Commissions rules, policies and procedures be discussed at a later meeting.

The meeting adjourned at 1:13 p.m.

The next scheduled meeting of the Commission is Thursday, February 15, 2007 at 10:00 a.m.

Respectfully submitted,  
Lisa Johnson

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#### **LIST OF APPROVED PERMANENT RULES January 18, 2007 Meeting**

##### **AGRICULTURE, BOARD OF**

Admission Regulations

02 NCAC 20B .0104

##### **BUILDING CODE COUNCIL**

2006 Residential Code Item B-2

11 NCAC 08

##### **HOME INSPECTOR LICENSURE BOARD**

Definitions

11 NCAC 08 .1101

Purpose and Scope

11 NCAC 08 .1103

General Exclusions

11 NCAC 08 .1105

Exterior

11 NCAC 08 .1107

Plumbing

11 NCAC 08 .1109

Electrical

11 NCAC 08 .1110

<u>Heating</u>	11	<u>NCAC 08</u>	<u>.1111</u>
<u>Air conditioning</u>	11	<u>NCAC 08</u>	<u>.1112</u>
<u>Interiors</u>	11	<u>NCAC 08</u>	<u>.1113</u>
<u>Insultion and Ventilation</u>	11	<u>NCAC 08</u>	<u>.1114</u>

**CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION**

<u>Required Annual In-Service Training Topics</u>	12	<u>NCAC 09E</u>	<u>.0102</u>
<u>Minimum training Specifications: Annual In-Service Training</u>	12	<u>NCAC 09E</u>	<u>.0105</u>
<u>Sanctions</u>	12	<u>NCAC 09F</u>	<u>.0106</u>

**LABOR, DEPARTMENT OF**

<u>Fall Protection</u>	13	<u>NCAC 07F</u>	<u>.0605</u>
<u>Definitions</u>	13	<u>NCAC 20</u>	<u>.0101</u>
<u>Current Employees</u>	13	<u>NCAC 20</u>	<u>.0302</u>
<u>Prospective Employees</u>	13	<u>NCAC 20</u>	<u>.0303</u>

**COASTAL RESOURCES COMMISSION**

<u>Technical Standards for Beach Fill Projects</u>	15A	<u>NCAC 07H</u>	<u>.0312</u>
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**EDUCATION, STATE BOARD OF**

<u>Dispute Resolution Process for Homeless Students</u>	16	<u>NCAC 06H</u>	<u>.0112</u>
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**MEDICAL BOARD**

<u>Declaratory Ruling</u>	21	<u>NCAC 32A</u>	<u>.0107</u>
<u>Request for Declaratory Ruling</u>	21	<u>NCAC 32A</u>	<u>.0111</u>
<u>Disposition of Request</u>	21	<u>NCAC 32A</u>	<u>.0112</u>
<u>Procedure for Declaratory Ruling</u>	21	<u>NCAC 32A</u>	<u>.0113</u>

**PHARMACY, BOARD OF**

<u>Definitions</u>	21	<u>NCAC 46</u>	<u>.1317</u>
<u>Right to Refuse a Prescription</u>	21	<u>NCAC 46</u>	<u>.1801</u>
<u>Availability of Records</u>	21	<u>NCAC 46</u>	<u>.2607</u>
<u>Storage of Devices and Medical Equipment</u>	21	<u>NCAC 46</u>	<u>.2612</u>

**APPRAISAL BOARD**

<u>Qualifications for Trainee Registration</u>	21	<u>NCAC 57A</u>	<u>.0201</u>
<u>Certified Residential Real Estate Appraiser Course Requir...</u>	21	<u>NCAC 57B</u>	<u>.0102</u>
<u>Certified General Real Estate Appraiser Course Requirements</u>	21	<u>NCAC 57B</u>	<u>.0103</u>

**STATE PERSONNEL COMMISSION**

<u>Exempt Priority Consideration-Policy and Scope</u>	25	<u>NCAC 01H</u>	<u>.1001</u>
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**AGENDA**  
**RULES REVIEW COMMISSION**  
**February 15, 2007, 10:00 A.M.**

- I. Reminder of Governor's Executive Order #1
- II. Review of minutes of last meeting
- III. Follow-Up Matters
  - A. DHHS/Medical Assistance (Temporary Rule)– 10A NCAC 21B .0314 (Bryan)
  - B. Medical Board – 21 NCAC 32T .0101 (Bryan)
  - C. Pharmacy Board – 21 NCAC 46 .1601; .1608; .2613; .3101 (Bryan)
  - D. Board of Community Colleges – 23 NCAC 3A .0113 (DeLuca)
  - E. State Personnel Commission – 25 NCAC 1H .0631 *Extend Period of Review* (DeLuca)
  - F. State Personnel Commission – 25 NCAC 1H .0635 (DeLuca)
- IV. Review of Permanent Rules (Log Report)
- V. Review of Temporary Rules (If Any)
- VI. Commission Business
  - Discussion of Rules Review Commission policies and procedures
- VII. Next meeting: March 15, 2007

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**Commission Review/Permanent Rules**  
***Log of Filings***  
***December 21, 2006 through January 22, 2007***

**SOCIAL SERVICES COMMISSION**

The rules in Chapter 6 are from the Social Services Commission and concern Operations for Aging Programs.

The rules in Subchapter 6T are state adult day care fund rules.

Nature and Purpose of State Adult Day Care Fund  
Amend/\*

10A NCAC 06T .0201

**HHS-MEDICAL ASSISTANCE**

The rules in Chapter 21 are from the Medical Assistance Administration.

The rules in Subchapter 21B concern eligibility determination including coverage groups (.0100); application process (.0200); conditions for eligibility (.0300); budgeting principals (.0400); and redetermination (.0500).

Waiver of Transfer of Assets Penalty Due to Undue Hardship  
Adopt/\*

10A NCAC 21B .0314

## **HHS - VOCATIONAL REHABILITATION SERVICES**

The rules in Chapter 89 are from Vocational Rehabilitation.

The rules in Subchapter 89C concern program rules including general policies (.0100); eligibility (.0200); scope and nature of services (.0300); methods to assure nondiscrimination (.0400); supported employment services (.0500); and order of selection for Services (.0600).

<u>Rates of Payment</u>	<u>10A</u>	<u>NCAC</u>	<u>89C</u>	<u>.0103</u>
Amend/*				
<u>Vendor Compliance</u>	<u>10A</u>	<u>NCAC</u>	<u>89C</u>	<u>.0402</u>
Amend/*				
<u>Eligibility and Most Significant Disability</u>	<u>10A</u>	<u>NCAC</u>	<u>89C</u>	<u>.0502</u>
Amend/*				

The rules in Subchapter 89D concern standards for facilities and providers including general policies (.0100); standards for facilities (.0200); and standards for providers of services (.0300).

<u>General Policies</u>	<u>10A</u>	<u>NCAC</u>	<u>89D</u>	<u>.0101</u>
Amend/*				
<u>Community Rehabilitation Program Standards</u>	<u>10A</u>	<u>NCAC</u>	<u>89D</u>	<u>.0204</u>
Amend/*				

## **BUILDING CODE COUNCIL**

This rule is from the 2006 Administrative Code.

<u>Special Inspections</u>	107.5
Amend/*	
This rule is from the 2006 Building Code.	
<u>Special Inspections</u>	1704
Amend/*	

## **ALARM SYSTEMS LICENSING BOARD**

The rules in Chapter 11 are from the N.C Alarm Systems Licensing Board and cover the organization and general provisions (.0100); license applications and requirements (.0200); registration of employees of licensees (.0300); the recovery fund (.0400); and continuing education for licensees (.0500).

<u>Prohibited Acts</u>	<u>12</u>	<u>NCAC</u>	<u>11</u>	<u>.0105</u>
Amend/*				

## **ENVIRONMENTAL MANAGEMENT COMMISSION**

The rules in Chapter 2 concern environmental management and are promulgated by the Environmental Management Commission and the Department of Environment and Natural Resources.

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

<u>Broad River Basin</u>	<u>15A</u>	<u>NCAC</u>	<u>02B</u>	<u>.0306</u>
Amend/*				

The rules in Subchapter 2D are air pollution control requirements including definitions and references (.0100); air pollution sources (.0200); air pollution emergencies (.0300); ambient air quality standards (.0400); emission control standards (.0500); air pollutants monitoring and reporting (.0600); complex sources (.0800); volatile organic compounds (.0900); motor vehicle emission control standards (.1000); control of toxic air pollutants (.1100); control of emissions from incinerators (.1200); oxygenated gasoline standard (.1300); nitrogen oxide standards (.1400); transportation conformity (.1500); general conformity for federal actions (.1600); emissions at existing municipal solid waste landfills (.1700); control of odors (.1800); open burning (.1900); transportation conformity (.2000); risk management program (.2100); special orders (.2200); emission reduction credits (.2300); clean air interstate rules (.2400); and mercury rules for electric generators (.2500).

<u>Applicability</u>	15A	NCAC	02D	.0902
Amend/*				
<u>Compliance Schedules for Sources In Noncompliant Areas</u>	15A	NCAC	02D	.0909
Amend/*				
<u>Applicability</u>	15A	NCAC	02D	.1402
Amend/*				
<u>Compliance Schedules</u>	15A	NCAC	02D	.1403
Amend/*				

## SECRETARY OF STATE, DEPARTMENT OF

The rules in Chapter 7 are from the Notary Public Division.

<u>Notary Public Division</u>	18	NCAC	07A	.0101
Repeal/*				
<u>Appointment of Notaries Public</u>	18	NCAC	07A	.0202
Repeal/*				
<u>Disposition of Commissions</u>	18	NCAC	07A	.0204
Repeal/*				
<u>Fee</u>	18	NCAC	07A	.0205
Repeal/*				
<u>Requirements of Commissions</u>	18	NCAC	07A	.0206
Repeal/*				
<u>Revocation of Commissions</u>	18	NCAC	07A	.0207
Repeal/*				
<u>Certificates of Authority</u>	18	NCAC	07A	.0208
Repeal/*				
<u>Approved Course of Study</u>	18	NCAC	07A	.0301
Repeal/*				
<u>Instructors</u>	18	NCAC	07A	.0302
Repeal/*				
<u>Approved Manual</u>	18	NCAC	07A	.0303
Repeal/*				

The rules in Subchapter 7B are rules covering traditional notary publics and include general provisions (.0100); the application process (.0200); initial appointment as a notary (.0300); renewal or reappointment as a notary (.0400); commissioning and term of office (.0500); enforcement and disciplinary actions (.0900); and public records and requests for information (.1000).

<u>Scope</u>	18	NCAC	07B	.0101
Adopt/*				
<u>Definitions</u>	18	NCAC	07B	.0102
Adopt/*				
<u>Location, Hours and Contact Information</u>	18	NCAC	07B	.0103

Adopt/*				
<u>Forms</u>	18	NCAC	07B	.0104
Adopt/*				
<u>Fees</u>	18	NCAC	07B	.0105
Adopt/*				
<u>Waiver</u>	18	NCAC	07B	.0106
Adopt/*				
<u>Continuing Obligations of Notaries</u>	18	NCAC	07B	.0107
Adopt/**				
<u>General</u>	18	NCAC	07B	.0201
Adopt/*				
<u>Initial Commission</u>	18	NCAC	07B	.0301
Adopt/*				
<u>Timing of Filing of Initial Application</u>	18	NCAC	07B	.0302
Adopt/*				
<u>Reappointment</u>	18	NCAC	07B	.0401
Adopt/*				
<u>Reappointment Test</u>	18	NCAC	07B	.0402
Adopt/*				
<u>Application After Reappointment Denial Based on Failing Test</u>	18	NCAC	07B	.0403
Adopt/*				
<u>Appointment and Issuance of Commissioning Certificate</u>	18	NCAC	07B	.0501
Adopt/*				
<u>Commissioning Certificate Date</u>	18	NCAC	07B	.0502
Adopt/*				
<u>Oath of Office and Delivery of Commissioning Certificate</u>	18	NCAC	07B	.0503
Adopt/*				
<u>Reappointment if Oath not Taken Within 45 Days</u>	18	NCAC	07B	.0504
Adopt/*				
<u>Term of Office</u>	18	NCAC	07B	.0505
Adopt/*				
<u>Factors Considered in Disciplinary Actions</u>	18	NCAC	07B	.0901
Adopt/*				
<u>General Application Denial</u>	18	NCAC	07B	.0902
Adopt/**				
<u>Executed Document Violations</u>	18	NCAC	07B	.0903
Adopt/*				
<u>Complete and Lawful Notarial Act Violations</u>	18	NCAC	07B	.0904
Adopt/*				
<u>Other Violations</u>	18	NCAC	07B	.0905
Adopt/*				
<u>Minimum Sanction</u>	18	NCAC	07B	.0906
Adopt/*				
<u>Appeal Procedures</u>	18	NCAC	07B	.0907
Adopt/*				
<u>Public Information</u>	18	NCAC	07B	.1001
Adopt/*				

## HEARING AID DEALERS AND FITTERS BOARD

The rules in Chapter 22 are from the Hearing and Dealers and Fitters Board.

Fee Schedule  
Amend/\*

21    NCAC 22B .0603

## **COMMUNITY COLLEGES, BOARD OF**

The rules in Chapter 2 concern Community Colleges.

The rules in Subchapter 2C deal with the organization and operation of the colleges including trustees and colleges (.0100); personnel (.0200); students (.0300); libraries and learning resource centers (.0400); equipment (.0500); college evaluation (.0600); and civil rights (.0700).

Faculty  
Amend/\*

23    NCAC 02C .0202

The rules in Subchapter 2D cover the fiscal affairs of community colleges including salaries (.0100), student fees (.0200) and budgeting, accounting and fiscal management (.0300).

Establishing Pay Rates  
Amend/\*

23    NCAC 02D .0101



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## CONTESTED CASE DECISIONS

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*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.  
Selina Brooks  
Melissa Owens Lassiter  
Don Overby*

*Beecher R. Gray  
A. B. Elkins II  
Joe Webster*

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>ALCOHOL BEVERAGE CONTROL COMMISSION</u></b>				
Santos Ferman T/A Paraiso vs. ABC Commission	05 ABC 1828	Chess	05/31/06	
Owl's Eyes of Asheville, LLC, T/A Hooters v. ABC Commission	05 ABC 1989	Chess	06/07/06	
Carlos Salas T/A Boom Boom Boom Night Club, 1205 Elgin Avenue Hight Point, NC 27262 v. ABC Commission	06 ABC 0719	Chess	08/07/06	
ABC Commission v. T/A Minit Shop	06 ABC 0862	Morrison	10/17/06	
ABC Commission v. Carlos Salas, T/A Boom Boom Room Night Club	06 ABC 1262	Gray	01/04/07	
ABC Commission v. Kenneth A. Jones, T/A Ken One Stop	06 ABC 1368	Gray	12/04/06	
<b><u>CRIME VICTIMS COMPENSATION</u></b>				
Timothy P. Webber v. Crime Victims Compensation Commission	05 CPS 1568	Lassiter	06/08/06	21:01 NCR 109
Valerie Joy McGill v. Crime Victims Compensation Commission	06 CPS 0038	Gray	06/08/06	
Torrey Charles v. Crime Victims Compensation Commission	06 CPS 0051	Chess	09/21/06	
Charles Leon Champion v. Crime Victims Compensation Commission	06 CPS 0155	Elkins	06/08/06	
Dantevis L. Bland v. Crime Victims Compensation Commission	06 CPS 0654	Elkins	11/15/06	
Sharron Smith v. Crime Control and Public Safety	06 CPS 0708	Gray	07/12/06	
Elaine B. Deloatch v. Crime Victims Compensation Commission	06 CPS 0736	Wade	08/15/06	
Christopher Lee Vess v. Crime Control Victims Compensation Services Division	06 CPS 0890	Gray	08/23/06	
Chris K. Daniels v. Crime Control and Public Safety, Div. of Victim Compensation Commission	06 CPS 0909	Lassiter	08/01/06	
Tamika L. Howard-Smith v. Crime Victims Compensation	06 CPS 1161	Elkins	09/06/06	
Danny Thoms v. Victim Compensation	06 CPS 1237	Overby	12/04/06	
James A. Hillman v. Crime Victims Compensation Commission	06 CPS 1339	Wade	12/08/06	
Pervis R. Owens Sr v. OAH, Crime Victims Compensation Commission	06 CPS 1492	Morrison	09/28/06	
A list of Child Support Decisions may be obtained by accessing the OAH Website: <a href="http://www.ncoah.com/decisions">www.ncoah.com/decisions</a> .				
<b><u>DEPARTMENT OF AGRICULTURE</u></b>				
Shacond Muse Bey v. Dept. of Agriculture	06 DAG 0985	Morrison	08/16/06	
Clara Church v. Dept. of Agriculture and Consumer Services	06 DAG 1422	Wade	12/11/06	
<b><u>DEPARTMENT OF CULTURAL RESOURCES</u></b>				
William H. Miller v. Cultural Resources, State Historic Preservation	05 DCR 0439	Mann	07/03/06	
<b><u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u></b>				
Andrea Green, Parent, on behalf of her Minor Child, Andrew Price	01 DHR 2149	Gray	06/29/06	
Charles N. Long v. DHHS, Wake County Human Services	02 DHR 0932	Lassiter	12/21/06	
Michael Eugene Dalton v. DHHS, DFS	02 DHR 1456	Lassiter	10/06/06	
Marquell's Enrichment Center for Edith James and Wilhelmenia Bridges v. Div. Child Development Regulatory Services Section	02 DHR 1537	Gray	08/21/06	

# CONTESTED CASE DECISIONS

Afusat Daodu v. DHHS, DFS	03 DHR 1489	Lassiter	12/08/06	
Michael Eugene Dalton v. DHHS, DFS	04 DHR 0288	Lassiter	10/06/06	
Gerald Wanamaker v. Ms Satana T. Deberry General Coun. DHHS	04 DHR 1513	Lassiter	06/14/06	
Michael Eugene Dalton v. DHHS, DFS	04 DHR 1662	Lassiter	10/06/06	
Rebecca Hamilton, Beck's Play and Learn v. DHHS, Div. of Child Development	04 DHR 1866	Lassiter	10/02/06	
Restoration Church of God in Christ, d/b/a Restoration's Joys of the Heart Child Care Center v. DHHS, Div. of Child Development	05 DHR 0097	Elkins	08/30/06	
Restoration Church of God in Christ Inernation, d/b/a Joys of the Heart Child Care Center v. DHHS, Div. of Public Health, Child and Adult Care Food Program	05 DHR 0124	Elkins	08/30/06	
Handa of the Future, Sheila Martin v. DHHS, Child and Adult Care Food Program	05 DHR 0457	Wade	06/27/06	
Anthony Wayne Sando v. DHHS	05 DHR 0465	Gray	11/14/06	
Patricia Filyaw's FCCH vs. Div. of Child Development	05 DHR 0803	Gray	05/30/06	
Amanda M. Walters v. DHHS, DFS, Health Care Personnel Registry Section	05 DHR 1121	Chess	05/30/06	
Carolyn W. Cooper, Happy Days Child Care v. Div. of Child Development	05 DHR 1255	Lassiter	09/12/06	
Shari Ann Torain v. DHHS	05 DHR 1317	Elkins	06/08/06	
Delfina Harris v. DHHS, DFS	05 DHR 1344	Wade	10/11/06	
Patrick Francis Diamond v. DHHS	05 DHR 1356	Gray	12/14/06	
County of Buncombe & NC Radiation Therapy Management Services, Inc. d/b/a 21 <sup>st</sup> Century Oncology v. DHHS, DFS, Certificate of Need Section, & Asheville Hematology and Oncology Associates, P.A.	05 DHR 1369	Gray	05/26/06	21:01 NCR 115
Jamie Bluto, Guardian of Heather Bluto v. Mecklenburg County Area Mental Health and Developmental Disabilities	05 DHR 1427	Chess	05/17/06	
United Home Care, Inc v. DHHS, DFS, CON Section and Liberty Home Care II, LLC, Total Care Home Health of NC, INC.,	05 DHR 1456	Wade	06/19/06	
Total Care Home Health of NC, INC., v. DHHS, DFS, CON Section and Liberty Home , Care II, LLC, Total Care Home Health of NC, INC.,	05 DHR 1464	Wade	06/19/06	
Brookside Montessori School v. DHHS, Div. of Child Development	05 DHR 1465	Gray	06/28/06	
Novant Health, Inc. and Forsyth Memorial Hospital, Inc. d/b/a Forsyth Medical , Center v. DHHS, DFS, Certificate of Need Section	05 DHR 1490	Lassiter	05/31/06	
Duke University Health System d/b/a Durham Regional Hospital v. DHHS, DFS, Certificate of Need Section	05 DHR 1491	Lassiter	05/31/06	
Duke University Health System d/b/a Durham Regional Hospital v. DHHS, DFS, Certificate of Need Section	05 DHR 1492	Lassiter	05/31/06	
Community General Health Partners, Inc. d/b/a Thomasville Medical Center v. DHHS, DFS, Certificate of Need Section	05 DHR 1506	Lassiter	05/31/06	
Shannon Woodell Glidewell v. DHHS, DFS	05 DHR 1514	Gray	09/29/06	
Kamaria Smith v. DHHS, DFS, Nurse Aid Registry	05 DHR 1547	Mann	12/22/06	
LaBrenda Perry Bennett v. Health Care Personnel Registry	05 DHR 1579	Morrison	07/13/06	
Carolina Kids Academy, Inc v. DHHS, Division of Child Development	05 DHR 1906	Morrison	11/03/06	
Lisa D. Smith-Perri on behalf of Gibson Price Smith, Brother	05 DHR 1982	Gray	06/26/06	
All Braxton, The Braxton Home II v, DHHS, DFS	05 DHR 1986	Mann	07/20/06	
Bertha Graham v. DHHS, DFS, Health Care Personnel Registry	05 DHR 2040	McCotter	06/08/06	
Jeanette Clark v. State Board of Nursing, Raleigh, NC	05 DHR 2076	Gray	07/10/06	
Yavonka Renee Vann v. DHHS, DFS	05 DHR 2108	Gray	07/12/06	
Janet Johnson v. Health Care Personnel Registry	05 DHR 2127	Gray	08/15/06	
Zion Hill Ame Zion Church, Child Development Center v. DHHS, Div. of Child Development	05 DHR 2184	Gray	07/12/06	
Steven Thomas Safrit v. DHHS	05 DHR 2191	Mann	06/20/06	
Rosa Currie v. DHHS	05 DHR 2204	Elkins	09/26/06	
Ruben Perez v. DHHS, Div. of Public Health Women and Children's Health Section	05 DHR 2225	Lassiter	05/10/06	
Hospice & Palliative Care Charlotte Region v. DHHS, DFS, CON Section, Licensure and Certification Section and Liberty Home Care II, LLC	06 DHR 0018	Elkins	09/28/06	
Hospice & Palliative Care Charlotte Region v. DHHS, DFS, CON Section and DHHS, DFS, Licensure and Certification Section	06 DHR 0022	Elkins	09/14/06	21:07 NCR 674
Jacqueline Hall v. DHHS, Div. of Child Development	06 DHR 0025	Lassiter	08/31/06	
Joshua B. Worley, by and through his Guardian as Litem, Bertha Gail Levi v. DHHS, Div. of Medical Assistance	06 DHR 0033	Mann	09/11/06	
Richard Wayne Baird v. DHHS, DMA	06 DHR 0177	Gray	06/15/06	
Rosemary Nwanko v. DHHS, DFS, Mental Health Licensure and Certification Section	06 DHR 0186	Gray	07/12/06	
JoAnn Baldwin v. DHHS, DFS, Child and Adult Care Food Program	06 DHR 0208	Wade	06/27/06	
Joyce Moore v. DHHS	06 DHR 0212	Morrison	08/15/06	
Jansala Walker v. Healthcare Personnel Registry	06 DHR 0213	Wade	06/07/06	
Bobby Locklear v. DHHS, DFS, Adult Licensure Section	06 DHR 0215	Mann	06/20/06	
Linwood B. Cameron d/b/a New Millennium Management Services v. DFS	06 DHR 0218	Elkins	06/08/06	
Selvia Chapel Child Care Center ID# 74000208, Bishop A. H. Hartsfield v. DHHS, Div. of Child Development	06 DHR 0268	Gray	08/21/06	
Deloris Johnson v. DHHS, Div. of Public Health, Child and Adult Care Food Program	06 DHR 0271	Gray	05/17/06	

## CONTESTED CASE DECISIONS

Jack Williamson v. Div. of Medical Assistance Third Party Recovery	06 DHR 0300	Chess	08/04/06
Shawqi Abdalla Ibtisam Omar v. OAH	06 DHR 0332	Gray	07/10/06
Daniel Marshall v. DHHS	06 DHR 0340	Wade	06/27/06
Katie Morris v. DHHS	06 DHR 0344	Gray	08/21/06
Michael Glenn Shell v. Board of Health Care Workers Registry, DHHS	06 DHR 0358	Elkins	07/31/06
Angel Allman v. Div. of Medical Assistance Medical Policy	06 DHR 0370	Wade	08/09/06
Tammie L. Greene v. DHHS, Div. of Medical Assistance	06 DHR 0386	Chess	07/25/06
Carol Denny v. DHHS	06 DHR 0395	Mann	09/05/06
Myrna Diane Bunns v. DHHS, Division of Child Development	06 DHR 0399	Gray	06/19/06
Joseph Randy Creech v. Dix, DHHS	06 DHR 0416	Mann	09/06/06
Annette Alexander v. DHHS	06 DHR 0471	Elkins	06/23/06
Bernice Norman v. Wash Co. Dept. of Social Services	06 DHR 0472	Elkins	06/23/06
Daisey Fish v. Dorthea Dix Hospital	06 DHR 0473	Morrison	08/02/06
Delisa Jean Scott v. DHHS, DFS	06 DHR 0475	Elkins	06/23/06
Deloris Johnson v. DHHS, Div. of Public Health, Child and Adult Care Food Program	06 DHR 0488	Gray	05/17/06
Myrna A. Batson v. Broughton Hospital	06 DHR 0503	Gray	07/12/06
Digna A. Marte v. DHHS, Div. of Medical Assistance	06 DHR 0551	Mann	07/21/06
Carolyn W. Cooper, Happy Days Child Care Center v. Div. of Child Development, DHHS	06 DHR 0565	Lassiter	08/01/06
Eric Becton v. DHHS	06 DHR 0594	Elkins	06/23/06
Bibian Nwanguma v. Health Care Personnel Registry	06 DHR 0651	Wade	08/14/06
Grace A. Wright v. Wake County Health and Human Services, Program Interg Program Dept.	06 DHR 0670	Wade	01/04/07
Regina A McLean v. DHHS, Citizen Affairs/Administration	06 DHR 0691	Gray	06/27/06
Regina A. Mclean v. Human Health Client Assistant Program	06 DHR 0692	Gray	07/20/06
Christy Laws v. DHHS	06 DHR 0698	Elkins	09/07/06
Kara Elmore v. DHHS, DFS	06 DHR 0702	Gray	08/23/06
James Soules v. DHHS	06 DHR 0718	Gray	08/01/06
DeJuana Byrd Heavenly Angels Child Center v. Child Abuse/ Neglect	06 DHR 0720	Lassiter	06/14/06
Angela M. Rhodes v. New Hanover County DSS	06 DHR 0730	Mann	09/05/06
Full Potential, LLC v. DHHS	06 DHR 0781	Gray	07/21/06
Little Town Learning Center, Inc., By Angela Beacham v. DHHS, Div. of Public Health, Child and Adult Care Food Program	06 DHR 0786	Morrison	10/05/06
Alberta Denise Murphy v. DHHS and Registry	06 DHR 0788	Elkins	09/07/06
Bettie B. Woods v. Gardian Ad Litem, Angela Phillips, Lincoln County DSS/Catawba BAL	06 DHR 0830	Gray	06/28/06
Rockingham County Department of Social Services v. Medicaid/Value Options	06 DHR 0839	Lassiter	08/01/06
Denise Little v. Catawba County LME, John Hardy, Director Consultant Deanna Hoxworth	06 DHR 0860	Lassiter	06/23/06
Edna Cray - Kid's Academy v. DHHS, Div. of Public Health Child and Adult Care Food Program	06 DHR 0887	Gray	06/13/06
Barbara J. Younce v. DHHS, DFS	06 DHR 0927	Gray	12/05/06
Norman Lavel Bracey, Jr., v. Social Services (Medicaid)	06 DHR 0955	Gray	07/21/06
Elaine Weidman v. DHHS, DFS, Health Care Personnel Registry	06 DHR 1032	Gray	10/25/06
Ariel Horowitz, Minor, by her Parents David Horowitz and Rosalind Heiko v. Div. of Medical Assistance, MH/DD/SAS and DHHS	06 DHR 1064	Lassiter	08/21/06
Keira T. Williams v. Wake County Dept. of Social Services	06 DHR 1067	Lassiter	07/06/06
Brentwood Child Care Center (92001147) v. DCD/Child Abuse Neglect Unit	06 DHR 1100	Lassiter	10/12/06
Angela Fay Carraway v. DHHS	06 DHR 1105	Morrison	08/21/06
Ivory Jade Alson v. Wake Co. Dept. of Social Services	06 DHR 1106	Lassiter	07/10/06
Play and Learn Childcare, Mary Ellen Helton v. DHHS, Div. of Public Health, Chalid and Adult Care Food Program	06 DHR 1108	Gray	07/24/06
RTTS, Inc v. DHHS, DFS, Mental Health Licensure and Cert. Section	06 DHR 1127	Lassiter	10/02/06
Rhonda Bumgarner v. DHHS, Div. of Medical Assistance	06 DHR 1162	Gray	09/14/06
Zabrina Johnson v. DHHS	06 DHR 1170	Gray	10/09/06
Leea Holt, Tari Guevara v. Div. of Child Development, DHHS	06 DHR 1181	Morrison	10/13/06
Reno Judd/Noreen Currie v. DHHS	06 DHR 1183	Gray	10/26/06
New Directions II, Tamara Perry v. DHHS, DFS, Mental Health Licensure & Certification Section	06 DHR 1199	Overby	11/22/06
New Directions II Lane House, Tama Perry v. DHHS, DFS Mental Health Licensure & Certification Section	06 DHR 1200	Overby	11/22/06
Beverly M. West v. DHHS	06 DHR 1238	Wade	09/26/06
Sherri Groves v. Div. of Child Development	06 DHR 1252	Gray	09/14/06
Graceland Food Mart, James C. McGirt, Owner v. DHHS	06 DHR 1266	Elkins	09/22/06
Willie P. Little v. Medicaid	06 DHR 1315	Gray	11/09/06
Mary Jane Rutledge v. NCOAH	06 DHR 1331	Gray	09/12/06
Aunt Alice Daycare Center, Alice Camara v. DHHS, Nutrition Program	06 DHR 1490	Lassiter	10/13/06
Connie Lee Yates v. DHHS	06 DHR 1558	Morrison	09/27/06

### DEPARTMENT OF ADMINISTRATION

Corporate Express Office Products, Inc. v. NC Division of Purchase and Contract, & Office Depot, Inc.	06 DOA 0112	Gray	05/17/06	21:01 NCR	163
Hershel Sarraf, Oro Avanti, Inc. v. DOA, Div. of Purchase and Contract	06 DOA 0646	Wade	09/20/06		

### DEPARTMENT OF CORRECTIONS

# CONTESTED CASE DECISIONS

Michael Eugene Hunt v. DOC	06 DOC 0498	Gray	06/20/06	
<b><u>DEPARTMENT OF JUSTICE</u></b>				
Steven Forrest Brubaker v. NC Criminal Justice Education and Training Standards Commission	05 DOJ 1405	Elkins	05/31/06	21:01 NCR 158
Jeffrey Michael Quinn v. Criminal Justice Training Standards Comm.	05 DOJ 1406	Elkins	08/04/06	
Christopher Paul Stanfield v. Criminal Justice and Training Standards Commission and Sheriff's Education and Training Standards Comm.	05 DOJ 1520	Wade	08/28/06	
Christopher Paul Stanfield v. Criminal Justice and Training Standards Commission and Sheriff's Education and Training Standards Comm.	05 DOJ 1521	Wade	08/28/06	
Todd Franklin Wyke v. Criminal Justice Education and Training Standards Commission	05 DOJ 2223	Lassiter	09/15/06	
Michael Edward Sutton v. NC Criminal Justice Education & Training Standards Commission	06 DOJ 0012	Morrison	05/09/06	
Philip Lee Holdaway v. Sheriffs' Education and Training Standards Comm.	06 DOJ 0069	DeLuca	08/04/06	
Anthony Lee Davis v. Sheriffs' Education and Training Standards Comm.	06 DOJ 0070	Gray	08/26/06	
Todd Franklin Wyke v. DOJ, Company Police Program	06 DOJ 0146	Lassiter	09/15/06	
Angela Renee Lail v. Sheriffs' Education and Training Standards Comm.	06 DOJ 0228	Gray	08/06/06	21:06 NCR 514
James Woodrow Jacobs v. Sheriffs' Education and Training Standards Comm.	06 DOJ 0229	Gray	07/12/06	
Jason Matthew Lish v. Criminal Justice Education and Training Standards Commission	06 DOJ 0579	Wade	09/12/06	
Christopher Brian Mingia v. Criminal Justice Education and Training Standards Commission	06 DOJ 0598	Wade	09/12/06	
Christopher S. Cummings v. DOJ, Company Police Program	06 DOJ 0696	Gray	08/11/06	
Allison M. Burdette v. Company Police Program	06 DOJ 0733	Wade	08/11/06	
Amber Lee Baldwin v. Sheriffs' Education and Training Standards Comm.	06 DOJ 0814	Gray	06/26/06	
Reginald Warren v. Criminal Justice Education and Training Standards Commission	06 DOJ 0880	Gray	09/08/06	
Betty Perry v. Criminal Justice Education and Training Standards Comm.	06 DOJ 0881	Lassiter	09/20/06	
Danny Kaye Barham and NC Detective Agency, Inc v. Private Protective Services Board	06 DOJ 0870	Morrison	08/07/06	
David L. Willams v. Private Protective Services Board	06 DOJ 0876	Morrison	07/18/06	
Donna G. Redding v. Private Protective Services Board	06 DOJ 0877	Morrison	08/01/06	
Joseph O. Smiley v. Private Protective Services Board	06 DOJ 0878	Morrison	08/01/06	
Amy Pearl King v. Sheriffs' Education and Training Standards Comm.	06 DOJ 1295	Lassiter	10/10/06	
<b><u>DEPARTMENT OF STATE TREASURER</u></b>				
Percy E. Myers v. Retirement Systems Division, LGERS,	06 DST 0048	Chess	05/31/06	
Harry Whisnat v. Teachers' and State Employees' Retirement System of NC, A Corporation, Board of Trustees of the Teachers' and State Employees' Retirement System of NC, A body politic and Corporate, DOT, Retirement Systems Div. and the State of NC	06 DST 0591	Gray	09/19/06	
<b><u>EDUCATION, STATE BOARD OF</u></b>				
Darrell Wayne Purcell v. State Board of Education	05 EDC 1861	Morrison	10/11/06	
Elizabeth Ann Mical v. Department of Public Instruction	05 EDC 1962	Morrison	08/04/06	
Margaret Frances Handest v. Dept. of Public Instruction, Center for Recruitment and Retention	05 EDC 2057	Morrison	10/11/06	
Linda Ellis v. Dept. of Public Instruction – National Board – Certification	06 EDC 0002	Morrison	10/12/06	
Monica Robertson v. Department of Public Instruction	06 EDC 0359	Morrison	08/02/06	
Gail G. Brooks v. Department of Public Instruction	06 EDC 0437	Morrison	08/07/06	
Reginald Powe v. Public Schools of North Carolina, State Board of Educ. Department of Public Instruction, Superintendent's Ethics Advisory Committee	06 EDC 1116	Elkins	10/03/06	
<b><u>DEPT. OF ENVIRONMENT AND NATURAL RESOURCES</u></b>				
Howard L. Hardy v. Co. of Craven Department of Health	00 EHR 0803	Gray	06/26/06	
Wheatly Oil Company, Inc v. DENR, Div. of Waste Management	03 EHR 0030	Gray	08/04/06	
Auddies, Inc v. DENR	03 EHR 1312	Lassiter	10/18/06	
Joe L. Wilson v. DENR	03 EHR 1641	Gray	10/09/06	
Ronald L. Preston v. Davidson County Health Department	03 EHR 2329	Gray	08/24/06	
Auddies, Inc v. DENR	04 EHR 0103	Lassiter	10/18/06	
Sandra M. Netting v. DENR	04 EHR 1768	Gray	09/29/06	
County of Davidson v. DENR, Div. of Air Quality	04 EHR 0362	Wade	09/01/06	
Laney Oil Company, Inc, UST# 04-049P, UST# 04-050P v DENR	05 EHR 0135	Gray	06/20/06	
Anton Tomassetti v. DENR, Div. of Air Quality	05 EHR 0321	Gray	06/12/06	
Raymond S. Carpenter v. DENR	05 EHR 2009	Bryan	08/28/06	
John Graham v. DENR, Div. of Air Quality	05 EHR 2029	Gray	05/08/06	
Samuel Buck Kiser v. DENR, Div. of Waste Management	05 EHR 2120	Chess	07/25/06	21:06 NCR 519

## CONTESTED CASE DECISIONS

Christopher S. Anderson, Jan HP Anderson v. Ashe County Health Dept.	06 EHR 0558	Elkins	07/31/06
Heyward Ledford, Wolfpen Associates, Inc. v. DENR	06 EHR 0679	Gray	06/12/06
Parnell-Kinlaw Group, Inc v. DENR, Div. of Land Quality	06 EHR 0743	Mann	09/26/06
Danny Ray Thorpe v. Brunswick Co. Health Dept., Environmental Health Department	06 EHR 1041	Gray	08/07/06
Dianne D. Vereen v. Brunswick Co. Health Department	06 EHR 1126	Elkins	09/27/06
C.F. Little and Patsy H. Little v. DENR	06 EHR 1340	Lassiter	09/22/06
John P. Leonard, Agent for Magnolia Pointe LP v. County of Durham Engineering Department	06 EHR 1568	Gray	10/13/06

### DEPARTMENT OF INSURANCE

James D. Kelly Jr. v. State Health Plan	06 INS 0013	Morrison	08/07/06	21:06 NCR	524
Daniel C. Johnson v. Teachers' and State Employees' Comprehensive Major Medical Plan	06 INS 0353	Morrison	07/03/06		

### OFFICE OF STATE PERSONNEL

Sgt. Gerry R. Mouzon v. Crime Control & Public Safety, NC State Highway Patrol, and Brian Beatty, Secretary CC & PS	02 OSP 0392	Gray	06/15/06		
Sgt. Gerry R. Mouzon v. Crime Control & Public Safety, NC State Highway Patrol, and Brian Beatty, Secretary CC & PS	02 OSP 1036	Gray	06/15/06		
Georgia Warren v. DOT	02 OSP 1911	Wade	08/08/06		
Georgia Warren v. DOT	02 OSP 2179	Wade	08/08/06		
Emily Flores v. College of Agriculture and Life Sciences NC State	04 OSP 1518	Lassiter	10/13/06		
Charles H. Boykin, Jr. v. Halifax County Health Dept.	05 OSP 0851	Gray	09/15/06		
Tiffany Bowick-Richardson v. Fayetteville State University	05 OSP 0901	Lassiter	08/23/06		
Hank L. Silverthorne v. DOT, Bridge Maintenance (Division One)	05 OSP 0291	Gray	05/11/06		
Jeffrey Michael Quinn v. Dept. of Crime Control and Public Safety, State Highway Patrol	05 OSP 1012	Elkins	08/04/06	21:06 NCR	527
Deena Ward v. Columbus Co. Dept. of Social Services	05 OSP 1017	Lassiter	06/23/06		
Alma Chinita Trotter v. DHHS, Public Health Department	05 OSP 1183	Chess	06/01/06		
Tonita Derr Dawkins v. DOC, Alexander Correctional Institution	05 OSP 1449	Gray	07/27/06		
Thomas H. Jones v. NC State Highway Patrol, Dept. of Crime Control & Public Safety	05 OSP 1495	Chess	05/17/06		
W. Frank Etheridge v. DOA, State Capital Police	05 OSP 1771	Lassiter	08/03/06	21:06 NCR	536
Sandra Harris v. DOT	05 OSP 1886	Lassiter	07/13/06		
Marisa Lail Setzer v. Department of Public Instruction	05 OSP 1963	Morrison	08/02/06		
Melissa H. Bailey v. DOT	05 OSP 2119	Wade	06/28/06		
Michael D. Bognanowicz v. NC Wildlife Resources Commission	05 OSP 2024	Bryan	05/18/06		
Malcolm Shelton Davis v. DHHS	06 OSP 0015	Smith	09/12/06		
Kamaria Smith v. DHHS	06 OSP 0130	Mann	06/06/06		
Lisa A. Forbes v. Dorothea Dix Hospital	06 OSP 0134	Gray	03/29/06		
Lisa A. Forbes v. Dorothea Dix Hospital	06 OSP 0135	Gray	03/29/06		
Lelia J. Bailey v. Winston-Salem State University	06 OSP 0211	Chess	09/06/06		
Reginald Powe v. Public Schools of NC State Board of Education, Dept of Public Instruction	06 OSP 0238	Lassiter	05/09/06		
Nita Bass v. Craven County Department of Social Services	06 OSP 0346	Lassiter	09/12/06		
Lisa Green v. DOC	06 OSP 0379	Lassiter	06/02/06		
James Walter Gibson v. DOT	06 OSP 0543	Gray	05/19/06		
Caria Faulk v. Columbus Co. Dept. of Social Services	06 OSP 0546	Lassiter	07/06/06		
Robin D. Long v. UNC Greensboro	06 OSP 0684	Lassiter	06/27/06		
Rena Coltraine McLeod v. Guilford Co. Dept. of Public Health	06 OSP 0703	Wade	06/28/06		
Jan-Lee Wells v. Fayetteville Sate	06 OSP 0731	Gray	08/10/06		
Timothy Scott Reynolds v. Morrison Correctional Institution	06 OSP 0803	Lassiter	07/26/06		
Geraldine Blackston-Ramos v. Maurice Boswell, Mary Washun, Cynthia Chamblee, Phyllis Sharpe, Dennis Davis, Bill McNeal, Wake County Public Schools/Human Resource Department/Preventive Services/Partnership for Educational Success	06 OSP 0831	Morrison	07/12/06		
Rick Van Kerkhove v. DOC	06 OSP 0851	Gray	08/25/06		
Odessa D. Gwynn v. Caswell County Senior Center	06 OSP 0863	Wade	08/26/06		
Juliana W. Smith v. Alamance-Caswell Area Mental Health, Developmental Disabilities, and Substance Abuse Authority	06 OSP 1059	Lassiter	08/09/06		
Dr. Mirian W. McIntosh v. Durham Co. Health Department	06 OSP 1060	Lassiter	08/09/06		
Maria Olea-Lingg v. UNC-Health Care	06 OSP 1143	Lassiter	10/12/06		
Tamra M. Burroughs v. Div. of Services for the Deaf and Hard of Hearing	06 OSP 1280	Elkins	09/07/06		
James D. Abrams v. Craven Co. DOT	06 OSP 1358	Gray	10/13/06		

### SECRETARY OF STATE

Tisha L. Jones v. Dept. of Secretary of State	05 SOS 1987	Gray	05/19/06		
Temeka A. Brooks v. Dept of Secretary of State	06 SOS 0276	Mann	05/26/06		
Laksha England v. Dept. of SOS	06 SOS 0630	Mann	09/13/06		
Brendalyn D. Blackmon v. Dept. of Secretary of State	06 SOS 0701	Wade	08/11/06		
Jennifer Carol Daniels v. Dept. of SOS	06 SOS 1167	Lassiter	10/12/06		

### UNC HOSPITALS

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**CONTESTED CASE DECISIONS**

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Linda Sisco v. UNC Hospitals	05 UNC 0781	Gray	05/09/06
Karen H. Moore v. UNC Hospitals	06 UNC 0351	Elkins	06/08/06
Krista Singletary v. UNC Hospitals	06 UNC 0468	Mann	10/12/06
Larry E. Rogers v. UNC Hospitals	06 UNC 0697	Elkins	07/31/06
Cynthia Lodestro v. UNC Hospitals	06 UNC 0707	Wade	08/11/06
Margaret Branham v. UNC Hospitals	06 UNC 0903	Elkins	09/07/06
Ta-Wanda & David Wilson v. UNC Hospitals	06 UNC 1084	Lassiter	09/12/06
Angel C. Carey v. UNC Hospitals	06 UNC 1146	Lassiter	09/07/06