

# ***NORTH CAROLINA REGISTER***

**VOLUME 21 • ISSUE 19 • Pages 1685 - 1795**

**April 2, 2007**

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## **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  
424 North Blount Street  
Raleigh, North Carolina 27601-2817  
(919) 733-2678  
(919) 733-3462 FAX

contact: Molly Masich, Codifier of Rules      molly.masich@ncmail.net      (919) 733-3367  
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Julie Edwards, Editorial Assistant      julie.edwards@ncmail.net      (919) 733-3980  
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### **Rule Review and Legal Issues**

Rules Review Commission  
1307 Glenwood Ave., Suite 159  
Raleigh, North Carolina 27605  
(919) 733-2721  
(919) 733-9415 FAX

contact: Joe DeLuca Jr., Staff Attorney      joe.deluca@ncmail.net      (919) 715-8655  
Bobby Bryan, Staff Attorney      bobby.bryan@ncmail.net      (919) 733-0928  
Lisa Johnson, Administrative Assistant      lisa.Johnson@ncmail.net      (919) 733-3962

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

Office of State Budget and Management  
116 West Jones Street  
Raleigh, North Carolina 27603-8005  
(919) 807-4700  
(919) 733-0640 FAX

contact: Nathan Knuffman, Economist III      nathan.Knuffman@ncmail.net      (919)807-4728  
Jonathan Womer, Asst. State Budget Officer      jonathan.womer@ncmail.net      (919)807-4737

### **Governor's Review**

Reuben Young      reuben.young@ncmail.net  
Legal Counsel to the Governor      (919) 733-5811  
116 West Jones Street(919)  
Raleigh, North Carolina 27603

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

Joint Legislative Administrative Procedure Oversight Committee  
545 Legislative Office Building  
300 North Salisbury Street  
Raleigh, North Carolina 27611  
(919) 733-2578  
(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  
Raleigh, North Carolina 27603  
(919) 715-2893

contact: Jim Blackburn      jim.blackburn@ncacc.org  
Rebecca Troutman      rebecca.troutman@ncacc.org

NC League of Municipalities  
215 North Dawson Street  
Raleigh, North Carolina 27603  
(919) 715-4000

contact: Anita Watkins      awatkins@ncmlm.org

**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
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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.

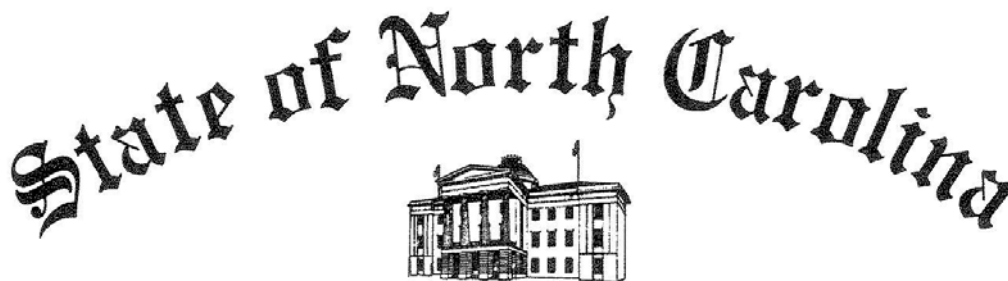
### **NOTICE OF TEXT**

**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.



MICHAEL F. EASLEY  
GOVERNOR

**EXECUTIVE ORDER NO. 117  
AMENDING EXECUTIVE ORDER NO. 116,  
DESIGNATION OF CERTAIN STATE EMPLOYEES AS COVERED "PUBLIC  
SERVANTS" UNDER THE STATE GOVERNMENT ETHICS ACT**

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

Executive Order No. 116, Designation of Certain State Employees as Covered "Public Servants" Under the State Government Ethics Act, issued by Michael F. Easley on January 26, 2007, is hereby amended as follows:

The following individuals are included as state employees or appointees as covered "public servants" under the State Government Ethics Act:

- David Joyner, Executive Director, North Carolina Turnpike Authority
- Steve DeWitt, Chief Engineer, North Carolina Turnpike Authority
- Grady Rankin, Chief Financial Officer, North Carolina Turnpike Authority
- Jim Eden, Chief Operating Officer, North Carolina Turnpike Authority

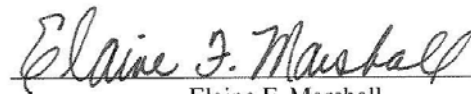
This order is effective immediately.

**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 sixth day of March 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

***Note from the Codifier:*** 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.

**SUMMARY OF NOTICE OF  
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY  
Hawkins Street Holdings, LLC**

Pursuant to N.C.G.S. 130A-310.34, Hawkins Street Holdings, 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 Sonoco Flexible Packaging Company, consists of 4.8 acres and is located at 2203 Hawkins Street. Environmental contamination exists on the Property in groundwater and soil. Hawkins Street Holdings, LLC has committed itself to commercial (including retail and office), residential and ancillary purposes on the Property. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Hawkins Street Holdings, 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 may be submitted to DENR within 30 days, and written requests for a public meeting within 21 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 Hawkins Street Holdings, 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 April 3, 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

JKT:MSR:ANS:par  
DJ 166-012-3  
2007-0172

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

February 21, 2007

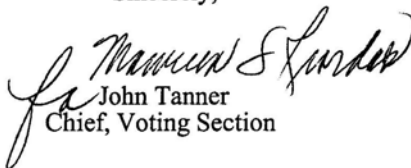
Mr. David A. Holec  
City Attorney  
P.O. Box 7207  
Greenville, North Carolina 27835-7207

Dear Mr. Holec:

This refers to thirteen annexations (adopted between September 14, 2006, and November 9, 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 January 16, 2007.

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

STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE

**IN THE MATTER OF:**

The Proposed Penalty for Failure to Obtain )  
A Transporter's License Issued March 14, )  
2003 by the North Carolina Secretary of )  
Revenue in the Amount of \$6,250.00 )

and )

The Proposed Penalty for Failure to File )  
Information Returns Issued March 14, 2003 )  
by the North Carolina Secretary of Revenue )  
in the Amount of \$3,000.00 )

vs. )

William T. Smith d/b/a B&S Enterprises, )

Appellant )

**ADMINISTRATIVE DECISION**

**NUMBER:** 480

Docket Number 2003-194

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This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Thursday, November 10, 2005 pursuant to the petition of William T. Smith d/b/a B & S Enterprises (hereinafter "Appellant") for administrative review of the final decision entered by the Assistant Secretary of Revenue on October 25, 2004. At that hearing, the Assistant Secretary affirmed the proposed assessment of Penalty for Failure to Obtain a Transporter's License in the amount of \$6,250.00 and Penalty for Failure to File Informational Returns in the amount of \$3,000.00.

During the tax years 1998 through 2002, the Appellant engaged in the business of operating commercial vehicles for the purpose of transporting motor fuel products. In 2002, the North Carolina Department of Revenue conducted an International Fuel Tax Agreement audit of Appellant. It was discovered that Appellant was not licensed as a motor fuel transporter as required by N.C. Gen. Stat. § 105-236(2), nor had Appellant filed monthly informational returns for the relevant period as required by N.C. Gen. Stat. § 105-236(10)(c). On March 14, 2003, the Department of Revenue sent Appellant a notice of tax assessment in the amount of \$9,250.00 for the aforementioned penalties.

Appellants protested the assessment and requested a hearing before the Secretary of Revenue. After conducting a hearing, the Assistant Secretary of Revenue sustained the proposed assessments. From the Assistant Secretary's final decisions, appellants filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2.



The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the taxpayer must offer evidence to show that the assessment is not correct.

It appearing to the Board, after conducting an administrative hearing in this matter, during which appellant and counsel appeared and presented oral argument, and reviewing the Assistant Secretary's final decision, that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record, that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact, and that the final decisions of the Assistant Secretary were supported by the conclusions of law;

**IT IS THEREFORE ORDERED** that the Assistant Secretary's final decision is **AFFIRMED**.

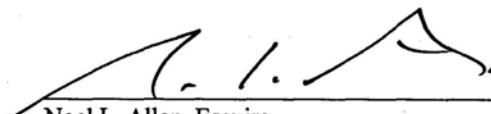
Made and entered into the 8th day of February 2006.



**TAX REVIEW BOARD**

  
\_\_\_\_\_  
Stacey A. Phipps, Chief Deputy Treasurer, on behalf  
Richard H. Moore, State Treasurer

  
\_\_\_\_\_  
Jo Anne Sanford, Chair  
North Carolina Utilities Commission

  
\_\_\_\_\_  
Noel L. Allen, Esquire  
Appointed Member

**STATE OF NORTH CAROLINA**

**BEFORE THE  
TAX REVIEW BOARD**

**COUNTY OF WAKE**

**IN THE MATTER OF:**

The Proposed Motor Fuels Bulk User Tax )  
 Amended Assessment Issued by the )  
 Secretary of Revenue of North Carolina )  
 April 14, 2004 in the amount of \$2,133.06 )

**ADMINISTRATIVE DECISION**

**NUMBER: 481**

vs.

Docket Number 2004-46

Sun Heating Supplies, Inc., )  
 Appellant )

---

This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Thursday, November 10, 2005 pursuant to the petition of Sun Heating Supplies, Inc. (hereinafter "Appellant") for administrative review of the final decision entered by the Assistant Secretary of Revenue on December 20, 2004 affirming the proposed assessment of Motor Fuels Bulk User taxes due in the amount of \$2,133.06 plus accruing interest.

Pursuant to an audit by the Internal Revenue Service of the period of September 1, 2000 through August 28, 2003, it was determined that the Appellant had purchased 10,298 gallons of untaxed diesel fuel and had used the purchased fuel to operate at least one highway vehicle and three pieces of off-road equipment. Further, there was no mechanism at the fuel storage facility for measuring dispensed fuel, and Appellant maintained no records memorializing the usage of stored fuel. The Appellant offered limited evidence to the Department showing that not all of the untaxed fuel was used in highway vehicles. The Department equitably assessed a tax based on 75% of the total fuel in question, or 7,721 gallons, on July 15, 2004 in the amount of \$2,123.52 plus interest.

Appellants protested the assessment and requested a hearing before the Secretary of Revenue. After conducting a hearing, the Assistant Secretary of Revenue sustained the proposed assessments. From the Assistant Secretary's final decisions, appellants filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2.

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the taxpayer must offer evidence to show that the assessment is not correct.

It appearing to the Board, after conducting an administrative hearing in this matter, and reviewing the Assistant Secretary's final decision, that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record, that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact, and that the final decisions of the Assistant Secretary were supported by the conclusions of law;

**IT IS THEREFORE ORDERED** that the Assistant Secretary's final decision is **AFFIRMED**.

Made and entered into the 8th day of February 2006.



**TAX REVIEW BOARD**

*Stacey A. Phipps*

Stacey A. Phipps, Chief Deputy Treasurer, on behalf  
Richard H. Moore, State Treasurer

*Jo Anne Sanford*

Jo Anne Sanford, Chair  
North Carolina Utilities Commission

*Noel L. Allen*

Noel L. Allen, Esquire  
Appointed Member

**STATE OF NORTH CAROLINA**

**BEFORE THE  
TAX REVIEW BOARD**

**COUNTY OF WAKE**

**IN THE MATTER OF:**

The Proposed Assessment of Unauthorized )  
Substance Tax for the Taxable Period )  
of June 30, 2004 by the Secretary of )  
Revenue of North Carolina )

**ADMINISTRATIVE**

**DECISION NUMBER:** 482

Docket No. 2004-343

vs. )  
)  
)

Nathaniel Goode, Appellant )  
)

THIS MATTER is before the regular Tax Review Board (hereinafter "Board") upon petition for administrative review filed by the Nathaniel Goode (hereinafter "Appellant") regarding the Final Decision of Eugene J. Cella, Assistant Secretary of Revenue, sustaining the proposed assessment of unauthorized substance tax for the taxable period of June 30, 2004.

Pursuant to N.C. Gen. Stat. § 105-241.1, an assessment of tax, penalty and accrued interest for the taxable period was mailed to the Appellant. The Appellant protested the assessment and filed a request for an administrative hearing. After conducting a hearing, the Assistant Secretary entered a Final Decision sustaining the proposed assessment. Pursuant to N.C. Gen. Stat. § 105-241.2, the Appellant filed a notice of intent and petition for administrative review with the Tax Review Board.


Pursuant to N.C. Gen. Stat. § 105-241.2(c), the Board has examined the petition, the records and documents transmitted by the North Carolina Secretary of Revenue pertaining to this matter; and it appearing to the Board that the Appellant's petition should be dismissed since the grounds and arguments upon which relief is sought are deemed lacking in legal merit. Thus, the Board concludes that Appellant's petition for administrative review is frivolous and is filed for the purpose of delay.

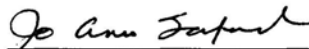
**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that Appellant's petition for administrative review be and is hereby **Dismissed**.


Made and entered into the 8th day of February 2006.

**TAX REVIEW BOARD**



  
\_\_\_\_\_  
Stacey A. Phipps, Chief Deputy Treasurer, on  
behalf of Richard H. Moore, State Treasurer

  
\_\_\_\_\_  
Jo Anne Sanford  
Chair, Utilities Commission

  
\_\_\_\_\_  
Noel L. Allen, Esq.

**STATE OF NORTH CAROLINA**

**BEFORE THE  
TAX REVIEW BOARD**

**COUNTY OF WAKE**

**IN THE MATTER OF:**

The Proposed Assessments of Additional )  
Income Tax for the Taxable Years 1999 )  
and 2000 by the Secretary of )  
Revenue of North Carolina )

**ADMINISTRATIVE**

**DECISION NUMBER:** 483

Docket No. 2004-511

vs. )

Phil Bennett, Appellant )

---

THIS MATTER is before the regular Tax Review Board (hereinafter "Board") upon petition for administrative review filed by Phil Bennett (hereinafter "Appellant") regarding the Final Decision of Eugene J. Cella, Assistant Secretary of Revenue, sustaining the proposed assessments of additional individual income tax for taxable years 1999 and 2000.

Pursuant to N.C. Gen. Stat. § 105-241.1, assessments proposing additional tax, penalty and interest for the years at issue were mailed to the Appellant. The Appellant protested the assessments and filed a request for administrative hearing. After conducting a hearing, the Assistant Secretary entered a Final Decision that sustained the proposed assessments against the Appellant. Pursuant to N.C. Gen. Stat. § 105-241.2, the Appellant filed a notice of intent and petition for administrative review of the Assistant Secretary's final decision with the Tax Review Board.

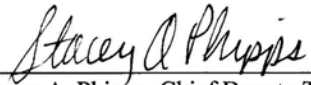
Pursuant to N.C. Gen. Stat. § 105-241.2(c), the Board has examined the petition, the records and documents transmitted by the North Carolina Secretary of Revenue pertaining to this matter, and it appearing to the Board that the Appellant's petition should be dismissed since the grounds and arguments upon which relief is sought are deemed lacking in legal merit. Thus, the Board concludes that Appellant's petition for administrative review is frivolous and is filed for the purpose of delay.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that Appellant's petition for administrative review be and is hereby **Dismissed**.

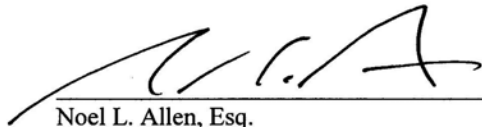
Made and entered into the 8th day of February 2006.

TAX REVIEW BOARD



  
Stacey A. Phipps, Chief Deputy Treasurer, on  
behalf of Richard H. Moore, State Treasurer

  
Jo Anne Sanford, Member  
Chair, Utilities Commission

  
Noel L. Allen, Esq.

STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE

**IN THE MATTER OF:**

The Proposed Assessments of Additional )  
Income Tax for the Tax Year )  
2002 by the Secretary of )  
Revenue of North Carolina )

**ADMINISTRATIVE**

**DECISION NUMBER:** 484

Docket No. 2005-1

vs. )

Delond Parker, Appellant )

---

THIS MATTER is before the regular Tax Review Board (hereinafter "Board") upon petition for administrative review filed by the Appellant regarding the Final Decision of Eugene J. Cella, Assistant Secretary for Administrative Hearings of the North Carolina Department of Revenue (Assistant Secretary), sustaining the proposed assessments of additional individual income tax for taxable year 2002.

Pursuant to N.C. Gen. Stat. § 105-241.1, assessments proposing additional tax, penalty and accrued interest for the year at issue were mailed to the Appellant. The Appellant protested the assessments and filed a request for an administrative hearing. After conducting a hearing, the Assistant Secretary entered a Final Decision that sustained the proposed assessments against the Appellant. Pursuant to N.C. Gen. Stat. § 105-241.2, the Appellant filed a notice of intent and petition for administrative review of the Assistant Secretary's final decision with the Tax Review Board.

Pursuant to N.C. Gen. Stat. § 105-241.2(c), the Board has examined the petition, the records and documents transmitted by the North Carolina Secretary of Revenue pertaining to this matter; and it appearing to the Board that the Appellant's petition should be dismissed since the grounds and arguments upon which relief is sought have been repeatedly rejected by the Courts and are deemed lacking in legal merit. Thus, the Board concludes that Appellant's petition for administrative review is frivolous and is filed for the purpose of delay.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that Appellant's petition for administrative review be and is hereby **Dismissed**.



Made and entered into the 8th day of February 2006.



**TAX REVIEW BOARD**

*Stacey A. Phipps*

Stacey A. Phipps, Chief Deputy Treasurer, on  
behalf of Richard H. Moore, State Treasurer

*Jo Anne Sanford*

Jo Anne Sanford, Member  
Chair, Utilities Commission

*Noel L. Allen*

Noel L. Allen, Esq.

STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE  
IN THE MATTER OF:

The Motor Fuels Civil Penalty )  
Assessments Issued May 14, 2004 by )  
The North Carolina Secretary of )  
Revenue in the Amount of \$2,000.00 )  
 )  
Against )  
 )  
Fairway Oaks, LLC, )  
 )  
Appellant )

ADMINISTRATIVE DECISION

NUMBER: 488  
Docket Number 2003-294

This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Thursday, April 6, 2006 pursuant to the petition of Fairway Oaks, LLC (hereinafter "Appellant") for administrative review of the final decision entered by the Assistant Secretary of Revenue on May 12, 2004. At that hearing, the Assistant Secretary affirmed the assessment of two civil penalties totaling \$2,000.00 for the improper use of dyed diesel fuel in highway vehicles operated by the Appellant.

On May 14, 2003 the Appellant was the subject of a routine inspection by the Department of Revenue (hereinafter "Department") of Appellant's motor fuel operation at his place of business in Whittier, NC. It was discovered that two of Appellant's three highway vehicles contained dyed fuel in violation of N.C.G.S. 105-449.117. Appellant was also assessed \$8,122.61 for bulk fuel use, reduced from \$12,644.29 after the Department waived a negligence penalty which was applicable under N.C.G.S. 105-236(5). This bulk fuel assessment is not disputed by Appellant.

Appellants protested the \$2,000.00 in penalties assessed, and requested a hearing before the Secretary of Revenue. After conducting a hearing, the Assistant Secretary of Revenue sustained the assessments. From the Assistant Secretary's final decision, appellant filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2, asserting that it was an abuse of discretion for the Assistant Secretary not to waive the civil penalties in question.

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In

order to rebut the presumption, the taxpayer must offer evidence to show that the assessment is not correct.

It appearing to the Board, after conducting an administrative hearing in this matter, and reviewing the Assistant Secretary's final decision, that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record, that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact, and that the final decisions of the Assistant Secretary were supported by the conclusions of law;

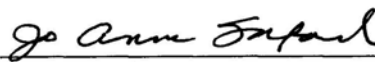
**IT IS THEREFORE ORDERED** that the Assistant Secretary's final decision is **AFFIRMED**.


Made and entered into the 5th day of July 2006.

**TAX REVIEW BOARD**



  
Stacey A. Phipps, Chief Deputy Treasurer, on behalf  
Richard H. Moore, State Treasurer

  
Jo Anne Sanford, Chair  
North Carolina Utilities Commission

  
Noel L. Allen, Esquire  
Appointed Member

**STATE OF NORTH CAROLINA**  
**COUNTY OF WAKE**

**BEFORE THE  
TAX REVIEW BOARD**

**IN THE MATTER OF:**

The Proposed Assessment of Additional )  
Income Tax for the Taxable Year 2002 )  
By the Secretary of Revenue of North )  
Carolina )

**ADMINISTRATIVE DECISION**

**NUMBER:** 489  
Docket Number 2004-510

vs. )

Roger C. Howard, )

Appellant )

---

This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Thursday, April 6, 2006 pursuant to the petition of Roger C. Howard (hereinafter "Appellant") for administrative review of the final decision entered by the Assistant Secretary of Revenue on June 7, 2005. At that hearing, the Assistant Secretary affirmed the tax assessment for year 2002 of \$6,576.16 plus interest, adding a further penalty of \$2,002.00.

Appellant did not file a North Carolina individual tax return for the year 2002. Wage and tax information obtained from Appellant's employer were used to calculate a Notice of Individual Income Tax Assessment which was mailed to the Appellant on March 30, 2004. This included additional income tax, a twenty-five percent failure to file penalty, and accrued interest totaling \$6,576.16.

Appellant protested the assessment and requested a hearing before the Secretary of Revenue. After conducting a hearing, the Assistant Secretary of Revenue sustained the proposed assessments, and added an additional penalty of \$2,002.00 under N.C.G.S. 105-163.5(f) for the furnishing by Appellant to his employer of an improper exemption certificate. From the Assistant Secretary's final decision, appellant filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2.

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase  
the assessment or decision of the Secretary."

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the taxpayer must offer evidence to show that the assessment is not correct.

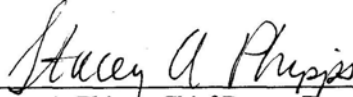
It appearing to the Board, after conducting an administrative hearing in this matter, during which appellant did not appear, and reviewing the Assistant Secretary's final decision, that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record, that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact, and that the final decisions of the Assistant Secretary were supported by the conclusions of law;

**IT IS THEREFORE ORDERED** that the Assistant Secretary's final decision is **AFFIRMED**.

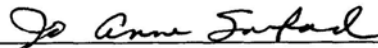
Made and entered into the 5th day of July 2006.



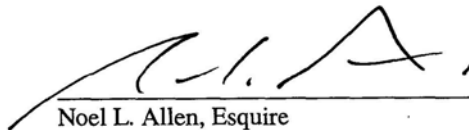
**TAX REVIEW BOARD**



Stacey A. Phipps, Chief Deputy Treasurer, on behalf  
Richard H. Moore, State Treasurer



Jo Anne Sanford, Chair  
North Carolina Utilities Commission



Noel L. Allen, Esquire  
Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE

## IN THE MATTER OF:

The Proposed Assessment of Additional )  
 Income Tax for the Taxable Years 2001 )  
 and 2002 by the Secretary of Revenue )  
 of North Carolina )

## ADMINISTRATIVE

DECISION NUMBER: 490

Docket No. 2005-217

vs. )

Dennis Crisp, )

Appellant )

THIS MATTER is before the regular Tax Review Board (hereinafter "Board") upon petition for administrative review filed by the Taxpayer regarding the Final Decision of Eugene J. Cella, Assistant Secretary for Administrative Hearings of the North Carolina Department of Revenue (Assistant Secretary), sustaining the proposed assessments of additional individual income tax for tax years 2001 and 2002.

Pursuant to N.C. Gen. Stat. § 105-241.1, assessments proposing additional tax, penalty and accrued interest for the taxable period at issue were proposed against Appellant. The Appellant protested the assessments and filed a request for an administrative hearing. After conducting a hearing, the Assistant Secretary entered a Final Decision that sustained the proposed assessments against the Appellant. Pursuant to N.C. Gen. Stat. § 105-241.2, the Appellant filed a notice of intent and petition for administrative review of the Assistant Secretary's final decision with the Tax Review Board.

Pursuant to N.C. Gen. Stat. § 105-241.2(c), the Board has examined the petition, the records and documents transmitted by the North Carolina Secretary of Revenue pertaining to this matter; and it appearing to the Board that the Appellant's petition should be dismissed since the grounds and arguments upon which relief is sought are deemed lacking in legal merit. Thus, the Board concludes that Appellant's petition for administrative review is frivolous and is filed for the purpose of delay.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that Taxpayer's petition for administrative review be and is hereby **Dismissed**.

Made and entered into the 5th day of July 2006.



**TAX REVIEW BOARD**

*Stacey A Phipps*

Stacey A. Phipps, Chief Deputy Treasurer, on  
behalf of Richard H. Moore, State Treasurer

*Jo Anne Sanford*

Jo Anne Sanford, Member  
Chair, Utilities Commission

*Noel L. Allen*

Noel L. Allen, Esquire  
Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE

**IN THE MATTER OF:**

The Proposed Assessment of Additional )  
Income Tax for the Taxable Year 2000 by )  
the Secretary of Revenue of North Carolina )

**ADMINISTRATIVE**

**DECISION NUMBER:** 491

Docket No. 2004-62 (B)

vs. )

Beth M. & Johnny E. Sturdivant, )

Appellants )

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THIS MATTER is before the regular Tax Review Board (hereinafter "Board") upon petition for administrative review filed by the Taxpayer regarding the Final Decision of Eugene J. Cella, Assistant Secretary for Administrative Hearings of the North Carolina Department of Revenue (Assistant Secretary), sustaining the proposed assessment of additional individual income tax for tax year 2000.

Pursuant to N.C. Gen. Stat. § 105-241.1, an assessment proposing additional tax, penalty and accrued interest for the taxable period at issue was mailed to Appellants. The Appellants protested the assessments and filed a request for an administrative hearing. After conducting a hearing, the Assistant Secretary entered a Final Decision that sustained the proposed assessment against the Appellants. Pursuant to N.C. Gen. Stat. § 105-241.2, the Appellants filed a notice of intent and petition for administrative review of the Assistant Secretary's final decision with the Tax Review Board.

Pursuant to N.C. Gen. Stat. § 105-241.2(c), the Board has examined the petition, the records and documents transmitted by the North Carolina Secretary of Revenue pertaining to this matter; and it appearing to the Board that the Appellants' petition should be dismissed since the grounds and arguments upon which relief is sought are deemed lacking in legal merit. Thus, the Board concludes that Appellants' petition for administrative review is frivolous and is filed for the purpose of delay.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that Taxpayer s' petition for administrative review be and is hereby **Dismissed**.



Made and entered into the 5th day of July 2006.

**TAX REVIEW BOARD**



*Stacey A. Phipps*

Stacey A. Phipps, Chief Deputy Treasurer, on  
behalf of Richard H. Moore, State Treasurer

*Jo Anne Sanford*

Jo Anne Sanford, Member  
Chair, Utilities Commission

*Noel L. Allen*

Noel L. Allen, Esquire  
Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE

**IN THE MATTER OF:**

The Proposed Assessments of Additional )  
Income Tax for the Taxable Years 2001 )  
through 2004 by the Secretary of )  
Revenue of North Carolina )

**ADMINISTRATIVE**

**DECISION NUMBER: 492**

Docket No. 2005-356

vs. )

Michael Miranda, Appellant )

---

THIS MATTER is before the regular Tax Review Board (hereinafter "Board") upon petition for administrative review filed by Michael Miranda (hereinafter "Appellant") regarding the Final Decision of Eugene J. Cella, Assistant Secretary of Revenue, sustaining the proposed assessments of additional individual income tax for taxable years 2001 through 2004.

Pursuant to N.C. Gen. Stat. § 105-241.1, assessments proposing additional tax, penalty and accrued interest for the taxable period at issue were mailed to the Appellant. The Appellant protested the assessments and filed a request for an administrative hearing. After conducting a hearing, the Assistant Secretary entered a Final Decision that sustained the proposed assessments against the Appellant. Pursuant to N.C. Gen. Stat. § 105-241.2, the Appellant filed a notice of intent and petition for administrative review of the Assistant Secretary's final decision with the Tax Review Board.

Pursuant to N.C. Gen. Stat. § 105-241.2(c), the Board has examined the petition, the records and documents transmitted by the North Carolina Secretary of Revenue pertaining to this matter; and it appearing to the Board that the Appellant's petition should be dismissed since the grounds and arguments upon which relief is sought are deemed lacking in legal merit. Thus, the Board concludes that Appellant's petition for administrative review is frivolous and is filed for the purpose of delay.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that Appellant's petition for administrative review be and is hereby **Dismissed**.

Made and entered into the 27th day of September 2006.



**TAX REVIEW BOARD**

*Stacey A. Phipps*

Stacey A. Phipps, Chief Deputy Treasurer, on  
behalf of Richard H. Moore, State Treasurer

*Jo Anne Sanford*

Jo Anne Sanford, Member  
Chair, Utilities Commission

*Noel L. Allen*

Noel L. Allen, Esq.

**STATE OF NORTH CAROLINA  
COUNTY OF WAKE**

**BEFORE THE  
TAX REVIEW BOARD**

IN THE MATTER OF: )

The Proposed Assessments of )  
Unauthorized Substance Tax dated )  
July 15, 2003 by the Secretary of )  
Revenue of North Carolina )

**ADMINISTRATIVE DECISION**

**NUMBER: 494**

**Docket number 2003-444**

vs. )

Alfredo Leon Sanchez, )  
Appellant )

---

This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Thursday, June 29th, 2006 pursuant to the petition of Alfredo Leon Sanchez (hereinafter "Appellant") for administrative review of the final decision entered by the Assistant Secretary of Revenue on June 22, 2004. At the hearing before the Assistant Secretary, Appellant was assessed an Unauthorized Substance Tax and Penalty of \$280,000.00 plus interest for possession of 4000 grams of cocaine.

Prior to the hearing on this matter, the Board considered a written Motion To Continue on behalf of Appellant. This Motion was **DENIED** by the Board, at which time the Board heard Appellant's Petition for Administrative Review.

On July 13, 2003, an Iredell County sheriff's deputy stopped the Appellant's vehicle for suspicious lane change. After further investigation, Appellant was subsequently arrested for possessing four kilograms of cocaine found hidden in the bumper of his vehicle. Pursuant to N.C.G.S. 105-13.111, on July 15, 2003 a Notice of Unauthorized Substance Tax Assessment was mailed to Appellant, notifying him that based on his possession of 4000 grams of cocaine he owed tax and penalty in the amount of \$280,000 plus interest. Although Appellant did not request a hearing before the Secretary of Revenue in writing within 30 days of the date of the Notice, he did comply with N.C.G.S. 105-241.1(b) in that he did timely submit an affidavit dated October 3, 2003 in which he swore that the Notice was not delivered to him. On February 24, 2004 a hearing was held before the Assistant Secretary of Revenue, and thereafter the final decision was issued upholding the Assessment.

From the Assistant Secretary's final decision, Appellant filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2, asserting in part that the evidence used to sustain the assessment was unlawfully obtained and that Appellant did not constructively possess the controlled substance.

**The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:**

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the Appellant to rebut that presumption. In order to rebut the presumption, the Appellant must offer evidence to show that the assessment is not correct.

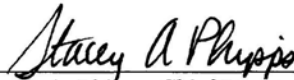
It appearing to the Board, after conducting an administrative hearing in this matter, and reviewing the Assistant Secretary's final decision, that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record, that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact, and that the final decisions of the Assistant Secretary were supported by the conclusions of law;

**IT IS THEREFORE ORDERED** that the Assistant Secretary's final decision is **AFFIRMED**.

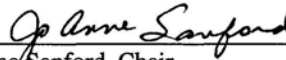
Made and entered into the 27th day of September 2006.



**TAX REVIEW BOARD**



Stacey A. Phipps, Chief Deputy Treasurer, on behalf  
Richard H. Moore, State Treasurer



Jo Anne Sanford, Chair  
North Carolina Utilities Commission



Noel L. Allen, Esquire  
Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE

**IN THE MATTER OF:**

The Proposed Assessments of Additional )  
Income Tax for the Taxable Years 2002 )  
through 2004 by the Secretary of )  
Revenue of North Carolina )

**ADMINISTRATIVE**

**DECISION NUMBER:** 495

Docket No. 2005-293

vs. )

Michael H. Finnerman, Appellant )  
)

---

THIS MATTER is before the regular Tax Review Board (hereinafter "Board") upon petition for administrative review filed by Michael H. Finnerman (hereinafter "Appellant") regarding the Final Decision of Eugene J. Cella, Assistant Secretary of Revenue, sustaining the proposed assessments of additional individual income tax for taxable years 2002 through 2004.

Pursuant to N.C. Gen. Stat. § 105-241.1, assessments proposing additional tax, penalty and accrued interest for the taxable period at issue were mailed to the Appellant. The Appellant protested the assessments and filed a request for an administrative hearing. After conducting a hearing, the Assistant Secretary entered a Final Decision that sustained the proposed assessments against the Appellant. Pursuant to N.C. Gen. Stat. § 105-241.2, the Appellant filed a notice of intent and petition for administrative review of the Assistant Secretary's final decision with the Tax Review Board.

Pursuant to N.C. Gen. Stat. § 105-241.2(c), the Board has examined the petition, the records and documents transmitted by the North Carolina Secretary of Revenue pertaining to this matter; and it appearing to the Board that the Appellant's petition should be dismissed since the grounds and arguments upon which relief is sought are deemed lacking in legal merit. Thus, the Board concludes that Appellant's petition for administrative review is frivolous and is filed for the purpose of delay.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that Appellant's petition for administrative review be and is hereby **Dismissed**.

Made and entered into the 27th day of September 2006.

**TAX REVIEW BOARD**



*Stacey A. Phipps*

Stacey A. Phipps, Chief Deputy Treasurer, on  
behalf of Richard H. Moore, State Treasurer

*Jo Anne Sanford*

Jo Anne Sanford, Member  
Chair, Utilities Commission

*N. L. Allen*

Noel L. Allen, Esq.

STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE

**IN THE MATTER OF:**

The Proposed Assessments of Additional )  
Income Tax for the Taxable Years 2000 )  
through 2003 by the Secretary of )  
Revenue of North Carolina )

**ADMINISTRATIVE**

**DECISION NUMBER:** 496

Docket No. 2005-308

vs. )

John R. & Kerry A. Moffo, Appellants )

---

THIS MATTER is before the regular Tax Review Board (hereinafter "Board") upon petition for administrative review filed by John R. Moffo and Kerry A. Moffo (hereinafter "Appellants") regarding the Final Decision of Eugene J. Cella, Assistant Secretary of Revenue, sustaining the proposed assessments of additional individual income tax for taxable years 2000 through 2003.

Pursuant to N.C. Gen. Stat. § 105-241.1, assessments proposing additional tax, penalty and accrued interest for the taxable period at issue were mailed to the Appellant. The Appellants protested the assessments and filed a request for an administrative hearing. After conducting a hearing, the Assistant Secretary entered a Final Decision that sustained the proposed assessments against the Appellants. Pursuant to N.C. Gen. Stat. § 105-241.2, the Appellants filed a notice of intent and petition for administrative review of the Assistant Secretary's final decision with the Tax Review Board.

Pursuant to N.C. Gen. Stat. § 105-241.2(c), the Board has examined the petition, the records and documents transmitted by the North Carolina Secretary of Revenue pertaining to this matter; and it appearing to the Board that the Appellants' petition should be dismissed since the grounds and arguments upon which relief is sought are deemed lacking in legal merit. Thus, the Board concludes that Appellants' petition for administrative review is frivolous and is filed for the purpose of delay.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that Appellants' petition for administrative review be and is hereby **Dismissed**.



Made and entered into the 27th day of September 2006.



**TAX REVIEW BOARD**

A handwritten signature in cursive script, reading "Stacey A. Phipps".

Stacey A. Phipps, Chief Deputy Treasurer, on  
behalf of Richard H. Moore, State Treasurer

A handwritten signature in cursive script, reading "Jo Anne Sanford".

Jo Anne Sanford, Member  
Chair, Utilities Commission

A handwritten signature in cursive script, reading "Noel L. Allen".

Noel L. Allen, Esq.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE  
TAX REVIEW BOARD

**IN THE MATTER OF:**

The Proposed Assessment of Additional )  
Income Tax for the Taxable Years 1998 )  
Through 2004 by the Secretary of Revenue )  
of North Carolina )

**ADMINISTRATIVE DECISION**

**NUMBER: 497**

v. )

Docket Number 2005-292

Byron W. Sisk, )

Appellant )

---

This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Thursday, August 3, 2006 pursuant to the petition of Byron W. Sisk (hereinafter "Appellant") for administrative review of the final decision entered by the Assistant Secretary of Revenue on April 6, 2006. At that hearing, the Assistant Secretary sustained the tax assessments for years 1998 through 2004.

Appellant did not file North Carolina individual tax returns for years 1998 through 2004. Wage and tax information obtained from Appellant's employer were used to calculate Notices of Individual Income Tax Assessment. These Notices reflected tax, penalties and interest for years 1998 through 2004, and were mailed to Appellant on April 6, 2004, April 26, 2005, and September 20, 2005.

Appellant protested the assessment and requested a hearing before the Secretary of Revenue. After conducting a hearing, the Assistant Secretary of Revenue sustained the proposed assessments, penalties and interest. From the Assistant Secretary's final decisions, appellant filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2.

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the taxpayer must offer evidence to show that the assessment is not correct.

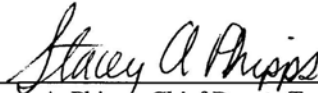
It appearing to the Board, after conducting an administrative hearing in this matter, during which appellant did not appear, and reviewing the Assistant Secretary's final decision, that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record, that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact, and that the final decision of the Assistant Secretary was supported by the conclusions of law;

**IT IS THEREFORE ORDERED** that the Assistant Secretary's final decision is **AFFIRMED**.

Made and entered into the 1st day of November 2006.



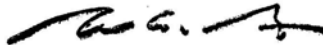
**TAX REVIEW BOARD**



Stacey A. Phipps, Chief Deputy Treasurer, on behalf  
Richard H. Moore, State Treasurer



Jo Anne Sanford, Chair  
North Carolina Utilities Commission



Noel L. Allen, Esquire  
Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE

**IN THE MATTER OF:**

The Denial of Refund of Sales and Use Tax )  
for the Period January 1, 2003 through June )  
30, 2003 by the Secretary of Revenue of )  
North Carolina )

**ADMINISTRATIVE DECISION**

**NUMBER:** 498

v. )

Docket Number 2005-134

MCNC Research & Development )  
Institute, )

Appellant )

This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Thursday, August 3, 2006 pursuant to the petition of MCNC Research & Development Institute (hereinafter "Appellant") for administrative review of the final decision entered by the Assistant Secretary of Revenue on March 15, 2006.

Pursuant to N.C. Gen. Stat. § 105-164.14(b), Appellant filed a Nonprofit and Governmental Entity Claim for a refund of state and county sales and use taxes it paid during January 1, 2003 through June 30, 2003. The Department of Revenue denied the refund, and Appellant subsequently objected and requested a hearing before the Secretary of Revenue. At such hearing, Appellant was afforded opportunity to present evidence to support the contention that it is a nonprofit entity as defined by N.C. Gen. Stat. § 105-164.14(b). After conducting the hearing, the Assistant Secretary of Revenue sustained the denial of refund. From the Assistant Secretary's final decision, Appellant filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2.

Board members present at the administrative hearing on August 3, 2006 were Stacey Phipps and Noel Allen. Mr. Allen subsequently recused himself from deliberations on this matter due to a possible conflict of interest. On August 24, 2006 the Board was reconvened with Board members Stacey Phipps and Jo Anne Sanford present for deliberations on the evidence.

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the taxpayer must offer evidence to show that the assessment is not correct.

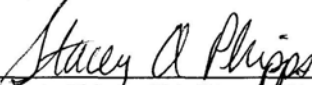
It appearing to the Board, after conducting an administrative hearing in this matter during which Appellant appeared and presented oral argument through counsel, and reviewing the Assistant Secretary's final decision, that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record, that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact, and that the final decision of the Assistant Secretary was supported by the conclusions of law;

**IT IS THEREFORE ORDERED** that the Assistant Secretary's final decision is **AFFIRMED**.

Made and entered into the 1st day of November 2006.



**TAX REVIEW BOARD**

  
\_\_\_\_\_  
Stacey A. Phipps, Chief Deputy Treasurer, on behalf  
Richard H. Moore, State Treasurer

  
\_\_\_\_\_  
Jo Anne Sanford, Chair  
North Carolina Utilities Commission

STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE

**IN THE MATTER OF:**

The Proposed Denial of Refund of the )  
Motor Fuels Tax Division's Two )  
Identification Marker (Decal) Civil Penalties )  
Issued on April 19, 2005 by the Secretary )  
of Revenue of the State of North Carolina )

**ADMINISTRATIVE DECISION**

**NUMBER:** 499  
Docket Number 2005-259

Against )  
)  
)  
The Philippians Project, )  
2400 Richmond Hill Church Road )  
East Bend, North Carolina 27018 )  
)  
Appellant )

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This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Utilities Commission, on Thursday, November 30, 2006 pursuant to the petition of The Philippians Project (hereinafter "Appellant") for administrative review of the final decision entered by the Assistant Secretary of Revenue on February 27, 2006. At that hearing, the Assistant Secretary sustained two Civil Penalties for Failure to Display Identification Marker (Fuel Decal) stickers on two of Appellant's heavy trucks.

Appellant owns and operates two heavy trucks in its operations, and Appellant submitted to the Motor Fuels Division an incomplete application requesting the required Fuel Decals for these trucks. Appellant refused to provide either a Social Security Number or a Federal Identification Number where required in the application, and the application was subsequently denied by the Division. N.C. Gen. Stat. § 105-449.52 provides a \$100.00 penalty for a motor carrier who operates "a motor vehicle that either fails to carry the registration card required by this Article or fails to display an identification marker in accordance with this Article." On April 19, 2005, a representative of the Motor Fuels Division met with Appellant and issued two civil penalty assessments for failure to display the required Fuel Decals.

Appellant protested the two civil penalties and requested a hearing before the Secretary of Revenue. After conducting a hearing, the Assistant Secretary of Revenue sustained the penalties. From the Assistant Secretary's final decisions, appellant filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2.

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the Appellant must offer evidence to show that the assessment is not correct. Through counsel, Appellant has presented several constitutional arguments in this matter regarding the application of the law in question to their organization. However, the scope of this Board's review does not permit consideration of these constitutional arguments.

Thus, it appearing to the Board, after conducting an administrative hearing in this matter and reviewing the Assistant Secretary's final decision, that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record, that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact, and that the final decision of the Assistant Secretary was supported by the conclusions of law;

**IT IS THEREFORE ORDERED** that the Assistant Secretary's final decision is **AFFIRMED**.

Made and entered into the 29th day of December 2006.

**TAX REVIEW BOARD**



*Stacey A. Phipps*

Stacey A. Phipps, Chief Deputy Treasurer, on behalf  
Richard H. Moore, State Treasurer

*Jo Anne Sanford*

Jo Anne Sanford, Chair  
North Carolina Utilities Commission

*Noel L. Allen*

Noel L. Allen, Esquire  
Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

Taxes, Penalty, and Interest for the Period	)	
January 1, 2002 through March 31, 2003	)	
Issued by the Secretary of Revenue of the	)	
State of North Carolina in the Amount of	)	<b>ADMINISTRATIVE DECISION</b>
\$1,529.44 Plus Subsequently Accruing	)	<b>NUMBER: 500</b>
Interest	)	Docket Number 2005-261
	)	
Against	)	
	)	
Walter L. Fink	)	
d/b/a WLF Transport,	)	
Appellant	)	

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This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Utilities Commission on Thursday, November 30, 2006 pursuant to the petition of Walter L. Fink d/b/a WLF Transport (hereinafter "Appellant") for administrative review of the final decision entered by the Assistant Secretary of Revenue on June 5, 2006.

Appellant was the subject of an audit of Appellant's motor fuel carrier operations by the Motor Fuels Division of the North Carolina Department of Revenue for the period of January 1, 2002 through March 31, 2003. Using the best available records, it was determined that the Appellant had under-reported his mileage by 3,185 miles and fuel usage by 159 gallons. Accordingly, on May 5, 2005 the Division issued a proposed tax assessment of \$1,529.44, which included penalties for failure to file a quarterly return, a negligence penalty and interest.

Appellants protested the assessment and requested a hearing before the Secretary of Revenue. After conducting a hearing, the Assistant Secretary of Revenue sustained the proposed assessments but waived the penalties, issuing a final decision of tax and interest owed of \$1,339.54 through June, 2006. From the Assistant Secretary's final decision, appellants filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2.

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."



Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the taxpayer must offer evidence to show that the assessment is not correct.

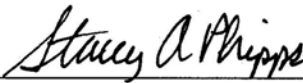
It appearing to the Board, after conducting an administrative hearing in this matter, during which Appellant did not appear, and reviewing the Assistant Secretary's final decision, that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record, that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact, and that the final decision of the Assistant Secretary was supported by the conclusions of law;

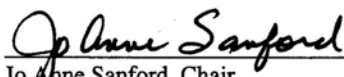
**IT IS THEREFORE ORDERED** that the Assistant Secretary's final decision is **AFFIRMED**.

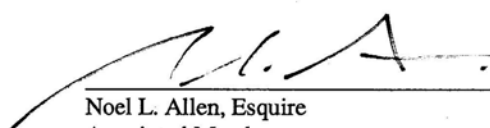
Made and entered into the 29th day of December 2006.



**TAX REVIEW BOARD**

  
\_\_\_\_\_  
Stacey A. Phipps, Chief Deputy Treasurer, on behalf  
Richard H. Moore, State Treasurer

  
\_\_\_\_\_  
Jo Anne Sanford, Chair  
North Carolina Utilities Commission

  
\_\_\_\_\_  
Noel L. Allen, Esquire  
Appointed Member

**STATE OF NORTH CAROLINA**

**BEFORE THE  
TAX REVIEW BOARD**

**COUNTY OF WAKE**

**IN THE MATTER OF:**

The Assessment of Unauthorized )  
 Substance Tax Dated October 25, 2005 )  
 By the Secretary of Revenue of the State )  
 of North Carolina )

**ADMINISTRATIVE DECISION**

**NUMBER: 501**  
 Docket Number 2005-384

v. )

Stanley O'Neal Gill, )  
 Appellant )

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This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Utilities Commission, on Thursday, November 30, 2006 pursuant to the petition of Stanley O'Neal Gill (hereinafter "Appellant") for administrative review of the final decision entered by the Assistant Secretary of Revenue on May 26, 2006. The final decision sustained Unauthorized Substance Tax and Penalty of \$35,000.00 plus interest against Appellant based on his constructive possession of 500 grams of cocaine.

On January 15, 2003, law enforcement officers seized firearms and a large amount of cocaine at Appellant's residence pursuant to an undercover investigation and information received from a confidential informant. Appellant was not physically present at his residence at the time. On April 12, 2004, Appellant pled guilty in United States District Court to the charge of conspiring to possess and distribute cocaine and to the charge of possession of more than 500 grams of cocaine with intent to distribute.

Appellant protested the Unauthorized Substance Tax and Penalty and requested a hearing before the Secretary of Revenue. After conducting a hearing, the Assistant Secretary of Revenue sustained tax and penalty. From the Assistant Secretary's final decision, appellant filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2.

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase  
 the assessment or decision of the Secretary."

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the Appellant must offer evidence to show that the assessment is not correct.

Thus, it appearing to the Board, after conducting an administrative hearing in this matter and reviewing the Assistant Secretary's final decision, at which Appellant did not appear, that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record, that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact, and that the final decisions of the Assistant Secretary were supported by the conclusions of law;

**IT IS THEREFORE ORDERED** that the Assistant Secretary's final decision is **AFFIRMED**.

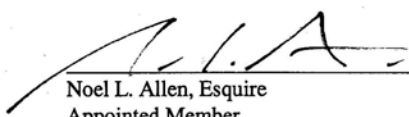
Made and entered into the 29th day of December 2006.

**TAX REVIEW BOARD**



  
Stacey A. Phipps, Chief Deputy Treasurer, on behalf  
Richard H. Moore, State Treasurer

  
Jo Anne Sanford, Chair  
North Carolina Utilities Commission

  
Noel L. Allen, Esquire  
Appointed Member

**STATE OF NORTH CAROLINA**  
**COUNTY OF WAKE**

**BEFORE THE**  
**TAX REVIEW BOARD**

**IN THE MATTER OF:**

The Proposed Assessment of Additional )  
Income Tax for the Taxable Years 2000 )  
through 2004 by the Secretary of Revenue )  
of North Carolina )

**ADMINISTRATIVE DECISION**

**NUMBER: 502**  
Docket Number 2005-201

v. )  
)  
Thomas E. Gust, )  
)  
Appellant )

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This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Utilities Commission, on Thursday, November 30, 2006 pursuant to the petition of Thomas E. Gust (hereinafter "Appellant") for administrative review of the final decision entered by the Assistant Secretary of Revenue on July 6, 2006.

Pursuant to N.C. Gen. Stat. § 105-241.1, an assessment of tax, penalty and accrued interest for the taxable period was mailed to the Appellant. The Appellant protested the assessment and filed a request for an administrative hearing. After conducting a hearing, the Assistant Secretary entered a Final Decision sustaining the proposed assessment of additional income tax, penalties and interest for tax years 2000 through 2004. Pursuant to N.C. Gen. Stat. § 105-241.2, the Appellant filed a notice of intent and petition for administrative review with the Tax Review Board.

Pursuant to N.C. Gen. Stat. § 105-241.2(c), the Board has examined the petition, the records and documents transmitted by the North Carolina Secretary of Revenue pertaining to this matter; and it appearing to the Board that the Appellant's petition should be dismissed since the grounds and arguments upon which relief is sought are deemed lacking in legal merit. Thus, the Board concludes that Appellant's petition for administrative review is frivolous and is filed for the purpose of delay.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that Appellant's petition for administrative review be and is hereby **Dismissed**.

Made and entered into the 29th day of December 2006.

TAX REVIEW BOARD



*Stacey A. Phipps*

Stacey A. Phipps, Chief Deputy Treasurer, on behalf  
Richard H. Moore, State Treasurer

*J. Anne Sanford*

J. Anne Sanford, Chair  
North Carolina Utilities Commission

*Noel L. Allen*

Noel L. Allen, Esquire  
Appointed Member

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

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

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

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the NC Child Care Commission intends to amend the rules cited as 10A NCAC 09 .0102, .0708, .1403, .2701 - .2702, .2704.

**Proposed Effective Date:** September 1, 2007

### **Public Hearing:**

**Date:** April 26, 2007

**Time:** 11 a.m. – 12 p.m.

**Location:** NC Division of Child Development, 319 Chapanoke Road, Suite 120, Raleigh, NC

**Reason for Proposed Action:** The NC Child Care Commission is initiating rule-making regarding the requirements for safety of children in child care facilities. These amendments will ensure the safety and welfare of children when they are participating in aquatic activities while in child care. Other rule changes are to amend the criminal record check requirements and to clarify the requirements for in-service training for child care providers. Other changes simply recodify language within the rules for clarity, consistency and ease of reading.

**Procedure by which a person can object to the agency on a proposed rule:** Anyone wishing to comment on these proposed rules or would like to request copies of the rules, should contact Dedra Alston, Rule-making Coordinator, NC Division of Child Development, 2201 Mail Service Center, Raleigh, NC 27699-2201, at (919) 662-4543, or Dedra.Alston@ncmail.net. Written comments will be accepted through June 1, 2007. Oral comments may be made during the public hearing. The Commission Chairperson may impose time limits for oral remarks.

**Comments may be submitted to:** Dedra Alston, 2201 Mail Service Center, Raleigh, NC 27699-2201, phone (919) 662-4543, fax (919) 662-4568, email Dedra.Alston@ncmail.net.

**Comment period ends:** June 1, 2007

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

objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

### **Fiscal Impact:**

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

## **CHAPTER 09 - CHILD CARE RULES**

### **SECTION .0100 – DEFINITIONS**

#### **10A NCAC 09 .0102 DEFINITIONS**

The terms and phrases used in this Chapter shall be defined as follows except when the content of the rule clearly requires a different meaning. The definitions prescribed in G.S. 110-86 also apply to these Rules.

- (1) "Agency" as used in Section .2200 of this Chapter, means Division of Child Development, Department of Health and Human Services located at 319 Chapanoke Road, Suite 120, Raleigh, North Carolina 27603.
- (2) "Appellant" means the person or persons who request a contested case hearing.
- (3) "Basic School-Age Care Training" (BSAC Training) means the seven clock hours of training developed by the North Carolina State University Department of 4-H Youth Development for the Division of Child Development on the elements of quality school-age care.
- (4) "Child Care Program" means a single center or home, or a group of centers or homes or both, which are operated by one owner or supervised by a common entity.
- (5) "Child care provider" as defined by G.S. 110-90.2 (a) (2) a. and used in Section .2700 of this Chapter, includes but is not limited to the following employees who have contact with the children in a child care program: facility directors, administrative staff, teachers, teachers' aides, cooks, maintenance personnel and drivers.
- (6) "Child Development Associate Credential" means the national early childhood credential

- administered by the Council for Early Childhood Professional Recognition.
- (7) "Developmentally appropriate" means suitable to the chronological age range and developmental characteristics of a specific group of children.
- (8) "Division" means the Division of Child Development within the Department of Health and Human Services.
- (9) "Drop-in care" means a child care arrangement where children attend on an intermittent, unscheduled basis.
- (10) "Early Childhood Environment Rating Scale - Revised edition" (Harms, Cryer, and Clifford, 1998, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are two and a half years old through five years old, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in August 2005 is ~~fourteen dollars and ninety five cents (\$14.95)~~. 2006 is sixteen dollars and ninety-five cents (\$16.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.
- (11) "Family Day Care Rating Scale" (Harms and Clifford, 1989, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by children in family child care homes to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in August 2005 is ~~fourteen dollars and ninety five cents (\$14.95)~~. 2006 is fifteen dollars and ninety-five cents (\$15.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.
- (12) "Group" means the children assigned to a specific caregiver, or caregivers, to meet the staff/child ratios set forth in G.S. 110-91(7) and this Chapter, using space which is identifiable for each group.
- (13) "Household member" means a person who resides in a family home as evidenced by factors including, but not limited to, maintaining clothing and personal effects at the household address, receiving mail at the household address, using identification with the household address, or eating and sleeping at the household address on a regular basis.
- (14) "Infant/Toddler Environment Rating Scale - Revised edition" (Harms, Cryer, and Clifford, 1990, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are younger than thirty months old, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in August 2005 is ~~fourteen dollars and ninety five cents (\$14.95)~~. 2006 is sixteen dollars and ninety-five cents (\$16.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.
- (15) "ITS-SIDS Training" means the Infant/Toddler Safe Sleep and SIDS Risk Reduction Training developed by the NC Healthy Start Foundation for the Division of Child Development for caregivers of children ages 12 months and younger.
- (16) "Licensed or Approved Space" as used in 10A NCAC 09 .0512 includes "primary space" as described in 10A NCAC 09 .1401(a), outdoor space as described in 10A NCAC 09 .1402, single use rooms or other administrative areas.
- ~~(16)~~(17) "Licensee" means the person or entity that is granted permission by the State of North Carolina to operate a child care facility.
- ~~(17)~~(18) "North Carolina Early Childhood Credential" means the state early childhood credential that is based on completion of coursework and standards found in the North Carolina Early Childhood Instructor Manual (published by the NC Community College System Office). These standards are incorporated by reference and include subsequent amendments. A copy of the North Carolina Early Childhood Credential requirements is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection or copying at no charge during regular business hours.
- ~~(18)~~(19) "Operator" means the person or entity held legally responsible for the child care business. The terms "operator", "sponsor" or "licensee" may be used interchangeably.
- (20) "Over 15 years old", as referenced in Section 2700 of this Chapter, means an individual who has had their 15th birthday.

- (19)(21) "Owner" means any person with a five percent or greater equity interest in a child care facility.
- (20)(22) "Parent" means a child's parent, legal guardian, or full-time custodian.
- (21)(23) "Part-time care" means a child care arrangement where children attend on a regular schedule but less than a full-time basis.
- (22)(24) "Passageway" means a hall or corridor.
- (23)(25) "Person" means any individual, trust, estate, partnership, corporation, joint stock company, consortium, or any other group, entity, organization, or association.
- (24)(26) "Preschooler" or "preschool-aged child" means any child who does not fit the definition of school-aged child in this Rule.
- (25)(27) "School-Age Care Environment Rating Scale" (Harms, Jacobs, and White, 1996, published by Teachers College Press) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of the children in the group are older than five years, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy for may call Teachers College Press at 1-800-575-6566. The cost of this scale in August 2005 is fourteen dollars and ninety-five cents (\$14.95). 2006 is fifteen dollars and ninety-five cents (\$15.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.
- (26)(28) "School-aged child" means any child who is at least five years old on or before October 16 of the current school year and who is attending, or has attended, a public or private grade school or kindergarten; or any child who is not at least five years old on or before October 16 of that school year, but has been attending school during that school year in another state in accordance with the laws or rules of that state before moving to and becoming a resident of North Carolina; or any child who is at least five years old on or before April 16 of the current school year, is determined by the principal of the school to be gifted and mature enough to justify admission to the school, and is enrolled no later than the end of the first month of the school year.
- (27)(29) "Seasonal Program" means a recreational program as set forth in G.S. 110-86(2)(b).
- (28)(30) "Section" means Division of Child Development.
- (29)(31) "Substitute" means any person who temporarily assumes the duties of a staff person for a time period not to exceed two consecutive months.

(30)(32) "Temporary care" means any child care arrangement which provides either drop-in care or care on a seasonal or other part-time basis and is required to be regulated pursuant to G.S. 110-86.

(31)(33) "Volunteer" means a person who works in a child care facility and is not monetarily compensated by the facility.

*Authority G.S. 110-85; 110-88; 143B-168.3.*

## **SECTION .0700 - HEALTH AND OTHER STANDARDS FOR CENTER STAFF**

### **10A NCAC 09 .0708 IN-SERVICE TRAINING APPROVAL**

Staff may meet the in-service training requirements by attending child-care workshops, conferences, seminars, or courses, provided each training activity satisfies the following criteria:

- (1) Prior approval from the Division is not required for training offered by ~~an accredited~~ a college or ~~university, university~~ with nationally recognized regional accreditation, by a government agency, or by a state or national professional organization or its recognized affiliates, affiliates as recognized by the Division, provided the content complies with G.S. 110-91(11). An annual training plan submitted on a form provided by the Division, is required for review by the Division for training provided by a government agency or by a state or national professional organization. The plan is not required for any state, national or international conferences sponsored by professional child care organizations or other similar organizations recognized by the Division.
- (2) Prior approval from the Division is required ~~on an annual basis for any agencies, agencies and organizations or individuals not specified in Item (1) of this Rule which have staff who provide, or who arrange for the provision of,~~ who wish to provide training for child care operators and staff. To obtain such approval, the agency or agency, organization or individual shall complete and submit the in-service training approval forms provided by the Division at least 20 business days prior to the training event. A training roster listing the attendees' name, the county of employment and day time phone number shall be submitted to the Division no later than 15 days after the training event. The event sponsor shall provide training evaluations to be completed by attendees and shall keep the evaluations on file for three years, submit its annual training plan to the Division. Approval shall be determined based upon the qualifications of the trainer(s).



- (3) ~~Prior approval for training shall be obtained from the Division by any organization, association, or individual not included in Items (1) and (2) of this Rule.~~

Prior approval shall be determined based upon:

- (a) The qualifications of the trainer(s); trainer's education, training and experience relevant to the training topic;
  - (b) Best practice in adult learning principles;
  - (c) Content that is in compliance with G.S. 110-91(11); and
  - (d) Contact hours, reasonable for the proposed content and scope of the training session.
- (4) ~~No more than five clock hours of the 20 clock hours of training required annually shall be provided by center staff. This restriction shall not apply if the center staff providing the training have been approved according to the criteria outlined in either Item (1) or (2) of this Rule.~~

The Division may decline to approve:

- (a) Agencies, organizations or individuals not meeting the standards listed in this Rule and in G.S. 110-91-(11); and
- (b) Agencies, organizations or individuals who intentionally falsify any information submitted to the Division.

*Authority G.S. 110-85; 110-91(11); 143B-168.3.*

## SECTION .1400 - SPACE REQUIREMENTS

### 10A NCAC 09 .1403 AQUATIC ACTIVITIES

(a) The requirements in this Rule apply to aquatic activities, which are defined as activities that take place in or on a body of water such as swimming, swimming instruction, wading, visits to water parks, and boating. Aquatic activities do not include water play activities such as water table play, slip and slide activities or playing in sprinklers.

~~(a)(b)~~ When children participate in swimming or other aquatic activities, a person who has a current life guard training certificate, issued by the Red Cross or other training determined by the Division to be equivalent to the Red Cross training, appropriate for both the type of body of water and type of aquatic activities, shall accompany the group and shall be present at all times to supervise the children in or near the water and shall not be counted in the staff-child ratio.

(c) One person with a current life guard training certificate is required for each group of 25 or fewer children.

(d) Children under the age of three shall not participate in aquatic activities.

~~(b)(e)~~ The following staff-child ratios set forth in G.S. 110-91(7) shall be maintained whenever children participate in

swimming activities, including swimming instruction, aquatic activities:

<u>Age of Children</u>	<u>Ratio Staff/Children</u>
<u>3 to 4 Years</u>	<u>1/8</u>
<u>4 to 5 Years</u>	<u>1/10</u>
<u>5 Years and Older</u>	<u>1/13</u>

Notwithstanding the staff-child ratios, at no time shall there be fewer than two staff members supervising the aquatic activity.

(f) Children shall be adequately supervised by center staff at all times while participating in aquatic activities. Adequate supervision shall mean that half of the center staff present is in the water and the other half is out of the water and stationed in pre-assigned areas that will enable them to hear, see, and respond quickly to the children at all times. Children shall not enter the water before center staff are stationed in their pre-assigned areas. Center staff shall devote their full attention to supervising the children in their pre-assigned areas of coverage.

(g) Prior to children participating in aquatic activities, the center shall develop policies that address the following:

- (1) aquatic safety hazards;
- (2) pool and aquatic activity area supervision including restroom or changing room use;
- (3) how discipline is handled during aquatic activities;
- (4) aquatic area staff-child ratios; and
- (5) the facility's specific field trip and transportation policies and procedures.

(h) Prior to accompanying children on aquatic activities all center staff responsible for supervising children during an aquatic activity shall have reviewed:

- (1) the center policies as specified in Paragraph (g) of this Rule; and
- (2) any specific guidelines provided by the pool operator or other off-site aquatic facility.

The center shall maintain a signed and dated statement verifying staff review of the center and aquatic facility policies for the duration of the staff person's employment.

~~(e)(i)~~ Any outdoor swimming pool which is located on the child care facility premises shall be enclosed by a fence and shall be separated from the remaining outdoor play area by that fence.

~~(e)(j)~~ Swimming pool safety rules shall be posted near the any swimming pool located on the child care facility premises. At a minimum, these rules shall address:

- (1) the location of a first-aid kit;
- (2) that non-water toys are prohibited;
- (3) that children shall not run or push one another;
- (4) that no swimming is allowed without an adult present; and
- (5) that glass objects are not allowed.

~~(e)(k)~~ All swimming pools used by children shall meet the "Rules Governing Public Swimming Pools", in accordance with 15A NCAC 18A .2500 which are incorporated by reference, including subsequent amendments. A copy of these Rules is on file with the Division of Child Development, 319 Chapanoke Road, Raleigh, NC 27626, or may be obtained at no cost by writing the North Carolina Division of Environmental Health, 1630 Mail Service Center, Raleigh, NC 27699-1630.

*Authority G.S. 110-85; 110-88(5); 110-91(1),(6); 143B-168.3.*

**SECTION .2700 - CRIMINAL RECORDS CHECKS**

**10A NCAC 09 .2701 APPLICATION FOR PERMITS**

(a) In addition to the requirements set forth in Rules .0302 and .1702, of this ~~Subchapter~~ Chapter the prospective child care provider shall submit to the Division at the time of application the following forms:

- (1) a certified criminal history check from the Clerk of Superior Court's office in the county or counties where the individual has resided during the previous 12 months;
- (2) a signed Authority for Release of Information using the form provided by the Division; and
- (3) a completed fingerprint card using SBI form FD-258.

If the prospective child care provider has lived in North Carolina for less than five consecutive years immediately preceding the date the fingerprint card is completed, ~~a second fingerprint card shall be submitted in order to complete a national check.~~ check shall be completed.

(b) The prospective child care provider shall sign a statement declaring under penalty of perjury if he or she has been convicted of a crime other than a minor traffic violation. The prospective child care provider shall maintain this statement on file to be available for review by a representative of the Division until the notice of qualification is received by the provider. If the prospective child care provider has been ~~convicted~~ convicted, has pending charges or indictments, is under deferred prosecution, has received a Prayer For Judgment, or is on probation for a crime including, but not limited to, those specified in G.S. 110-90.2, the prospective child care provider shall acknowledge ~~on the statement~~ that he or she is aware that the issuance of a permit is conditional pending approval by the Division.

(c) If the prospective child care provider has been ~~convicted~~ convicted, has pending charges or indictments, is under deferred prosecution, has received a Prayer For Judgment, or is on probation for a crime including, but not limited to, those specified in G.S. 110-90.2, he or she may submit to the Division additional information concerning the conviction or charges that could be used by the Division in making the determination of the prospective child care provider's qualification. The Division may consider the following in making their decision: length of time since conviction; nature of the crime; circumstances surrounding the commission of the offense or offenses; evidence of rehabilitation; number of prior offenses; and age of the individual at the time of occurrence.

(d) A prospective child care provider's refusal to complete the required criminal history record check paperwork is reasonable cause to deny issuance of a permit.

(e) The Division shall notify the prospective child care provider in writing of the determination by the Division of the individual's fitness to have responsibility for the safety and well-being of children based on the criminal history.

(f) Determination by the Division that the prospective child care provider is disqualified is reasonable cause to deny issuance of a permit.

(g) If the prospective child care provider is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity, or a person designated by the

chief executive officer as responsible for the operation of the facility, shall complete the criminal history record check as specified in Paragraph (a) of this Rule.

(h) When a Letter of Intent to Operate pursuant to G.S. 110-106 ~~and G.S. 110-106.1~~ is submitted to the Division, the person signing the Letter of Intent shall also submit all forms as required in Rule .2702(a) of this Section.

(i) Determination by the Division that the person submitting the Letter of Intent is disqualified is reasonable cause to issue a Notice to Cease Operation.

(j) Any child care provider who owns or operates an existing child care program, and who is applying for a permit for an additional child care program within one year from the date of qualification that was based on fingerprinting, shall submit a certified criminal history check from the Clerk of Superior Court's office in the county or counties where the individual has resided during the previous 12 months. A new fingerprint card shall not be required unless deemed necessary by the Division in making the determination of qualification. If the criminal history check was completed more than one year prior to the application for an additional child care program, the applicant shall complete all forms as required in Paragraph (a) of this Rule.

*Authority G.S. 110-85; 110-90.2; 114-19.5; 143B-168.3; S.L. 1995, c. 507, s. 23.25.*

**10A NCAC 09 .2702 CRIMINAL RECORD CHECK REQUIREMENTS FOR CHILD CARE PROVIDERS**

(a) Child care providers shall submit the following to their employer no later than five ~~working~~ business days after beginning work:

- (1) a certified criminal history check from the Clerk of Superior Court's office in the county where the individual resides;
- (2) a signed Authority for Release of Information using the form provided by the Division;
- (3) a fingerprint card using SBI form FD-258; and
- (4) a signed statement declaring under penalty of perjury if he or she has been convicted of a crime other than a minor traffic violation.

If the child care provider has been ~~convicted~~ convicted, has pending charges or indictments, is under deferred prosecution, has received a Prayer For Judgment, or is on probation for a crime, including, but not limited to, those specified in G.S. 110-90.2, the child care provider shall acknowledge on the statement that he or she is aware that the employment is conditional pending approval by the Division. If the child care provider has lived in North Carolina for less than five consecutive years immediately preceding the date the fingerprint card is completed, ~~a second fingerprint card shall be submitted in order to complete a national check.~~ check shall be completed.

(b) If the child care provider has been ~~convicted~~ convicted, has pending charges or indictments, is under deferred prosecution, has received a Prayer For Judgment, or is on probation for a ~~crime,~~ crime including, but not limited to, those specified in G.S. 110-90.2, he or she may submit to the Division additional information concerning the conviction or charges that could be used by the Division in making the determination of the provider's qualification for employment. The Division may

consider the following in making a decision: length of time since conviction; nature of the crime; circumstances surrounding the commission of the offense or offenses; evidence of rehabilitation; number and type of prior offenses; and age of the individual at the time of occurrence.

(c) The child care provider's employer shall mail ~~the a complete and accurate packet that includes a local certified criminal history check, check from the Clerk of Superior Court's office in the county where the individual resides,~~ Authority for Release of Information using the form provided by the Division, and a fingerprint ~~card(s) card~~ to the Division no later than three ~~working business days~~ after receipt. A copy of the submitted information, and the declaration statement, shall be maintained in the child care provider's personnel file, and shall be available for review by a representative of the Division until the notice of qualification is received by the provider. At that time the submitted information and the declaration statement may be discarded. The notice of qualification shall be maintained in the child care provider's personnel file, and shall be available for review by a representative of the Division.

(d) The child care provider shall be on probationary status pending the determination of qualification or disqualification by the Division.

(e) The Division shall notify the child care provider in writing of the determination by the Division of the individual's ~~fitness~~ qualification to have responsibility for the safety and well-being of children based on the criminal history. The Division shall notify the employer, if any, in writing of the Division's determination concerning the child care provider; however, the employer shall not be told the specific information used in making the determination.

(f) If the child care provider changes employers within one year from the date of qualification that was based on fingerprinting, he or she shall submit a certified criminal history check from the Clerk of Superior Court's office in the county where the individual resides. This local check shall be submitted to his or her employer no later than five ~~working business days~~ after beginning work. The employer shall complete the steps as defined in Paragraphs (c), (d) and (h) of this Rule, except that the fingerprint card and the Authority for Release of Information as referenced in Paragraph (c) is not required. If the criminal history check was completed more than one year prior to employment, the child care provider shall complete all forms as required in Paragraph (a) of this Rule.

(g) ~~Family~~ If a family child care home changes the location of operation, the family child care home providers and household members over the age of 15 years old, including family members and non-family members who use the home, on a permanent or temporary basis, as their primary residence, who change the location of their operation shall submit a certified criminal history check from the Clerk of Superior Court's office in the county or counties where the provider and household members had lived during the previous 12 months. This local check shall be submitted to the child care consultant no later than 10 business days after the location change. A new fingerprint card shall not be required unless deemed necessary by the Division in making its determination of qualification.

(h) Child care providers determined by the Division to be disqualified shall be terminated by the center or family child

care home immediately upon receipt of the disqualification notice.

(i) Refusal on the part of the employer to dismiss a child care provider who has been found to be disqualified shall be grounds for suspension, denial or revocation of the permit in addition to any other administrative action or civil penalties pursued by the Division. If an employer appeals the administrative action, the child care provider shall not be employed during the appeal process.

(j) A substitute child care provider who is employed for more than five days, whether working full or part-time, shall submit all forms as required in Paragraph (a) of this Rule to the employer by the end of the fifth working day. The employer shall complete the steps as defined in Paragraphs (c), (d) and (h) of this Rule.

(k) If a child care provider or household member is employed or remains at the same facility for three consecutive years, a modified criminal record check shall be conducted by using the Administrative Office of the Courts (AOC) System. On each three year anniversary date of employment, the child care provider or household member shall complete and submit the form provided by the Division. The Division may request a certified criminal history check from the Clerk of Superior Court's office in the county where the individual resides, from the provider or household member to verify the AOC results.

(l) For persons employed at the same facility for more than three consecutive years, as of the effective date of this Rule, the required form will be mailed to the provider by the Division on a schedule determined by the Division. These existing staff members shall complete and submit the form to the Division within 10 business days of Division notification.

(m) Existing family child care home providers and household members who were qualified more than three years prior to January 1, 2008 will be notified by a separate mailing and shall complete and submit the required form to the Division within 10 business days of receipt of Division notification.

(n) After a child care provider or household member has received their letter of qualification, the Division may complete a new criminal record check at any time there has been an investigation that references the child care provider or household member conducted by the Department of Social Services or the Division of Child Development.

The rule also allows that the Division may complete a new criminal record check for the discovery or indication of any charges or indictments (pending or otherwise) that occurred after the initial qualification. When requested, the child care provider or household member shall complete and submit the packet as described in Paragraph (c) of this Rule to the Division within five business days of the request for a new criminal record check.

(o) Any individual over 15 years old who moves into the household or any individuals who lives in the household who has their 15<sup>th</sup> birthday after the initial licensing of a family child care home, including family members and non-family members who use the home on a permanent or temporary basis as their primary residence shall complete and submit the packet as described in Paragraph (c) of this Rule to the Division within five business days of moving into the home or their 15<sup>th</sup> birthday.

*Authority G.S. 110-85; 110-90.2; 114-19.5; 143B-168.3; S.L. 1995, c. 507, s. 23.25.*

**10A NCAC 09 .2704 CRIMINAL RECORD CHECK REQUIREMENTS FOR NONLICENSED HOME PROVIDERS**

(a) The nonlicensed home provider and household ~~member members over age-15 years old, including family members and non-family members who use the home on a permanent or temporary basis as their primary residence,~~ shall submit the following to the local purchasing agency:

- (1) a certified criminal history check from the Clerk of Superior Court's office in the county or counties where the individual has resided during the previous 12 months;
- (2) a signed Authority for Release of Information using the form provided by the Division;
- (3) a fingerprint card using SBI form FD-258; and
- (4) a signed statement declaring under penalty of perjury if he or she has been convicted of a crime other than a minor traffic violation.

This Rule also includes any individual over 15 years old who moves into the household, or any individuals who lives in the household who has their 15<sup>th</sup> birthday after initial approval, including family members and non-family members who use the home either on a permanent or temporary basis as their primary residence. These persons shall submit items in Subparagraphs (a)(1) through (a)(4) of this Rule to the local purchasing agency within five business days of moving into the home or their 15<sup>th</sup> birthday.

(b) New nonlicensed home providers and any household member over ~~the age of 15 years old~~ shall submit the complete and accurate packet no later than five working-business days after applying for enrollment as a nonlicensed home provider of subsidized child care. If more than 12 months have elapsed since the criminal ~~record~~records check has been completed and subsidy funds were not received, then a new criminal record check must be submitted by the nonlicensed home provider and any household member over ~~the age of 15-15 years old.~~

(c) Any individual over ~~the age of 15 years old, including family members and non-family members who use the home, either on a permanent or temporary basis as their primary residence who becomes a household member of a nonlicensed home provider~~ shall submit all criminal ~~records-record~~ check forms as required in 10A NCAC 09 .2704, Subparagraphs ~~(a)(1) through (a)(4)~~ (a)(1) through (a)(4) of this Rule within ~~ten-10~~ business days of joining the household.

(d) If the nonlicensed home provider or household member has been ~~convicted-convicted, has pending charges or indictments, is under deferred prosecution, has received a Prayer For Judgment, or is on probation for~~ a crime, crime including, but not limited to, those specified in G.S. 110-90.2, the nonlicensed home provider shall acknowledge on the statement that he or she is aware that payment is conditional pending approval by the Division. If the nonlicensed home provider has lived in North Carolina for less than five consecutive years immediately preceding the date the fingerprint card is completed, a ~~second fingerprint card shall be submitted in order to complete a national-check.~~ check shall be completed.

(e) If the nonlicensed home provider or household member has been ~~convicted-convicted, has pending charges or indictments, is under deferred prosecution, has received a Prayer For Judgment, or is on probation for~~ a crime, crime including, but not limited to, those specified in G.S. 110-90.2, he or she may submit to the Division additional information concerning the conviction or charges that could be used by the Division in making the determination of the provider's qualification. The Division may consider the following in making a decision: length of time since conviction; nature of the crime; circumstances surrounding the commission of the offense or offenses; evidence of rehabilitation; number of prior offenses; and age of the individual at the time of occurrence.

(f) The local purchasing agency shall mail the ~~local-certified criminal history check, check from the Clerk of Superior Court's office in the county where the individual resides,~~ Authority for Release of Information using the form provided by the Division, and a fingerprint card(s)-card to the Division no later than five ~~working-business~~ days after receipt. A copy of the submitted information, and the declaration statement, shall be maintained in the nonlicensed home provider's file until the notice of qualification is received by the nonlicensed home provider. At that time the submitted information and the declaration statement may be discarded. The notice of qualification shall be maintained in the nonlicensed home provider's file.

(g) A nonlicensed home provider may receive payment during the period in which the state or national criminal history check is being completed if the applicant would otherwise receive approval or temporary approval from the local purchasing agency for enrollment in the subsidized child care program, subject to the provisions referenced in 10A NCAC 10 .0803(b), .0810, and .0811.

(h) The Division shall notify the nonlicensed home provider in writing of the ~~determination-qualification~~ by the Division of the individual's fitness to have responsibility for the safety and well-being of children based on the criminal history. The Division shall notify the local purchasing agency in writing of the Division's determination concerning the nonlicensed home provider; however, the local purchasing agency shall not be told the specific information used in making the determination.

(i) Disqualification of a nonlicensed home provider by the Division shall be reasonable cause for the local purchasing agency to deny further payment.

(j) If a nonlicensed home provider disagrees with the decision of disqualification and files a civil action in district court, the provider may continue to operate as a nonlicensed home provider only but shall not receive payment during the proceedings. If the determination is that the nonlicensed home provider is qualified, the nonlicensed provider shall receive retroactive payment for the care that was provided.

(k) If a nonlicensed home provider or household member is employed or remains open for three consecutive years, a modified criminal record check shall be conducted using the Administrative Office of the Courts (AOC) System. On each three year anniversary date of approval by the local purchasing agency to receive subsidy funds, the provider or household member shall complete and submit the form provided by the Division. The Division may request a certified criminal history from Clerk of Superior Court, from the provider or household member to verify the AOC results.

(l) Existing nonlicensed home providers who have been operating for more than three consecutive years, as of the effective date of this Rule, will be notified by a separate mailing and shall complete and submit the form to the Division within 10 business days of receipt.

(m) After a nonlicensed home provider or household member has been qualified,

the Division may complete a new criminal record check at any time there has been an investigation that references the nonlicensed home provider or household member conducted by the Department of Social Services or the Division of Child Development.

The rule also allows that the Division may complete a new criminal record check for the discovery or indication of any charges or indictments (pending or otherwise) that occurred after the initial qualification. When requested, the nonlicensed home provider or household member shall complete and submit the packet as described in Subparagraphs (a)(1) through (a)(3) of this Rule to the Division within five business days of the request for a new criminal record check.

*Authority G.S. 110-85; 110-90.2; 114-19.5; 143B-168.3; S.L. 1995, c. 507, s. 23.25.*

## TITLE 11 – DEPARTMENT OF INSURANCE

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Insurance intends to amend the rule cited as 11 NCAC 11B .0222.*

**Proposed Effective Date:** August 1, 2007

**Public Hearing:**

**Date:** April 17, 2007

**Time:** 10:00 a.m.

**Location:** 3<sup>rd</sup> Floor Hearing Room, Dobbs Building, 430 N. Salisbury Street, Raleigh, NC

**Reason for Proposed Action:** Needs to be in compliance with current legislation and NAIC accreditation, contains technical changes.

**Procedure by which a person can object to the agency on a proposed rule:** The Department of Insurance will accept written objections to this rule until the expiration of the comment period on June 1, 2007.

**Comments may be submitted to:** Ellen K. Sprenkel, 1201 Mail Service Center, Raleigh, NC 27699-1201, phone (919) 733-4529, fax (919) 733-7495, email [esprenke@ncdoi.net](mailto:esprenke@ncdoi.net)

**Comment period ends:** June 1, 2007

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S.

150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact:**

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

## CHAPTER 11 - FINANCIAL EVALUATION DIVISION

### SUBCHAPTER 11B - SPECIAL PROGRAMS

#### SECTION .0200 - INSURANCE HOLDING COMPANY SYSTEMS

#### 11 NCAC 11B .0222 TRANSACTIONS SUBJECT TO PRIOR NOTICE - NOTICE FILING

(a) An insurer required to give prior notice of a proposed transaction under G.S. 58-19-30(b) shall ~~furnish the required information on Form D.~~ submit a completed Form D referenced in 11 NCAC 11B.0216, which can be found at [www.ncdoi.com](http://www.ncdoi.com).

(b) ~~Requests~~ An insurer required to give prior notice of an ordinary dividend or any other ordinary distribution to shareholders under G.S. 58-19-25(d) or an insurer that requests, under G.S. 58-19-30(c), for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:

- (1) The amount of the proposed ~~dividend;~~ dividend or distribution;
- (2) The date established for payment of the ~~dividend;~~ dividend or distribution;
- (3) A statement as to whether the dividend or distribution is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation;
- (4) A statement identifying the dividend or distribution as an ordinary dividend or other ordinary distribution subject to G.S. 58-19-25(d) or as an extraordinary dividend or other extraordinary distribution as defined in G.S. 58-19-30(c);
- ~~(4)(5)~~ A copy of the calculations determining that the proposed dividend or distribution is an ordinary dividend or other ordinary distribution subject to G.S. 58-19-25(d), or an extraordinary dividend or other extraordinary distribution as defined in G.S. 58-19-30(c). ~~extraordinary.~~ The work paper shall include the following information:

- (A) The amounts, dates and form of payment of all dividends or distributions ~~(including regular dividends but~~ excluding distributions of the ~~insurers~~ insurer's own securities) paid within the period of 12 consecutive months ending on the date fixed for payment of the proposed dividend for which notification is being given or approval is ~~sought~~ sought, and commencing on the day after the same day of the same month in the last preceding year;
- (B) Surplus as regards policyholders (total capital and surplus) as of the preceding December 31;
- (C) If the insurer is a life insurer, the net gain from operations for the 12-month period ending the preceding December 31; and
- (D) If the insurer is not a life insurer, the net income less realized capital gains for the 12-month period ending the preceding ~~December 31 and the two preceding 12-month periods; and December 31.~~
- ~~(E) If the insurer is not a life insurer, the dividends paid to stockholders excluding distributions of the insurer's own securities in the preceding two calendar years;~~
- ~~(5)(6)~~ A balance sheet and statement of income for the period ~~intervening from between~~ the last annual statement filed with the Commissioner and the end of the month preceding the month in which the request for ~~dividend approval is submitted; or the prior notification of a dividend or distribution is submitted.~~ The insurer shall indicate the amount of all unrealized capital gains included in unassigned funds;
- ~~(6)(7)~~ A brief statement as to the effect of the proposed dividend or distribution upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs; and
- ~~(7)(8)~~ A brief statement as to the intended use(s) of the proposed dividend or distribution by the parent, and, if applicable, any upstream parent, of the insurer.

(c) A prior notification of an ordinary dividend or any other ordinary distribution required under G.S. 58-19-25(d) shall be deemed to be incomplete unless all of the information required by Paragraph (b) of this Rule has been included.

(d) A request for approval of an extraordinary dividend or any other extraordinary distribution required under G.S. 58-19-30(c) shall be deemed to be incomplete unless all of the information required by Paragraph (b) of this Rule has been included.

(e) For the purposes of the Commissioner's review of all proposed dividend payments or other distributions to shareholders, the factors set forth in G.S. 58-19-30(d) shall be considered.

Authority G.S. 58-2-40; 58-19-25; 58-19-30.

## TITLE 12 – DEPARTMENT OF JUSTICE

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Education and Training Standards Commission intends to adopt the rules cited as 12 NCAC 09B .0242 - .0245 and amend the rules cited as 12 NCAC 09B .0211, .0215, .0218 - .0222, .0237 - .0240, .0310, .0408 - .0409, .0416; 09C .0308, .0601, .0608.*

**Proposed Effective Date:** August 1, 2007

**Public Hearing:**

**Date:** May 18, 2007

**Time:** 1:00 p.m.

**Location:** NC Dept. of Correction, Office of Staff Development and Training, 2211 Schieffelin Road, Apex.

### **Reason for Proposed Action:**

**12 NCAC 09B .0211** – Grammatical corrections, and changed "accredited" to "certified."

**12 NCAC 09B .0215** – Removed cost of training manual and added rules references for new courses.

**12 NCAC 09B .0218 - .0219** – Changed "re-training" to "re-certification" and "accredited" to "certified."

**12 NCAC 09B .0220 - .0222** – Revised description of prerequisite courses and added rules references for new courses.

**12 NCAC 09B .0237** – Removed cost of training manual, and added requirement that applicants for course must be fully qualified general instructors, not probationary instructors.

**12 NCAC 09B .0238 - .0239; 09C .0601, .0608** – Removed cost of training manual.

**12 NCAC 09B .0240** – Removed cost of training manual. Revised description of prerequisite courses, and added rules references for new courses.

**12 NCAC 09B .0310, .0408 - .0409, .0416** – Added rules references for new courses.

**12 NCAC 09C .0308** – Added rules references for new SMI courses and revised the description of the three types of speed measurement instrument certification.

**12 NCAC 09B .0242** – Outlines requirements for Radar/Lidar Operation course.

**12 NCAC 09B .0243** – Outlines requirements for Radar/Lidar Operation re-certification course.

**12 NCAC 09B .0244** – Outlines requirements for Radar/Time-Distance/Lidar Operation course.

**12 NCAC 09B .0245** – Outlines requirements for Radar/Time-Distance/Lidar Operator re-certification course.

**Procedure by which a person can object to the agency on a proposed rule:** *The objection, reasons for the objection, and the clearly identified portion of the rule to which the objection*

*pertains, must be submitted in writing to Teresa Marrella, Department of Justice, Criminal Justice Standards Division, 114 West Edenton Street, Raleigh, NC 27602.*

**Comments may be submitted to:** *Teresa Marrella, Department of Justice, 114 West Edenton Street, Raleigh, NC 27602, phone (919) 716-6470, fax (919) 716-6752, email tmarrella@ncdoj.com*

**Comment period ends:** *June 1, 2007*

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

**Fiscal Impact:**

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

**CHAPTER 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS**

**SUBCHAPTER 09B - STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT; EDUCATION; AND TRAINING**

**SECTION .0200 – MINIMUM STANDARDS FOR CRIMINAL JUSTICE SCHOOLS AND CRIMINAL JUSTICE TRAINING PROGRAMS OR COURSES OF INSTRUCTION**

**12 NCAC 09B .0211 TIME-DISTANCE INSTRUCTOR TRAINING COURSE**

(a) The time-distance instructor training course shall be designed to provide the trainee with the skills and knowledge to proficiently perform the function of a time-distance instructor. This course shall be for a period not to exceed eight consecutive weeks.

(b) Each applicant for the time-distance speed measurement instrument instructor training course shall meet the minimum entry requirements of 12 NCAC 9B .0210(c)(1) and (2) and 12 NCAC 9B .0309. The time-distance instructor training course required for time-distance instructor certification shall include but not be limited to the topic areas and minimum number of hours as outlined in ~~The~~ the Time-Distance Instructor Training

Course. To qualify for time-distance instructor certification, an applicant shall meet the minimum requirements as outlined in ~~The~~ the Time-Distance Instructor Training Course and meet the requirement of 12 NCAC 9B .0408 and .0409.

(c) The "Time-Distance Instructor Training Course" as published by the North Carolina Justice Academy is to be applied as basic curriculum for the criminal justice time-distance speed measurement instrument instructor training course for time-distance speed measurement instructors as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division  
 North Carolina Department of Justice  
 114 West Edenton Street  
 Old Education Building  
 Post Office Drawer 149  
 Raleigh, North Carolina 27602

and may be obtained at cost from the Academy at the following address:

North Carolina Justice Academy  
 Post Office Box 99  
 Salemburg, North Carolina 28385

(d) ~~Commission-accredited~~ Commission-certified schools that are ~~accredited~~ certified to offer the "Time Distance Instructor Training Course" are: The North Carolina Justice Academy.

*Authority G.S. 17C-6.*

**12 NCAC 09B .0215 SUPPLEMENTAL SMI TRAINING**

(a) The supplemental speed measuring instrument (SMI) training course for law enforcement officers shall be designed to allow officers an opportunity to be certified on additional speed measurement instruments not included on the officers' initial speed measurement instrument certification. The course shall be designed to provide the trainee with the skills and knowledge to proficiently perform those tasks essential to function as an instructor or operator using the additional speed measuring instrument(s).

(b) Each applicant for supplemental speed measuring instrument training shall:

- (1) possess a valid radar, time-distance, or lidar speed measuring instrument instructor or operator certification as a result of successful completion of 12 NCAC 09B .0210, .0211, .0212, .0213, .0214, .0237, ~~or .0238;~~ .0238, .0242, or .0244;
- (2) present the endorsement of a Commission-recognized school director or agency executive officer or his designee.

(c) The supplemental SMI training course required for certification, on the additional instrument(s), shall include the topic areas and number of hours as outlined in ~~The~~ the Supplemental SMI Training Course. To qualify for certification, on the additional instrument(s), an applicant shall meet the requirements as outlined in ~~The~~ the Supplemental SMI Training Course and meet the requirements of 12 NCAC 09B .0409.

(d) Certification as instructor or operator of the additional speed measuring instruments shall expire on midnight of the date of

expiration of the instructor or operator certification referred to in 12 NCAC 09B .0215(b) and .0310(a).

(e) The "Supplemental SMI Training Course" as published by the North Carolina Justice Academy shall be applied as basic curriculum for the supplemental SMI training course for SMI instructors or operators as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division  
North Carolina Department of Justice  
114 West Edenton Street  
Post Office Drawer 149  
Raleigh, North Carolina 27602

and may be obtained at a cost of ~~seven dollars and twelve cents (\$7.12)~~ from the Academy at the following address:

North Carolina Justice Academy  
Post Office Box 99  
Salemberg, North Carolina 28385

(f) Commission-certified schools that are certified to offer the "Supplemental SMI Training Course" for Instructors are: The North Carolina Justice Academy.

*Authority G.S. 17C-6.*

#### **12 NCAC 09B .0218 RE-CERTIFICATION TRAINING FOR RADAR INSTRUCTORS**

(a) The radar instructor re-certification training course shall be designed to provide the instructor with the skills and knowledge to continue to proficiently perform the function of a criminal justice radar instructor. This course shall be presented within a period not to exceed one week.

(b) Each applicant for a radar instructor ~~retraining-re-~~certification course shall:

- (1) possess criminal justice general instructor certification as required in 12 NCAC 9B .0302;
- (2) have been certified as a radar instructor within the three years preceding the completion date of the ~~retraining-re-~~certification course.

(c) The radar instructor re-certification training course required for radar instructor re-certification shall include but not be limited to the topic areas and minimum number of hours as outlined in ~~The-the~~ Radar Instructor Training Course. To qualify for radar instructor re-certification, an applicant shall meet the minimum requirements as outlined in ~~The-the~~ Radar Instructor Training Course and meet the requirements of 12 NCAC 9B .0408 and .0409.

(d) The "Radar Instructor Training Course" as published by the North Carolina Justice Academy is to be applied as basic curriculum for the radar instructor re-certification training course for radar instructors as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division  
North Carolina Department of Justice  
114 West Edenton Street  
Post Office Drawer 149  
Raleigh, North Carolina 27602

and may be obtained at cost from the Academy at the following address:

North Carolina Justice Academy

Post Office Box 99  
Salemberg, North Carolina 28385

(e) Commission-accredited schools that are accredited to offer the "Radar Instructor Re-Certification Training Course" are: The North Carolina Justice Academy.

*Authority G.S. 17C-6.*

#### **12 NCAC 09B .0219 RE-CERTIFICATION TRAINING FOR TIME-DISTANCE INSTRUCTORS**

(a) The time-distance instructor re-certification training course shall be designed to provide the instructor with the skills and knowledge to continue to proficiently perform the function of a criminal justice time-distance instructor. This course shall be presented within a period not to exceed one week.

(b) Each applicant for the time-distance instructor ~~retraining-re-~~certification course shall:

- (1) Meet the minimum entry requirements of 12 NCAC 9B .0218(b) and in addition thereto shall have successfully completed the ~~retraining-re-~~certification courses of 12 NCAC 9B .0218(c).
- (2) Have been certified as a time-distance instructor within the three years preceding the completion date of the ~~retraining-re-~~certification course.

(c) The time-distance instructor re-certification training course required for time-distance instructor re-certification shall include but not be limited to the topic areas and minimum number of hours as outlined in ~~The-the~~ Time-Distance Instructor Training Course. To qualify for time-distance instructor re-certification, an applicant shall meet the minimum requirements as outlined in ~~The-the~~ Time-Distance ~~Instruct-Instructor~~ Training Course and meet the requirements of 12 NCAC 9B .0408 and .0409.

(d) The "Time-Distance Instructor Training Course" as published by the North Carolina Justice Academy is to be applied as basic curriculum for the time-distance instructor re-certification training course for time-distance instructors as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division  
North Carolina Department of Justice  
114 West Edenton Street  
Post Office Drawer 149  
Raleigh, North Carolina 27602

and may be obtained at cost from the Academy at the following address:

North Carolina Justice Academy  
Post Office Box 99  
Salemberg, North Carolina 28385

(e) ~~Commission-accredited-Commission-certified~~ schools that are ~~accredited-certified~~ to offer the "Time-Distance Instructor Re-Certification Training Course" are: The North Carolina Justice Academy.

*Authority G.S. 17C-6.*

#### **12 NCAC 09B .0220 RE-CERTIFICATION COURSE FOR RADAR OPERATORS**



(a) The radar operator re-certification training course shall be designed to provide the law enforcement officer with the skills and knowledge to continue to proficiently perform the function of a radar operator. This course shall be presented within a period not to exceed one week.

(b) Each applicant for a radar operator re-certification course shall meet the requirements of 12 NCAC 9C .0308(c) and (d).

(c) Federal law enforcement personnel shall be allowed to participate in radar operator re-certification courses at the discretion of the school director without meeting the requirements specified in 12 NCAC 9B .0220(b), but such personnel must have successfully completed ~~the radar operator training course (12 NCAC 9B .0212) or the radar TD/SMI radar/time distance operator training course (12 NCAC 9B .0213).~~ one introductory level speed measurement instrument course that included instruction on operation of radar instruments. Courses that meet this requirement are described in 9B .0212, .0213, .0242, and .0244.

(d) The radar operator re-certification training course required for radar operator re-certification shall include ~~but not be limited to~~ the topic areas and ~~minimum~~ number of hours as outlined in ~~The the~~ Radar Operator Training Course. To qualify for radar operator re-certification, an applicant shall meet the ~~minimum~~ requirements as outlined in ~~The the~~ Radar Operator Training Course and meet the requirements of 12 NCAC 9B .0408 and .0409.

(e) The "Radar Operator Training Course" as published by the North Carolina Justice Academy is to be applied as basic curriculum for the radar operator re-certification training course for radar operators as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division  
North Carolina Department of Justice  
114 West Edenton Street  
Post Office Drawer 149  
Raleigh, North Carolina 27602

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North Carolina Justice Academy  
Post Office Box 99  
Salemberg, North Carolina 28385

*Authority G.S. 17C-6.*

#### **12 NCAC 09B .0221 RE-CERTIFICATION COURSE FOR RADAR/TIME-DISTANCE OPERATORS**

(a) The radar/time-distance operator re-certification training course shall be designed to provide the law enforcement officer with the skills and knowledge to continue to proficiently perform the function of a radar/time-distance operator. This course shall be presented within a period not to exceed one week.

(b) Each applicant for a radar and time-distance operator re-certification course shall meet the requirements of 12 NCAC 09C .0308(c) and (d).

(c) Federal law enforcement personnel shall be allowed to participate in radar and time-distance operator re-certification courses at the discretion of the school director without meeting the requirements specified in 12 NCAC 09B .0221(b), but such personnel must have successfully completed ~~the radar and TD/SMI operator training course (12 NCAC 09B .0213) or the~~

~~radar operator training course (12 NCAC 09B .0212) and the TD/SMI operator training course (12 NCAC 09B .0214).~~ one or more introductory level speed measurement instrument courses that included instruction on operation of radar instruments and time-distance instruments. Courses that meet this requirement are described in 09B .0212, .0213, .0214, .0242, and .0244.

(d) The radar/time-distance operator re-certification training course required for radar/time-distance operator re-certification shall include ~~but not be limited to~~ the topic areas and ~~minimum~~ number of hours as outlined in ~~The the~~ Radar/Time-Distance Operator Training Course. To qualify for radar/time-distance operator re-certification, an applicant shall meet the ~~minimum~~ requirements as outlined in ~~The the~~ Radar/Time-Distance Operator Training Course and meet the requirements of 12 NCAC 09B .0408 and .0409.

(e) The "Radar/Time-Distance Operator Training Course" as published by the North Carolina Justice Academy is to be applied as basic curriculum for the radar/time-distance operator re-certification training course for radar/time-distance operators as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division  
North Carolina Department of Justice  
114 West Edenton Street  
Post Office Drawer 149  
Raleigh, North Carolina 27602

and may be obtained at cost from the Academy at the following address:

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Post Office Box 99  
Salemberg, North Carolina 28385

*Authority G.S. 17C-6.*

#### **12 NCAC 09B .0222 RE-CERTIFICATION COURSE FOR TIME-DISTANCE OPERATORS**

(a) The time-distance operator re-certification training course shall be designed to provide the trainee with the skills and knowledge to continue to proficiently perform the function of a time-distance operator. This course shall be presented within a period not to exceed one week.

(b) Each applicant for a time-distance operator re-certification course shall meet the requirements of 12 NCAC 09C .0308(c) and (d).

(c) Federal law enforcement personnel shall be allowed to participate in time-distance operator re-certification courses at the discretion of the school director without meeting the requirements specified in 12 NCAC 09B .0222(b), but such personnel must have successfully completed ~~the radar and TD/SMI operator training course (12 NCAC 09B .0213) or the TD/SMI operator training course (12 NCAC 09B .0214).~~ one introductory level speed measurement instrument course that included instruction on operation of time-distance instruments. Courses that meet this requirement are described in 09B .0213, .0214, .0242, and .0244.

(d) The time-distance operator re-certification training course required for time-distance operator re-certification shall include ~~but need not be limited to~~ the topic areas and ~~minimum~~ number of hours as outlined in ~~The the~~ Time-Distance Operator Training Course. To qualify for time-distance operator re-certification, an

applicant shall meet the ~~minimum~~ requirements as outlined in ~~The~~ the Time-Distance Operator Training Course and meet the requirements of 12 NCAC 09B .0408 and .0409.

(e) The "Time-Distance Operator Training Course" as published by the North Carolina Justice Academy is to be applied as basic curriculum for the time-distance operator re-certification training course for time-distance operators as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

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North Carolina Department of Justice  
114 West Edenton Street  
Post Office Drawer 149  
Raleigh, North Carolina 27602

and may be obtained at cost from the Academy at the following address:

North Carolina Justice Academy  
Post Office Box 99  
Salemberg, North Carolina 28385

*Authority G.S. 17C-6.*

#### **12 NCAC 09B .0237      LIDAR INSTRUCTOR TRAINING COURSE**

(a) The Lidar Instructor Training Course shall be designed to provide the trainee with the skills and knowledge to proficiently perform the function of a lidar instructor. This course shall be for a period not to exceed six consecutive weeks.

(b) The Lidar Instructor Training Course required for lidar instructor certification shall include the topic areas and number of hours as outlined in the Lidar Instructor Training Course. To qualify for lidar instructor certification, an applicant shall meet the requirements as outlined in The Lidar Instructor Training Course and meet the requirements of 12 NCAC 09B .0408 and .0409.

(c) Each applicant for lidar instructor training shall:

- (1) Present the endorsement of a Commission-recognized school director or agency executive officer or his designee.
- (2) Possess full criminal justice General Instructor Certification as required in 12 NCAC 09B .0302.
- (3) Possess a current and valid lidar operator certification.

(d) The "Lidar Instructor Training Course" as published by the North Carolina Justice Academy is to be applied as basic curriculum for the lidar instructor training course for lidar instructors as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division  
North Carolina Department of Justice  
114 West Edenton Street  
Old Education Building  
Post Office Drawer 149  
Raleigh, North Carolina 27602

and may be obtained at ~~a cost of sixteen dollars and five cents (\$16.05)~~ from the Academy at the following address:

North Carolina Justice Academy  
Post Office Box 99  
Salemberg, North Carolina 28385

(e) Commission-certified schools that are certified to offer the Lidar Instructor Training Course are: The North Carolina Justice Academy.

*Authority G.S. 17C-6.*

#### **12 NCAC 09B .0238      CERTIFICATION TRAINING FOR LIDAR OPERATORS**

(a) The Lidar Operator Training Course for law enforcement officers shall be designed to provide the trainee with the skills and knowledge to proficiently perform the function of a law enforcement lidar operator. This course shall be for a period not to exceed four consecutive weeks.

(b) Only employed or appointed personnel of a law enforcement agency shall be enrolled in the Lidar Operator Training Course. Such a trainee shall not be certified as a lidar operator until the Basic Law Enforcement Training Course has been successfully completed and probationary or general law enforcement certification has been granted. Sheriffs, deputy sheriffs and federal law enforcement personnel, including armed forces personnel, shall be allowed to participate in lidar operator training courses on a space available basis at the discretion of the school director without having enrolled in or having successfully completed the Basic Law Enforcement Training Course and without being currently certified in a probationary status or holding general law enforcement certification. The Lidar Operator Training Course required for lidar operator certification shall include the topic areas and number of hours as outlined in the Lidar Operator Training Course. To qualify for lidar operator certification, an applicant shall meet the requirements as outlined in the Lidar Operator Training Course and meet the requirements of 12 NCAC 09B .0408 and .0409.

(c) The "Lidar Operator Training Course" as published by the North Carolina Justice Academy is to be applied as basic curriculum for the Lidar Operator Training Course for lidar operators as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

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North Carolina Department of Justice  
114 West Edenton Street  
Old Education Building  
Post Office Drawer 149  
Raleigh, North Carolina 27602

and may be obtained at ~~a cost of sixteen dollars and five cents (\$16.05)~~ from the Academy at the following address:

North Carolina Justice Academy  
Post Office Box 99  
Salemberg, North Carolina 28385

*Authority G.S. 17C-6.*

#### **12 NCAC 09B .0239      RE-CERTIFICATION TRAINING FOR LIDAR INSTRUCTORS**

(a) The Lidar Instructor Re-Certification Training Course shall be designed to provide the instructor with the skills and knowledge to continue to proficiently perform the function of a lidar instructor. This course shall be presented within a period not to exceed one week.

(b) Each applicant for a Lidar Instructor Re-Certification Training Course shall:

- (1) possess criminal justice General Instructor Certification as required in 12 NCAC 09B .0302; and
- (2) have been certified as a lidar instructor within the three years preceding the completion date of the re-certification training course.

(c) The Lidar Instructor Re-Certification Training Course required for lidar instructor re-certification shall include the topic areas and number of hours as outlined in the Lidar Instructor Training Course. To qualify for lidar instructor re-certification, an applicant shall meet the requirements as outlined in the Lidar Instructor Training Course and meet the requirements of 12 NCAC 09B .0408 and .0409.

(d) The "Lidar Instructor Training Course" as published by the North Carolina Justice Academy shall be applied as basic curriculum for the Lidar Instructor Re-Certification Training Course for lidar instructors as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division  
North Carolina Department of Justice  
114 West Edenton Street  
Post Office Drawer 149

Raleigh, North Carolina 27602

and may be obtained at a cost of sixteen dollars and five cents (\$16.05) from the Academy at the following address:

North Carolina Justice Academy  
Post Office Box 99  
Salemberg, North Carolina 28385

(e) Commission-certified schools that are certified to offer the Lidar Instructor Re-Certification Training Course are: The North Carolina Justice Academy.

*Authority G.S. 17C-6.*

#### **12 NCAC 09B .0240 RE-CERTIFICATION TRAINING COURSE FOR LIDAR OPERATORS**

(a) The Lidar Operator Re-Certification Training Course shall be designed to provide the law enforcement officer with the skills and knowledge to continue to proficiently perform the function of a lidar operator. This course shall be presented within a period not to exceed one week.

(b) Each applicant for a Lidar Operator Re-Certification Training Course shall meet the requirements of 12 NCAC 09C .0308(c) and (d).

(c) Federal law enforcement personnel shall be allowed to participate in Lidar Operator Re-Certification Training Courses at the discretion of the school director without meeting the requirements specified in 12 NCAC 09B .0238(b), but such personnel must have successfully completed the Lidar Operator Training Course. one introductory level speed measurement instrument course that included instruction on operation of lidar instruments. Courses that meet this requirement are described in 09B .0238, .0242, and .0244.

(d) The Lidar Operator Re-Certification Training Course required for lidar operator re-certification shall include the topic areas and number of hours as outlined in the Lidar Operator Training Course. To qualify for lidar operator re-certification,

an applicant shall meet the requirements as outlined in the Lidar Operator Training Course and meet the requirements of 12 NCAC 09B .0408 and .0409.

(e) The "Lidar Operator Training Course" as published by the North Carolina Justice Academy shall be applied as basic curriculum for the Lidar Operator Re-Certification Training Course for lidar operators as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

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North Carolina Department of Justice  
114 West Edenton Street  
Post Office Drawer 149  
Raleigh, North Carolina 27602

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North Carolina Justice Academy  
Post Office Box 99  
Salemberg, North Carolina 28385

*Authority G.S. 17C-6.*

#### **12 NCAC 09B .0242 CERTIFICATION TRAINING FOR RADAR/LIDAR OPERATORS**

(a) The radar/lidar operator training course for law enforcement officers shall be designed to provide the trainee with the skills and knowledge to proficiently perform the function of a radar and lidar operator. This course shall be for a period not to exceed four consecutive weeks.

(b) Only employed or appointed personnel of a law enforcement agency may be enrolled in the radar/lidar speed measurement instrument operator training course. Such a trainee shall not be certified as a radar and lidar speed measurement instrument operator until the basic law enforcement training course has been successfully completed and probationary or general law enforcement certification has been granted. Sheriffs, deputy sheriffs, and federal law enforcement personnel, including but not limited to armed forces personnel, shall be allowed to participate in a radar/lidar speed measurement instrument operator training courses on a space available basis at the discretion of the school director without having enrolled in or having successfully completed the basic law enforcement training course and without being currently certified in a probationary status or holding general law enforcement certification. The radar/lidar operator training course required for radar and lidar operator certification shall include the topic areas and number of hours as outlined in the Radar/Lidar Operator Training Course. To qualify for radar and lidar operator certification, an applicant shall meet the requirements as outlined in the Radar/Lidar Operator Training Course and meet the requirements of 12 NCAC 09B .0408 and .0409.

(c) The "Radar/Lidar Operator Training Course" as published by the North Carolina Justice Academy is to be applied as basic curriculum for the radar/lidar operator training course for radar and lidar instrument operators as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division  
North Carolina Department of Justice  
114 West Edenton Street

Old Education Building  
Post Office Drawer 149  
Raleigh, North Carolina 27602

and may be obtained at cost from the Academy at the following address:

North Carolina Justice Academy  
Post Office Box 99  
Salemburg, North Carolina 28385

*Authority G.S. 17C-6.*

**12 NCAC 09B .0243 RE-CERTIFICATION TRAINING COURSE FOR RADAR/LIDAR OPERATORS**

(a) The Radar/Lidar Operator Re-Certification Training Course shall be designed to provide the law enforcement officer with the skills and knowledge to continue to proficiently perform the function of a radar and lidar operator. This course shall be presented within a period not to exceed one week.

(b) Each applicant for a Radar/Lidar Operator Re-Certification Training Course shall meet the requirements of 12 NCAC 09C .0308(c) and (d).

(c) Federal law enforcement personnel shall be allowed to participate in Radar/Lidar Operator Re-Certification Training Courses at the discretion of the school director without meeting the requirements specified in 12 NCAC 09B .0242(b), but such personnel must have successfully completed one or more introductory level speed measurement instrument courses that included instruction on operation of radar instruments and lidar instruments. Courses that meet this requirement are described in 09B .0212, .0213, .0237, .0242, and .0244.

(d) The Radar/Lidar Operator Re-Certification Training Course required for radar and lidar operator re-certification shall include the topic areas and number of hours as outlined in the Radar/Lidar Operator Training Course. To qualify for radar and lidar operator re-certification, an applicant shall meet the requirements as outlined in the Radar/Lidar Operator Training Course and meet the requirements of 12 NCAC 09B .0408 and .0409.

(e) The "Radar/Lidar Operator Training Course" as published by the North Carolina Justice Academy shall be applied as basic curriculum for the Radar/Lidar Operator Re-Certification Training Course for radar and lidar operators as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division  
North Carolina Department of Justice  
114 West Edenton Street  
Post Office Drawer 149  
Raleigh, North Carolina 27602

and may be obtained at cost from the Academy at the following address:

North Carolina Justice Academy  
Post Office Box 99  
Salemburg, North Carolina 28385

*Authority G.S. 17C-6.*

**12 NCAC 09B .0244 CERTIFICATION TRAINING FOR RADAR/TIME-DISTANCE/LIDAR OPERATORS**

(a) The radar/time-distance/lidar operator training course for law enforcement officers shall be designed to provide the trainee with the skills and knowledge to proficiently perform the function of a radar, time-distance, and lidar operator. This course shall be for a period not to exceed four consecutive weeks.

(b) Only employed or appointed personnel of a law enforcement agency may be enrolled in the radar/time-distance/lidar speed measurement instrument operator training course. Such a trainee shall not be certified as a radar, time-distance, and lidar speed measurement instrument operator until the basic law enforcement training course has been successfully completed and probationary or general law enforcement certification has been granted. Sheriffs, deputy sheriffs, and federal law enforcement personnel, including but not limited to armed forces personnel, shall be allowed to participate in radar, time-distance, and lidar speed measurement instrument operator training courses on a space available basis at the discretion of the school director without having enrolled in or having successfully completed the basic law enforcement training course and without being currently certified in a probationary status or holding general law enforcement certification. The radar/time-distance/lidar operator training course required for radar, time-distance, and lidar operator certification shall include the topic areas and number of hours as outlined in the Radar/Time-Distance/Lidar Operator Training Course. To qualify for radar, time-distance, and lidar operator certification, an applicant shall meet the minimum requirements as outlined in the Radar/Time-Distance/Lidar Operator Training Course and meet the requirements of 12 NCAC 09B .0408 and .0409.

(c) The "Radar/Time-Distance/Lidar Operator Training Course" as published by the North Carolina Justice Academy is to be applied as basic curriculum for the radar/time-distance/lidar operator training course for radar, time-distance, and lidar instrument operators as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

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North Carolina Department of Justice  
114 West Edenton Street  
Old Education Building  
Post Office Drawer 149  
Raleigh, North Carolina 27602

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North Carolina Justice Academy  
Post Office Box 99  
Salemburg, North Carolina 28385

*Authority G.S. 17C-6.*

**12 NCAC 09B .0245 RE-CERTIFICATION TRAINING COURSE FOR RADAR/TIME-DISTANCE/LIDAR OPERATORS**

(a) The Radar/Time-Distance/Lidar Operator Re-Certification Training Course shall be designed to provide the law enforcement officer with the skills and knowledge to continue to proficiently perform the function of a radar, time-distance, and lidar operator. This course shall be presented within a period not to exceed one week.

(b) Each applicant for a Radar/Time-Distance/Lidar Operator Re-Certification Training Course shall meet the requirements of 12 NCAC 09C .0308(c) and (d).

(c) Federal law enforcement personnel shall be allowed to participate in Radar/Time-Distance/Lidar Operator Re-Certification Training Courses at the discretion of the school director without meeting the requirements specified in 12 NCAC 09B .0243(b), but such personnel must have successfully completed one or more introductory level speed measurement instrument courses that included instruction on operation of radar instruments, time-distance instruments and lidar instruments. Courses that meet this requirement are described in 09B .0212, .0213, .0214, .0238, .0242, and .0244.

(d) The Radar/Time-Distance/Lidar Operator Re-Certification Training Course required for radar, time-distance, and lidar operator re-certification shall include the topic areas and number of hours as outlined in the Radar/Time-Distance/Lidar Operator Training Course. To qualify for radar, time-distance, and lidar operator re-certification, an applicant shall meet the requirements as outlined in the Radar/Time-Distance/Lidar Operator Training Course and meet the requirements of 12 NCAC 09B .0408 and .0409.

(e) The "Radar/Time-Distance/Lidar Operator Training Course" as published by the North Carolina Justice Academy shall be applied as basic curriculum for the Radar/Time-Distance/Lidar Operator Re-Certification Training Course for radar, time-distance, and lidar operators as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

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*Authority G.S. 17C-6.*

### **SECTION .0300 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE INSTRUCTORS**

#### **12 NCAC 09B .0310      TERMS AND CONDITIONS – SMI INSTRUCTORS**

(a) The term of a Speed Measurement Instrument (SMI) instructor, which includes radar, ~~time-distance~~ time-distance, speed measurement instrument, and ~~LIDAR~~ lidar instructors, is three years from the date the Commission issues the certificate, unless sooner terminated by the Commission. The certificate may be renewed for subsequent three year periods. The SMI instructor desiring renewal shall:

- (1) Hold general instructor certification as required in 12 NCAC 09B .0303.
- (2) Have been active in the SMI classroom instructional process during the previous certification period.

- (3) Successfully complete a ~~commission-approved~~ Commission-approved SMI instructor re-certification course as required in 12 NCAC 09B .0218 ~~or .0219, .0219, or .0239.~~

(b) All SMI instructors seeking re-certification shall successfully complete the re-certification course within 12 months from expiration of the initial certification period or re-certification period. If re-certification training is not obtained within the 12-month period, successful completion of the appropriate instructor training program as required in 12 NCAC 09B .0308 will be required to obtain instructor certification. This prescribed 12-month period does not extend the instructor certification period.

*Authority G.S. 17C-6.*

### **SECTION .0400 - MINIMUM STANDARDS FOR COMPLETION OF TRAINING**

#### **12 NCAC 09B .0408      COMPREHENSIVE WRITTEN EXAMINATION -- BASIC SMI CERTIFICATION**

(a) At the conclusion of the classroom instruction portion of a school's offering of any speed measurement instrument ~~operators' operator courses course and or re-certification courses,~~ course, an authorized representative of the Commission shall administer to all candidates for certification as operators a comprehensive written examination.

(b) The examination shall be an objective test covering the topic areas contained in the certified course curriculum.

(c) The Commission's representative shall submit to the school director within five days of the administration of the examination a report of the results of the test for each candidate for certification.

(d) A trainee shall pass the operator training course as required in 12 NCAC 09B .0212, .0213, .0214, ~~or .0238~~ .0238, .0242, or .0244 by achieving 70 percent correct answers.

(e) An operator seeking recertification shall pass the operator training recertification ~~courses-course~~ course as specified in 12 NCAC 09B .0220, .0221, .0222 ~~or .0240~~ .0240, .0243, or .0245 by achieving 75 percent correct answers.

(f) A trainee who has fully participated in a scheduled delivery of a certified training course and has demonstrated 100 percent competence in each motor-skill or performance area of the course curriculum but has failed to achieve the prescribed score, as specified in Paragraph (d) of this Rule, on the Commission's comprehensive written examination may request the ~~director~~ Director of the Standards Division to authorize a re-examination of the trainee.

(g) The trainee's request for re-examination shall be made in writing on the Commission's form and shall be received by the Standards Division within 30 days of the examination.

(h) The trainee's request for re-examination shall include the favorable recommendation of the school director who administered the course.

(i) A trainee shall have, within 90 days of the original examination, only one opportunity for re-examination and shall satisfactorily complete the subsequent examination in its entirety.

(j) The trainee shall be notified by the Standards Division staff of a place, time, and date for re-examination.

(k) If the trainee fails to achieve the prescribed minimum score on the re-examination, the trainee may not be recommended for certification and shall enroll and complete a subsequent course offering in its entirety before further examination may be permitted.

*Authority G.S. 17C-6.*

**12 NCAC 09B .0409 SATISFACTION OF TRAINING  
-- SMI OPERATORS**

(a) To satisfy the training requirements for operator certification, a trainee shall complete all of the following:

- (1) achieve a score of 70 percent correct answers on the comprehensive written examination, provided for in 12 NCAC 09B .0408(d).
- (2) demonstrate successful completion of a certified offering of courses as prescribed under ~~either~~ 12 NCAC 09B .0212, .0213, .0214, .0215, ~~or .0238-.0238, .0242, or .0244~~ as shown by the certification of the school director.
- (3) demonstrate 100 percent proficiency in the motor-skill and performance subject areas as demonstrated to a certified Speed Measurement Instrument (SMI) instructor and further evidenced through documentation on the Commission's SMI forms and by the subscribing instructor's certification of trainee competence.
- (4) present evidence showing prior North Carolina certification in a Commission-certified operator training course as prescribed in 12 NCAC 09B .0212 ~~or 12 NCAC 09B .0213, .0213, .0214, .0238, .0242, .0244~~ or present evidence showing prior certification which meets or exceeds North Carolina certification, or present evidence showing completion of 16 hours of supervised field practice within 90 days after completing a Commission-certified radar operator training course as prescribed in 12 NCAC 09B .0212 ~~or 12 NCAC 09B .0213, .0213, .0242, .0244~~.

(b) Any trainee failing to achieve 100 percent proficiency in the motor-skill area may request written permission from the Director of the Standards Division for re-examination. The trainee's request for re-examination shall be made in writing and must be received by the Standards Division within 30 days of the original examination. ~~The trainee's request for re-examination shall be made in writing and must be received by the Standards Division within 30 days of the original examination.~~ The trainee's request for re-examination shall include the favorable recommendation of the school director who administered the course. A trainee shall have, within 90 days of the original examination, only one opportunity for motor-skill re-examination and must satisfactorily complete each identified area of deficiency on the original motor-skill examination. The trainee shall be notified by the Standards Division staff of a place, time and date for re-examination. If the trainee fails to achieve the prescribed score on the examination, the trainee shall not be recommended for certification and shall enroll and

complete a subsequent course offering in its entirety before further examination may be permitted.

(c) To satisfy the training requirements for operator re-certification, an operator seeking re-certification shall:

- (1) Achieve a score of 75 percent correct answers on the comprehensive written examination provided for in 12 NCAC 09B .0408(e).
- (2) Demonstrate successful completion of a certified offering of courses as prescribed under ~~either~~ 12 NCAC 09B .0218, .0219, .0220, .0221, .0222, .0239, ~~or .0240-.0240, .0243, or .0245~~ as shown by the certification of the school director.
- (3) Satisfy all motor-skill requirements as required in 12 NCAC 09B .0409(a)(3).

(d) At the time a trainee seeking operator re-certification fails to achieve the prescribed requirements on the comprehensive written examination as specified in 12 NCAC 09B .0409(c)(1), certification of the officer automatically and immediately terminates and that officer shall not be re-certified until successful completion of a subsequent course offering as prescribed under either 12 NCAC 09B .0212, .0213, .0214, ~~or .0238-.0238, .0242, or .0244~~ before further examination may be permitted.

(e) At the time a trainee seeking operator re-certification fails to achieve the prescribed motor-skill requirements as specified in 12 NCAC 09B .0409(c)(3), certification of the officer automatically and immediately terminates and that officer shall not be re-certified until successful completion of the required motor-skill testing. Provided, however, such an officer may request re-examination as prescribed in 12 NCAC 09B .0409(b).

*Authority G.S. 17C-6.*

**12 NCAC 09B .0416 SATISFACTION OF MINIMUM  
TRAINING -- SMI INSTRUCTOR**

(a) To acquire successful completion of the "Speed Measurement Instrument (SMI) Instructor Training Courses," and the "SMI Instructor Re-Certification Courses", the trainee shall:

- (1) satisfactorily complete all required course work as specified in Rules .0210, .0211, .0218, ~~and .0219-.0219, .0237, or .0239~~ of this Subchapter for the specific course in attendance; and
- (2) achieve a score of 75 percent correct answers on a ~~commission-administered~~ Commission-administered comprehensive written examination.

(b) If the trainee passes the written examination but fails to meet the minimum criteria on an area of motor-skills testing, he/she shall be authorized one opportunity for a re-test. Such re-test must be at the recommendation of the school director and a request must be made to the Standards Division within 30 days of the original testing. Re-examination must be completed within 90 days of the original testing. Failure on the re-test requires enrollment in a subsequent SMI operator course and an SMI instructor course.

*Authority G.S. 17C-6; 17C-10.*

**SUBCHAPTER 09C - ADMINISTRATION OF CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS**

**SECTION .0300 - CERTIFICATION OF CRIMINAL JUSTICE OFFICERS**

**12 NCAC 09C .0308 SPEED MEASUREMENT INSTRUMENT (SMI) OPERATORS CERTIFICATION PROGRAM**

(a) Standards Division staff shall issue certification in one of the following categories:

- (1) radar operator ~~Speed Measurement Instrument~~ speed measurement instrument (SMI) certification or re-certification requiring successful completion of the training program as required in 12 NCAC 09B .0210, ~~.0211~~, .0212, .0213, .0218, ~~.0219~~, .0220, .0221, ~~or .0222~~; .0242, .0243, .0244, or .0245;
- (2) ~~radar and time distance speed measurement instrument operator certification or re-certification requiring successful completion of the training program as required in 12 NCAC 09B .0211, .0213, .0219, or .0221;~~
- (3)(2) time-distance speed measurement instrument operator certification or re-certification requiring successful completion of the training program as required in 12 NCAC 09B .0211, .0213, .0214, .0219, .0221, ~~or .0222~~; .0222, .0244, or .0245;
- (4)(3) lidar speed measurement instrument operator certification or re-certification requiring successful completion of the training program as required in 12 NCAC 09B ~~.0238~~ .0237, .0238, .0239, or .0240; ~~.0240, .0242, .0243, .0244, or .0245~~.

(b) Certification in ~~either one or more category~~ categories reflects operational proficiency in the designated type(s) of approved equipment for which the trainee has been examined and tested. Such certification shall be for a three year period from the date of issue and re-certifications shall be for a three year period from the date of issue, unless sooner terminated by the Commission. The applicant shall meet the following requirements for operator certification or re-certification within 90 days of course completion and upon the presentation of documentary evidence showing that the applicant:

- (1) has successfully completed the training program as required in 12 NCAC 09B .0210, .0211, .0212, .0213, .0214, .0218, .0219, .0220, .0221, .0222, .0237, .0238, .0239, ~~or .0240~~; .0240, .0242, .0243, .0244, or .0245; and
- (2) has successfully completed a Commission-certified basic law enforcement training course as required in 12 NCAC 09B .0400 and is currently certified in a probationary status or holds general law enforcement certification; or

- (3) if the applicant is a sheriff, deputy sheriff, or other sworn appointee with arrest authority governed by the provisions of G.S. 17E has met and is in total compliance with the then current employment and training standards as established and made effective for such position by the North Carolina Sheriffs' Education and Training Standards Commission.

(c) Certified operators shall be notified by the Commission not less than 90 days prior to expiration of certification. All applicants for re-certification shall successfully complete a Commission-approved re-certification course within 12 months from the expiration of the previous certification. If re-certification is not obtained within the 12 month period, successful completion of the appropriate operator training programs as required by 12 NCAC 09B .0409(a) shall be required to obtain operator certification. This prescribed 12 month period shall not extend the operator certification period beyond its specified expiration date. When a re-certification course is successfully completed prior to the expiration of the previous certification, the new certification shall be issued by the Criminal Justice Standards Division effective upon the receipt of the Post-delivery Report of Training Course Presentation.

(d) Operator re-certification shall be issued only to officers with current law enforcement certification.

(e) All certifications issued pursuant to this Rule and the standards in effect between November 1, 1981 and July 1, 1982 shall continue with full force and effect; however, said certifications shall be subject to the provisions of 12 NCAC 09C .0308(c) and (d).

*Authority G.S. 17C-6.*

**SECTION .0600 - EQUIPMENT AND PROCEDURES**

**12 NCAC 09C .0601 APPROVED SPEED-MEASURING INSTRUMENTS**

The following procedures shall be adhered to for approval of speed-measuring instruments:

- (1) Prior to the inclusion as an approved speed-measuring instrument, the manufacturer of said instrument shall certify in writing to the Criminal Justice Standards Division that said instrument meets or exceeds the applicable standards set out in the "Model Performance Specifications for Police Traffic Radar Devices" as published by the National Highway Traffic Safety Administration, United States Department of Transportation (as in effect July 1, 1982) which is hereby incorporated by reference, and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division  
North Carolina Department of Justice  
114 West Edenton Street

Old Education Building  
Post Office Drawer 149  
Raleigh, North Carolina 27602

and may be obtained at no cost from the National Highway Traffic Safety Administration at the following address:

National Highway Traffic Safety Administration  
400 Seventh Street, SW  
Washington, DC 20590

The manufacturer shall provide evidence that the instrument meets or exceeds the applicable standards published by the National Highway Traffic Safety Administration, United States Department of Transportation.

(2) All speed-measuring instruments shall be evaluated by representatives from the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Department of Crime Control and Public Safety. A summary of the findings shall be submitted in writing to the Criminal Justice Standards Division's Radar-Speed Measurement Instrument Program Administrator.

(3) A current list of all approved speed-measuring instruments shall be included in Appendix "A" of the Supplement for Speed Measurement Instrument Training Courses published by the North Carolina Justice Academy.

(4) The "Speed-Measurement Instrument Operator Training Course Manuals" as published by the North Carolina Justice Academy shall be applied as the basic curriculum for the speed-measuring instrument operator training courses for speed-measuring instrument operators as administered by the North Carolina Criminal Justice Education and Training Standards Commission. Copies of these publications may be inspected at the office of the agency:

Criminal Justice Standards Division  
North Carolina Department of Justice  
114 West Edenton Street  
Old Education Building  
Post Office Drawer 149  
Raleigh, North Carolina 27602

and may be obtained at a cost of ~~twenty six dollars and twenty five cents (\$26.25) for the Radar Operator Training Course, twenty dollars and sixty cents (\$20.60) for the Time Distance Operator Training Course, sixteen dollars and five cents (\$16.05) for the Lidar Operator Training Course, and seven dollars and twelve cents (\$7.12) for the Supplement for Speed Measurement Instrument Training Courses~~ from the Academy at the following address:

North Carolina Justice Academy  
Post Office Box 99  
Salemberg, North Carolina 28385

Authority G.S. 17C-6.

**12 NCAC 09C .0608 SPEED-MEASURING  
INSTRUMENT OPERATING PROCEDURES**

The purpose of this Rule is to establish the minimum requirements for operating speed-measuring instruments used by law enforcement officers to measure the speed of vehicles for enforcement of speed laws and regulations. All operating procedures shall conform with G.S. 8-50.2 and 17C-6. The operating procedures for each specific Radar, Time-Distance, and Lidar speed-measuring instrument, as outlined in Appendix "C" of the Supplement for Speed Measurement Instrument Training Courses published by the North Carolina Justice Academy, are hereby incorporated by reference, and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division  
North Carolina Department of Justice  
114 West Edenton Street  
Old Education Building  
Post Office Drawer 149  
Raleigh, North Carolina 27602

and may be obtained at a cost of ~~seven dollars and twelve cents (\$7.12)~~ from the Academy at the following address:

North Carolina Justice Academy  
Post Office Box 99  
Salemberg, North Carolina 28385

Authority G.S. 8-50.2; 17C-6.

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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to adopt the rules cited as 15A NCAC 10F .0373 - .0374.*

**Proposed Effective Date:** August 1, 2007

**Rule .0373:**

**Public Hearing:** 15A NCAC 10F .0373

**Date:** April 19, 2007

**Time:** 7:00 p.m.

**Location:** 1924 Courthouse, 30 North College Ave., Newton, NC

**Rule .0374:**

**Public Hearing:** 15A NCAC 10F .0374

**Date:** April 26, 2007

**Time:** 7:00 p.m.

**Location:** Pitts School Road Elementary School Cafeteria, 720 Pitts School Road, Concord, NC

**Reason for Proposed Action:**

**15A NCAC 10F .0373** – Duke Energy has petitioned the Wildlife Resources Commission for the establishment of exclusionary zones near Duke hydroelectric power stations for the purpose of protecting public safety.

**15A NCAC 10F .0374** - Alcoa Power Generating Inc., has petitioned the Wildlife Resources Commission for the



*establishment of exclusionary zones near Alcoa hydroelectric power stations for the purpose of protecting public safety.*

**Procedure by which a person can object to the agency on a proposed rule:** *Any person who wishes to object to a proposed rule may do so by writing (or emailing) the person specified in connection with a given rule within the public comment period set up for these rules. For these rules, the contact person is Joan Troy.*

**Comments may be submitted to:** *Joan Troy, 1701 Mail Service Center, Raleigh, NC 27699-1701, email Joan.Troy@ncwildlife.org*

**Comment period ends:** *June 1, 2007*

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

**Fiscal Impact:**

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

**CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY**

**SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY**

**SECTION .0300 - LOCAL WATER SAFETY REGULATIONS**

**15A NCAC 10F .0373 DUKE ENERGY CORPORATION HYDROELECTRIC STATION EXCLUSIONARY ZONES**

(a) Regulated Area. This Rule applies to the area one hundred feet upstream or downstream from the stations and dams (and associated structures, abutments and equipment of these stations and dams) listed in Paragraph (f) of this Rule.

(b) Swimming or boating. No swimming or other entry of a person in or upon a boat, raft or other floating object shall be permitted within one hundred feet onto the watercourse downstream or the surface waters upstream of the hydroelectric station and associated dam or dams.

(c) Fishing. No person shall fish from the hydroelectric station or from any powerhouse, structure, abutment or equipment

associated with the dam except for those at designated public access areas.

(d) Paragraph (b) of this Rule shall not apply to persons who, with consent of Duke Energy Corporation., law enforcement or emergency personnel or North Carolina state employees acting in an official capacity requiring access for the purpose of maintaining, repairing or evaluating facilities of Duke Energy Corporation.

(e) Placement and Maintenance of Markers. Duke Energy Corporation is designated as a suitable entity for placement and maintenance of buoys and other signs indicating the areas in which boating, swimming and fishing are prohibited by this Rule.

(f) Duke Energy Corporation hydroelectric stations and dams affected by this Rule:

- (1) Bridgewater Hydroelectric Station (Paddy Creek Dam, Linville Dam and Catawba Dam) in the Catawba River in Burke and McDowell counties;
- (2) Cowans Ford Hydroelectric Station (Cowans Ford Dam) in the Catawba River in Lincoln and Mecklenburg counties;
- (3) Lookout Hydroelectric Station (Lookout Dam) in the Catawba River in Catawba and Iredell counties;
- (4) Mountain Island Hydroelectric Station (Mountain Island Dam) in the Catawba River in Gaston and Mecklenburg counties;
- (5) Oxford Hydroelectric Station (Oxford Dam) in the Catawba River in Alexander and Catawba counties;
- (6) Rhodhiss Hydroelectric Station (Rhodhiss Dam) in the Catawba River in Burke and Caldwell counties; and
- (7) Tuxedo Hydroelectric Station (Tuxedo Dam) in the Green River in Henderson County.

*Authority G.S. 75A-3; 75A-15.*

**15A NCAC 10F .0374 ALCOA POWER GENERATING INC. HYDROELECTRIC STATION EXCLUSIONARY ZONES**

(a) Regulated Area. This Rule applies to the area one hundred feet upstream or downstream from the stations and dams (and associated structures, abutments and equipment of these stations and dams) listed in Paragraph (f) of this Rule.

(b) Swimming or boating. No swimming or other entry of a person in or upon a boat, raft or other floating object shall be permitted within one hundred feet onto the watercourse downstream or the surface waters upstream of the hydroelectric station and associated dam or dams.

(c) Fishing. No person shall fish from the hydroelectric station or from any powerhouse, structure, abutment or equipment associated with the dam except for those at designated public access areas.

(d) Paragraph (b) of this Rule shall not apply to persons who, with consent of Alcoa Power Generating, Inc., law enforcement or emergency personnel or NC state employees acting in an official capacity requiring access for the purpose of maintaining, repairing or evaluating facilities of Alcoa Power Generating, Inc.

(e) Placement and Maintenance of Markers. Alcoa Power Generating, Inc. is designated as a suitable entity for placement and maintenance of buoys and other signs indicating the areas in which boating, swimming and fishing are prohibited by this Rule.

(f) Alcoa Power Generating Inc., hydroelectric stations affected by this Rule:

- (1) Narrows Hydroelectric Station in Yadkin River in Stanly and Montgomery Counties;
- (2) High Rock Hydroelectric Station in Yadkin River in Rowan and Davidson Counties.

*Authority G.S. 75A-3; 75A-15.*

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to amend the rules cited as 15A NCAC 18A .2609, .2620, and .2638.*

**Proposed Effective Date:** *November 1, 2007*

**Public Hearing:**

**Date:** *April 17, 2007*

**Time:** *10:00 a.m.*

**Location:** *2728 Capital Blvd., Raleigh, NC*

**Reason for Proposed Action:** *To improve the safety of foods that have been cooked and reheated and cooled to prevent microbial growth and reduce the possibility of foodborne illness.*

**Procedure by which a person can object to the agency on a proposed rule:** *Any objections to these rules may be submitted in writing via mail, delivery service, hand delivery or email to Kristina V. Nixon, P.O. Box 722, Edenton, NC 27932, phone (252) 482-1952, email kristi.nixon@ncmail.net*

**Comments may be submitted to:** *Kristina V. Nixon, P.O. Box 722, Edenton, NC 27932, phone (252) 482-1952, email kristi.nixon@ncmail.net*

**Comment period ends:** *June 1, 2007*

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

**Fiscal Impact: A copy of the fiscal note can be obtained from the agency.**

☐

**State**

☒

**Local** (15A NCAC 18A .2609)

☒

**Substantive** ( $\geq$ \$3,000,000) (15A NCAC 18A .2609)

☒

**None** (15A NCAC 18A .2620 and .2638)

## CHAPTER 18 - ENVIRONMENTAL HEALTH

### SUBCHAPTER 18A - SANITATION

#### SECTION .2600 – THE SANITATION OF FOOD SERVICE ESTABLISHMENTS

#### **15A NCAC 18A .2609 REFRIGERATION: THAWING: AND PREPARATION OF FOOD**

(a) All potentially hazardous foods requiring refrigeration shall be kept at or below 45° F (7° C), except when being prepared or served. An air temperature thermometer accurate to 3° F (1.5° C) shall be provided in all refrigerators.

(b) Refrigeration and freezer capacity shall be sufficient to maintain required temperatures on all potentially hazardous foods.

(c) Potentially hazardous foods shall be thawed:

- (1) in refrigerated units at a temperature not to exceed 45° F (7° C);
- (2) under potable running water of a temperature of 70° F (21° C), or below, with sufficient water velocity to agitate and float off loose food particles into the overflow;
- (3) as a part of the conventional cooking process; or
- (4) in a microwave oven only when the food will be immediately transferred to conventional cooking equipment as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven.

(d) Employees preparing food shall have used antibacterial soap, dips or hand sanitizers immediately prior to food preparation or shall use clean, plastic disposable gloves or sanitized utensils during food preparation. This requirement is in addition to all handwashing requirements in Section .2600 of these Rules. Food shall be prepared with the least possible manual contact, with utensils and on preparation surfaces that have been cleaned and rinsed prior to use. Preparation surfaces which come in contact with potentially hazardous foods shall be sanitized as provided in Rule .2618(c) of this Section. Raw fruits and raw vegetables shall be washed with potable water to remove soil and other contaminants before being cooked or served.

(e) Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to a temperature of at least 140° F (60° C) except as follows:

- (1) poultry, poultry stuffings, stuffed meats, and stuffings containing meat shall be cooked to heat all parts of the food to at least 165° F (74° C) with no interruption of the cooking process, and

- (2) pork and any food containing pork shall be cooked to heat all parts of the food to at least 150° F (66° C), and
- (3) ground beef and foods containing ground beef shall be cooked to an internal temperature of at least 155° F (68° C), and
- (4) roast beef shall be cooked to an internal temperature of at least 130° F (54° C), and
- (5) beef steak shall be cooked to a temperature of 130° F (54° C) unless otherwise ordered by the immediate consumer.

(f) Liquid eggs, or uncooked frozen eggs, dry eggs and egg products shall be used only for cooking and baking purposes. This Paragraph does not apply to pasteurized products.

(g) Potentially hazardous foods that have been cooked and then refrigerated shall be reheated to 165° F (74° C) or higher throughout before being served or before being placed in a hot food storage facility except that, food in intact packages from processing plants that are regulated by the food regulatory agency that has jurisdiction over the plants may initially be reheated to ~~140° F (60° C)~~, 135° F (57° C). Reheating time shall not exceed two hours.

(h) All potentially hazardous foods shall be stored at temperatures of ~~140° F (60° C)~~, 135° F (57° C) or above; or 45° F (7° C) or below except during necessary periods of preparation and serving. However, roast beef, as described in Subparagraph (e)(4) of this Rule shall be stored at a temperature of at least 130° F (54° C) or above; or 45° F (7° C) or below.

(i) Time only, rather than the temperature requirements set forth in Paragraph (h) of this Rule, may be used as the public health control for a working supply of potentially hazardous food before cooking, or for ready-to-eat potentially hazardous food that is displayed or held for service for immediate consumption if:

- (1) the food is marked or otherwise identified to indicate the time that is four hours past the point in time when the food is removed from temperature control;
- (2) the food is cooked and served, served if ready-to-eat, or discarded, within four hours from the point in time when the food is removed from required temperature control;
- (3) food in unmarked containers or packages or marked to exceed the four hour limit in Subparagraph (1) of this Paragraph, is discarded; and
- (4) written procedures approved by the Department, as being in accordance with these Rules, are maintained in the establishment for the handling of food from the time of completion of the cooking process or when the food is otherwise removed from required temperature control.

These procedures shall be made available to the Department upon request.

(j) Time only, rather than temperature requirements as set forth in Paragraph (h) of this Rule, may be used as the public health control for a working supply of potentially hazardous food before cooking, or for ready-to-eat potentially hazardous food that is displayed or held for customer take-out, if:

- (1) the food is marked or otherwise identified to indicate the time that is two hours past the point in time when the food is removed from temperature control;
- (2) the food is cooked and served, served if ready-to-eat, or discarded, within two hours from the point in time when the food is removed from required temperature control;
- (3) food in unmarked containers or packages or marked to exceed the two hour limit in Subparagraph (1) of this Paragraph, is discarded; and
- (4) written procedures approved by the Department, as being in accordance with these Rules, are maintained in the establishment for the handling of food from the time of completion of the cooking process or when the food was otherwise removed from required temperature control.

These procedures shall be made available to the Department upon request.

(k) An establishment wishing to move foods controlled under Paragraphs (i) and (j) of this Rule for immediate consumption on the premises, shall have their written procedures for the handling of the food from the time of completion of the cooking process or when the food was otherwise removed from required temperature control, approved by the Department, as being in accordance with these Rules, and shall maintain those approved procedures in the establishment.

(l) In a food establishment that serves a highly susceptible population, time only, rather than temperature, may not be used as the public health control for raw eggs.

(m) All potentially hazardous food that is transported must be maintained at temperatures as noted in Paragraph (h) of this Rule.

(n) A metal stem-type thermometer accurate to 2°F (1° C) shall be available to check food temperatures.

(o) Cooked potentially hazardous food shall be cooled:

- (1) within two hours from 135°F (57°C) to 70°F (21°C); and
- (2) within a total of six hours from 135°F (57°C) to 45°F (7°C) or less.

(p) Potentially hazardous food shall be cooled within four hours to 45°F (7°C) or less, if prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna.

(q) Cooling shall be accomplished in accordance with the time and temperature criteria specified in Paragraphs (o) and (p) of this Rule by using one or more of the following methods based on the type of food being cooled:

- (1) placing the food in shallow pans;
- (2) separating the food into smaller or thinner portions;
- (3) using rapid cooling equipment;
- (4) stirring the food in a container placed in an ice water bath;
- (5) using containers that facilitate heat transfer;
- (6) adding ice as an ingredient; or
- (7) other effective methods.

(r) When placed in cooling or cold holding equipment, food containers in which food is being cooled shall be:

- (1) arranged in the equipment to provide maximum heat transfer through the container walls; and
- (2) loosely covered, or uncovered if protected from overhead contamination during the cooling period to facilitate heat transfer from the surface of the food.

*Authority G.S. 130A-248.*

**15A NCAC 18A .2620 STORAGE AND HANDLING OF UTENSILS AND EQUIPMENT**

- (a) After bactericidal treatment, utensils shall be air-dried and stored above the floor in a clean place. Wherever practicable, containers and utensils shall be covered or inverted or stored in tight, clean cabinets; and glasses and cups shall be stored inverted. It shall not be considered practicable to invert plates and bowls which slide when inverted or to cover plates and bowls positioned for immediate use during business hours. Utensils used in restaurants or food service establishments and equipment shall be handled in such a manner as to prevent contamination, and employees shall avoid handling clean surfaces that will come in contact with customers' mouths.
- (b) Drain racks, trays, and shelves shall not be made of corrodible material, and shall be kept clean. These items are not required to be made of plastic.
- (c) Spoons, spatulas, dippers, and other in-use utensils shall be stored between use in the food product with the handles extending out of the food, stored dry on a clean surface or in a container of water if the water is maintained at a temperature of at least ~~140°F.~~ 135°F (57°).
- (d) When utensils are used to dispense frozen products or moist foods, the utensils may be stored in running water dipper wells only when the water has sufficient velocity to flush food residues into the overflow drain.
- (e) Single-service utensils shall be purchased only in sanitary containers, shall be stored therein in a clean, dry place until used, and shall be handled in a manner to prevent contamination of the utensils by hands. Single-service cup dispensers or similar devices shall be used when single-service cups are used. Nothing in the rules in this Section shall prohibit the use of plastic bags in which single-service cups or similar devices are received as the dispenser for those items.

*Authority G.S. 130A-248.*

**15A NCAC 18A .2638 GENERAL REQUIREMENTS FOR PUSHCARTS AND MOBILE FOOD UNITS**

- (a) A permit shall be issued by the local health department which provides sanitation surveillance for the restaurant or commissary from which the pushcart or mobile food unit is to operate, if the local health department determines that the pushcart or mobile food unit complies with these Rules.
- (b) The permit shall be posted on the pushcart or mobile food unit. Grade cards shall not be posted.
- (c) The local health department which issues the permit shall be provided by individuals receiving a permit a list of counties and locations where each pushcart or mobile food unit will operate.

(d) Individuals receiving a permit to operate a pushcart or mobile food unit shall provide the local health department in each county in which food service operations are proposed a list of locations where they will operate. Such lists must be kept current.

(e) Prior to initiating food service operations in a particular jurisdiction, the operator of the pushcart or mobile food unit shall submit to that particular jurisdiction such carts or units for inspection or reinspection to determine compliance with this Section.

(f) Pushcarts or mobile food units shall operate in conjunction with a permitted restaurant or commissary and shall report at least daily to the restaurant or commissary for supplies, cleaning, and servicing. Facilities, in compliance with this Section, shall be provided at the restaurant or commissary for storage of all supplies. The pushcart shall also be stored in an area that protects it from dirt, debris, vermin and other contamination. Water faucets used to supply water for pushcarts and mobile food units shall be protected to prevent contact with chemicals, splash and other sources of contamination. Solid waste storage and liquid waste disposal facilities must also be provided on the restaurant or commissary premises.

(g) All foods shall be obtained from approved sources and shall be handled in a manner so as to be clean, wholesome, and free from adulteration.

(h) All potentially hazardous foods shall be maintained at 45° F (7° C) or below or ~~140° F (60° C)~~ 135° F (57° C) or above, or as required in Rule .2609 of this Section. A metal stem-type thermometer accurate to 2°F (1° C.) shall be available to check food temperatures.

(i) Only single-service eating and drinking utensils shall be used in serving customers. Single-service items must be properly stored and handled.

(j) All garbage and other solid waste shall be stored and disposed of in an approved manner.

(k) Employees shall be clean as to their person and foodhandling practices. Clean outer clothing and hair restraints are required.

(l) No person who has a communicable or infectious disease that can be transmitted by foods, or who is a carrier of organisms that cause such a disease, or who has a boil, infected wound, or an acute respiratory infection with cough and nasal discharge, shall work with a pushcart or mobile food unit in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces, with disease-causing organisms or transmitting the illness to other persons.

(m) All equipment and utensils shall comply with the rules of this Section.

(n) The pushcart or mobile food unit shall be kept in a clean and sanitary condition and be free of flies, roaches, rodents, and other vermin.

*Authority G.S. 130A-248.*

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**TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

**CHAPTER 16 – DENTAL EXAMINERS**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Dental Examiners intends to amend the rules cited as 21 NCAC 16Q .0101, .0301- .0303, .0401, .0501.*

**Proposed Effective Date:** August 1, 2007

**Public Hearing:**

**Date:** April 19, 2007

**Time:** 7:00 p.m.

**Location:** Board Office, 507 Airport Blvd., Suite 105, Morrisville, NC 27560

**Reason for Proposed Action:** *To create a definition for complex external conscious sedation, amend the definition of external conscious sedation and regulate the administration of complex external conscious sedation.*

**Procedure by which a person can object to the agency on a proposed rule:** *Written objections to the proposed rule amendments may be directed to the Chief Operations Officer, N.C. State Board of Dental Examiners, 507 Airport Blvd., Ste. 105, Morrisville, NC 27560 on or before June 1, 2007.*

**Comments may be submitted to:** Bobby D. White, Chief Operations Officer, 507 Airport Blvd., Ste. 105, Morrisville, N.C. 27560

**Comment period ends:** June 1, 2007

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

**Fiscal Impact:**

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

## SUBCHAPTER 16Q - GENERAL ANESTHESIA AND SEDATION

### SECTION .0100 – DEFINITIONS

**21 NCAC 16Q .0101 GENERAL ANESTHESIA AND SEDATION DEFINITIONS**

For the purpose of these rules relative to the administration of general anesthesia, parenteral conscious sedation, complex enteral conscious sedation and enteral conscious sedation by or under the direction of a dentist, the following definitions shall apply:

- (1) "Analgesia" – the diminution or elimination of pain.
- (2) "Anti-anxiety sedative" – a sedative agent administered in a dosage intended to reduce anxiety without diminishing consciousness or protective reflexes.
- (3) "Anxiolysis" – pharmacological reduction of anxiety through the administration of a minor psychosedative which allows for uninterrupted interactive ability in a totally awake patient with no compromise in the ability to maintain patient airway consciously and without assistance.
- (4) "Behavioral management" – the use of pharmacological or psychological techniques singly or in combination, to modify behavior to a level that dental treatment can be performed effectively and efficiently.
- (5) "Competent" - displaying special skills or knowledge derived from training and experience.
- (6) "Complex enteral conscious sedation" is conscious sedation that is achieved by the oral or rectal administration of multiple pharmacological agents, in single or multiple doses, within a 24 hour period, including the time of treatment, possibly in combination with nitrous oxide. Complex conscious sedation is administered primarily for behavioral management.
- ~~(6)~~(7) "Conscious sedation" - an induced state of a depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command, and that is produced by pharmacologic or non-pharmacologic agents, or a combination thereof. In accordance with this particular definition, the drugs or techniques used shall carry a margin of safety wide enough to render unintended loss of consciousness unlikely.
- ~~(7)~~(8) "Deep sedation" – an induced state of a depressed level of consciousness accompanied by partial loss of protective reflexes, including the ability to continually maintain an airway independently or respond purposefully to verbal command, and is produced by pharmacological agents.
- ~~(8)~~(9) "Direct supervision" – the dentist responsible for the sedation/anesthesia procedure shall be physically present in the facility and shall be continuously aware of the patient's physical status and well being.

- ~~(9)~~(10) "Enteral conscious sedation" is conscious sedation that is achieved by the oral or rectal administration of a single pharmacological agent, through the alimentary tract either orally or rectally, in one or more doses, within a twenty-four hour period, including the time of treatment, possibly in combination with nitrous oxide. Enteral conscious sedation is administered primarily for behavioral management.
- ~~(10)~~(11) "Facility" – the location where a permit holder practices dentistry and provides anesthesia/sedation services.
- ~~(11)~~(12) "Facility inspection" - an on-site inspection to determine if a facility where the applicant proposes to provide anesthesia/sedation is supplied, equipped, staffed and maintained in a condition to support provision of anesthesia/sedation services that meet the minimum standard of care.
- ~~(12)~~(13) "General anesthesia" is the intended controlled state of depressed consciousness produced by pharmacologic agents and accompanied by a partial or complete loss of protective reflexes, including the ability to maintain an airway and respond purposefully to physical stimulation or verbal commands.
- ~~(13)~~(14) "Immediately available" – on-site in the facility and available for immediate use.
- ~~(14)~~(15) "Local anesthesia" – the elimination of sensations, especially pain, in one part of the body by the regional application or injection of a drug.
- ~~(15)~~(16) "May" – indicates freedom or liberty to follow a reasonable alternative.
- ~~(16)~~(17) "Minor psychosedative/minor tranquilizer" – pharmacological agents which allow for uninterrupted interactive ability in a patient with no compromise in the ability to maintain a patient airway continuously and without assistance and carry a margin of safety wide enough to render unintended loss of consciousness unlikely.
- ~~(17)~~(18) "Must" or "shall" – indicates an imperative need or duty or both; an essential or indispensable item; mandatory.
- ~~(18)~~(19) "Parenteral conscious sedation" – is conscious sedation achieved by the administration of pharmacological agents intravenously, intramuscularly, subcutaneously, submucosally, intranasally, or transdermally. Parenteral conscious sedation is administered primarily for behavioral management.
- ~~(19)~~(20) "Protective reflexes" – includes the ability to swallow and cough.
- ~~(20)~~(21) "Vested adult" – a responsible adult who is the legal parent or guardian, or designee of a legal parent or guardian, entrusted with the care of a minor following the administration of general anesthesia or conscious sedation.

Authority G.S. 90-28; 90-30.1.

## **SECTION .0300 - PARENTERAL CONSCIOUS SEDATION**

### **21 NCAC 16Q .0301 PARENTERAL CONSCIOUS SEDATION CREDENTIALS AND PERMIT**

(a) A dentist may administer or employ a certified registered nurse anesthetist to administer parenteral conscious sedation or complex enteral conscious sedation to dental patients on an outpatient basis provided he obtains a permit from the Board by submitting the appropriate information on an application form provided by the Board and pays a fee of fifty dollars (\$50.00). Such permit must be renewed annually and shall be displayed with the current renewal at all times in a conspicuous place in the office of the permit holder.

(b) A dentist applying for a permit to administer parenteral conscious sedation or complex enteral conscious sedation must meet at least one of the following criteria:

- (1) Satisfactory completion of a minimum of 60 hours of didactic training and instruction in intravenous conscious sedation and satisfactory management of a minimum of 10 patients, under supervision, using intravenous sedation; or
- (2) Satisfactory completion of an undergraduate or postgraduate program which included intravenous conscious sedation training equivalent to that defined in Subparagraph (b)(1) of this Rule; or
- (3) Satisfactory completion of an internship or residency which included intravenous conscious sedation training equivalent to that defined in Subparagraph (b)(1) of this Rule; or
- (4) Authorization for the use of general anesthetics by holding a permit for the same issued by the Board; or
- (5) Utilization of a certified registered nurse anesthetist under his supervision to administer intravenous sedation to dental patients.

(c) To be eligible for a parenteral conscious sedation permit or a complex enteral conscious sedation permit, a dentist must operate within a facility which includes the capability of delivering positive pressure oxygen, staffed with supervised auxiliary personnel who shall document annual, successful completion of basic life support (BSL) training and be capable of assisting with procedures, problems and emergencies incident thereto.

(d) The Board may, based upon formal application, grant a permit authorizing the use of parenteral conscious sedation or complex enteral conscious sedation to a dentist who has been utilizing parenteral conscious sedation or complex enteral conscious sedation in a competent and effective manner for the past five years preceding the effective date of this Rule, but who has not had the benefit of formal training as outlined in Paragraph (b) of this Rule, provided that said dentist meets the requirements of Paragraphs (c) and (d) of this Rule.

(e) A dentist who holds a parenteral conscious sedation permit or a complex enteral conscious sedation permit shall not

intentionally administer deep sedation although deep sedation may occur briefly unintentionally. A dentist who is qualified to administer parenteral conscious sedation and holds a parenteral conscious sedation permit or who is qualified to administer complex enteral conscious sedation and holds a complex enteral conscious sedation permit is also authorized to administer enteral conscious sedation without obtaining a separate enteral conscious sedation permit.

*Authority G.S. 90-28; 90-30.1.*

**21 NCAC 16Q .0302 CLINICAL REQUIREMENTS AND EQUIPMENT**

(a) A dentist administering parenteral conscious sedation or complex enteral conscious sedation is solely responsible for providing that the environment in which the parenteral conscious sedation or complex enteral conscious sedation is to be administered meets the following requirements:

- (1) The facility is equipped with:
  - (A) An operatory of size and design to permit access of emergency equipment and personnel and to permit effective emergency management;
  - (B) A chair or table for emergency treatment, including chair suitable for CPR or CPR Board;
  - (C) Lighting as necessary for specific procedures; and
  - (D) Suction equipment as necessary for specific procedures, including non-electrical back-up suction;
- (2) The following equipment is maintained:
  - (A) A positive oxygen delivery system, including full face mask for adults and pediatric patients;
  - (B) Oral and nasal airways of various sizes;
  - (C) Blood pressure monitoring device; and
  - (D) Pulse oximeter.
- (3) The following emergency equipment is maintained:
  - (A) I.V. setup as necessary for specific procedures, including hardware and fluids, if anesthesia is intravenous;
  - (B) Syringes as necessary for specific procedures; and
  - (C) Tourniquet and tape;
- (4) The following drugs are maintained with a current shelf life and within easy accessibility from the operatory and recovery area:
  - (A) Epinephrine;
  - (B) Atropine;
  - (C) Antiarrhythmic;
  - (D) Narcotic antagonist;
  - (E) Antihistamine;
  - (F) Corticosteroid;
  - (G) Nitroglycerine;
  - (H) Bronchial dilator;

- (I) Antiemetic;
  - (J) Benzodiazepine antagonist;
  - (K) Muscle relaxant for intubation; and
  - (L) 50% Dextrose;
- (5) Written emergency and patient discharge protocols are maintained and training to familiarize office personnel in the treatment of clinical emergencies is provided; and
  - (6) The following records are maintained:
    - (A) Patient's current written medical history, including known allergies and previous surgery;
    - (B) Drugs administered during the procedure, including route of administration, dosage, time and sequence of administration;
    - (C) A sedation record which shall include:
      - (i) blood pressure;
      - (ii) pulse rate;
      - (iii) respiration;
      - (iv) duration of procedure;
      - (v) documentation of complications or morbidity; and
      - (vi) status of patient upon discharge.

(b) During an inspection or evaluation, the applicant or permit holder shall demonstrate the administration of conscious sedation while the evaluator observes. During the demonstration, the applicant or permit holder shall demonstrate competency in the following areas:

- (1) Monitoring blood pressure, pulse, and respiration;
- (2) Drug dosage and administration;
- (3) Treatment of untoward reactions including respiratory or cardiac depression;
- (4) Sterilization;
- (5) Use of CPR certified personnel;
- (6) Monitoring of patient during recovery; and
- (7) Sufficiency of patient recovery time.

(c) During an inspection or evaluation, the applicant or permit holder shall verbally demonstrate competency to the evaluator in the treatment of the following clinical emergencies:

- (1) Laryngospasm;
- (2) Bronchospasm;
- (3) Emesis and aspiration;
- (4) Respiratory depression and arrest;
- (5) Angina pectoris;
- (6) Myocardial infarction;
- (7) Hypertension/Hypotension;
- (8) Allergic reactions;
- (9) Convulsions;
- (10) Syncope;
- (11) Bradycardia;
- (12) Insulin shock; and
- (13) Cardiac arrest.

(d) A dentist administering parenteral conscious sedation or complex enteral conscious sedation shall ensure that the facility is staffed with auxiliary personnel who shall document annual

successful completion of basic life support training and be capable of assisting with procedures, problems, and emergency incidents that may occur as a result of the sedation or secondary to an unexpected medical complication.

(e) Upon request, the holder of an anesthesia, ~~or~~ parenteral conscious sedation or complex enteral conscious sedation permit may travel to the office of a licensed dentist who does not hold such a permit and provide parenteral, complex enteral conscious sedation ~~and~~ or enteral conscious sedation services for the patients of that dentist who are undergoing dental procedures. The permit holder is solely responsible for providing that the office in which the parenteral, complex enteral conscious sedation or enteral conscious sedation is administered meets the requirements established by the Board, that the required drugs and equipment are present, and that the permit holder utilizes auxiliary personnel who shall document annual successful completion of basic life support training and be capable of assisting with procedures, problems, and emergency incidents that may occur as a result of the ~~parenteral conscious sedation~~ or secondary to an unexpected medical complication.

*Authority G.S. 90-28; 90-30.1; 90-48.*

#### **21 NCAC 16Q .0303 TEMPORARY APPROVAL PRIOR TO SITE INSPECTION**

(a) If a dentist meets the requirements of Rule .0301 of this Section, he shall be granted temporary approval to continue to administer parenteral conscious sedation or complex enteral conscious sedation until a permit can be issued. Temporary approval may be granted based solely on credentials until all processing and investigation has been completed. Temporary approval may not exceed three months. An on-site evaluation of the facilities, equipment, procedures, and personnel shall be required. The evaluation shall be conducted in accordance with Rules .0202 -.0205 of this Subchapter, except that evaluations of dentists applying for parenteral conscious sedation or complex enteral conscious sedation permits may be conducted by dentists who have been issued parenteral conscious or complex enteral conscious sedation permits by the Board and who have administered parenteral conscious sedation or complex enteral conscious sedation for at least three years. Fees required by Rules .0202-.0205 of this Subchapter shall apply.

(b) An evaluation may be made any time it is deemed necessary by the Board.

(c) Temporary approval shall not be granted to a provisional licensee.

*Authority G.S. 90-28; 90-30.1.*

#### **SECTION .0400 - ENTERAL CONSCIOUS SEDATION**

##### **21 NCAC 16Q .0401 ENTERAL CONSCIOUS SEDATION CREDENTIALS AND PERMIT**

(a) Before a dentist licensed to practice in North Carolina may administer or supervise a certified registered nurse anesthetist to administer enteral conscious sedation, he or she shall obtain ~~either~~ a parenteral conscious sedation permit issued by the Board, a general anesthesia permit issued by the Board, a complex enteral conscious sedation permit issued by the Board or an enteral conscious sedation permit issued by the Board. A

permit is not required for prescription administration of DEA controlled drugs prescribed for postoperative pain control intended for home use. A dentist may obtain an enteral conscious sedation permit from the Board by submitting the appropriate information on an application form provided by the Board and paying a fee of fifty dollars (\$50.00). Such permit must be renewed annually and shall be displayed with the current renewal at all times in a conspicuous place in the office of the permit holder.

(b) A dentist who holds only an enteral conscious sedation permit shall not administer deep sedation or general anesthesia.

(c) Application:

(1) An enteral conscious sedation permit may be obtained by completing an application form provided by Board, a copy of which may be obtained from the Board office, and meeting the requirements of Section .0400 of this Subchapter.

(2) The application form must be filled out completely and appropriate fees paid.

(3) Prior to issuance of an enteral conscious sedation permit the applicant shall undergo a facility inspection. The Board shall direct an evaluator to perform this inspection. The applicant shall be notified in writing that an inspection is required and provided with the name of the evaluator who shall perform the inspection. The applicant shall be responsible for successful completion of inspection of his or her facility within three months of notification. An extension of no more than 90 days shall be granted if the designated evaluator or applicant requests one.

(4) An applicant for the enteral conscious sedation permit shall be licensed and in good standing with the Board in order to be approved. For purposes of these rules "good standing" means that a licensee is not suspended, whether or not the suspended license is on probation. Applications from licensees who are not in good standing shall not be approved.

(d) Educational/Professional Requirements:

(1) The dentist applying for an enteral conscious sedation permit shall meet one of the following criteria:

(A) successful completion of training consistent with that described in Part I or Part III of the American Dental Association (ADA) Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry, and have documented administration of enteral conscious sedation in a minimum of five cases;

(B) successful completion of an ADA accredited post-doctoral training program which affords comprehensive training necessary to administer and manage enteral conscious sedation;



- (C) successful completion of an eighteen hour enteral conscious sedation course which must be approved by the Board based on whether it affords comprehensive training to administer and manage enteral conscious sedation;
  - (D) successful completion of an ADA accredited post graduate program in pediatric dentistry; or
  - (E) is a North Carolina licensed dentist in good standing who has been utilizing enteral conscious sedation in a competent manner for the five years preceding January 1, 2002, in his or her office facility has passed an on-site inspection by a Board evaluator as required in Paragraph (b)(3) of this Rule. Competency shall be determined by presentation of successful administration of enteral conscious sedation in a minimum of five clinical cases.
- (2) Prior to administering enteral conscious sedation to children under the age of 13, a dentist who qualifies only for an enteral conscious sedation permit shall also successfully complete a six hour course in pediatric enteral conscious sedation developed by the Pediatric Dentistry Department at the University of North Carolina or an equivalent course and submit documentation showing successful completion of such course to the Board. The requirements of this paragraph shall not apply to Pediatric Dentists who meet the requirements of Paragraph (c)(1)(D) of this Rule nor to those dentists who otherwise meet the requirements of Paragraph (c)(1)(E) of this Rule and in addition have administered enteral conscious sedation to children under the age of 13 in a competent manner for the five years preceding January 1, 2002. Competency shall be determined by presentation of successful administration of enteral conscious sedation in a minimum of five clinical cases.

*Authority G.S. 90-28; 90-30.1.*

## **SECTION .0500 - RENEWAL OF PERMITS**

### **21 NCAC 16Q .0501      ANNUAL RENEWAL REQUIRED**

(a) General anesthesia, parenteral conscious sedation, complex enteral conscious sedation and enteral conscious sedation permits shall be renewed by the Board on an annual basis. Such renewal shall be accomplished in conjunction with the license renewal process, and applications for permits shall be made at the same time as applications for renewal of licenses.

(b) Anesthesia, parenteral conscious sedation, complex enteral conscious sedation and enteral conscious sedation permits shall be subject to the same renewal deadlines as are dental practice licenses, in accordance with G.S. 90-31. If the permit renewal application is not received by the date specified in G.S. 90-31, continued administration of anesthesia, parenteral conscious sedation, complex enteral conscious sedation or enteral conscious sedation shall be unlawful and shall subject the dentist to the penalties prescribed by Section .0700 of this Subchapter.

(c) As a condition for renewal of the general anesthesia permit, the permit holder shall ensure that the requirements of 21 NCAC 16Q .0202 are met and document current, successful completion of advanced cardiac life support (ACLS) training, or its age-specific equivalent or other equivalent course, and auxiliary personnel shall document annual, successful completion of basic life support (BLS) training.

(d) As a condition for renewal of the parenteral conscious sedation or complex enteral conscious sedation permit, the permit holder shall ~~ensure that meet~~ the requirements of 21 NCAC 16Q .0302 ~~are met and also meet~~ one of the following criteria: document current, successful completion of advanced cardiac life support (ACLS) training or its age-specific equivalent, or other equivalent course; or document annual, successful completion of basic life support (BLS) training and obtain three hours of continuing education each year in one or more of the following areas, which may be counted toward fulfillment of the continuing education required each calendar year for license renewal: sedation; medical emergencies; monitoring IV sedation and the use of monitoring equipment; pharmacology of drugs and agents used in IV sedation; physical evaluation, risk assessment, or behavioral management; or audit ACLS/PALS courses.

(e) As a condition for renewal of the enteral conscious sedation permit, the permit holder shall ensure that the requirements of 16Q .0402 are met and shall document annual, successful completion of basic life support (BLS) training and obtain six hours of continuing education every two years in one or more of the following areas, which may be counted toward fulfillment of the continuing education required each calendar year for license renewal: pediatric or adult sedation; medical emergencies; monitoring sedation and the use of monitoring equipment; pharmacology of drugs and agents used in sedation; physical evaluation, risk assessment, or behavioral management; or audit ACLS/PALS courses.

*Authority G.S. 90-28; 90-30.1; 90-48.*

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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 February 15, 2007*

**REGISTER CITATION TO THE  
NOTICE OF TEXT****SOCIAL SERVICES COMMISSION**

Nature and Purpose of State Adult Day Care Fund 10A NCAC 06T .0201\* 21:10 NCR

**HHS - VOCATIONAL REHABILITATION SERVICES**

Vendor Compliance 10A NCAC 89C .0402\* 21:10 NCR

Eligibility and Most Significant Disability 10A NCAC 89C .0502 21:10 NCR

**ENVIRONMENTAL MANAGEMENT COMMISSION**

Broad River Basin 15A NCAC 02B .0306\* 21:05 NCR

Applicability 15A NCAC 02D .0902\* 21:06 NCR

Compliance Schedules for Sources In Noncompliant Areas 15A NCAC 02D .0909\* 21:06 NCR

Applicability 15A NCAC 02D .1402 21:06 NCR

Compliance Schedules 15A NCAC 02D .1403\* 21:06 NCR

**HEARING AID DEALERS AND FITTERS BOARD**

Fee Schedule 21 NCAC 22B .0603 21:10 NCR

**MEDICAL BOARD**

Clinical Pharmacist Practitioner 21 NCAC 32T .0101\* 21:05 NCR

**COMMUNITY COLLEGES, BOARD OF**

Faculty 23 NCAC 02C .0202\* 21:08 NCR

Establishing Pay Rates 23 NCAC 02D .0101\* 21:08 NCR

**STATE PERSONNEL COMMISSION**

Posting and Announcement of Vacancies 25 NCAC 01H .0631\* 21:02 NCR

Minimum Qualifications 25 NCAC 01H .0635\* 21:02 NCR

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**TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN  
SERVICES****10A NCAC 06T .0201 NATURE AND PURPOSE OF  
STATE ADULT DAY CARE FUND**

(a) The State Adult Day Care Fund shall be used for adult day care and adult day health services provided through county departments of social services for the purpose of enabling people to remain in or return to their own homes.

(b) The fund shall be used to increase state financial participation in the costs of this service.

(c) The maximum rate for the purchase of adult day care services under contract shall not exceed thirty-three dollars and seven cents (\$33.07) per day, per client. The maximum rate for the purchase of adult day health services under contract shall not exceed forty dollars (\$40.00) per day, per client. Adult day health services may only be purchased for an individual following a preadmission health assessment as specified in 10A NCAC 06S .0204(b)(2)(A) and a determination that the

individual needs one or more services delineated in 10A NCAC 06S .0402(a)(1) through (3).

(d) The maximum reimbursement rate for transporting an adult day care client to an adult day care program shall not exceed one dollar and fifty cents (\$1.50) for a one-way trip.

*History Note:* Authority G.S. 143B-153;

*Eff. January 1, 1982;*

*Temporary Amendment Eff. July 27, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*

*Amended Eff. December 1, 1994; July 1, 1990;*

*Temporary Amendment Eff. December 8, 1997;*

*Amended Eff. March 1, 2007; April 1, 2005; April 1, 1999.*

#### **10A NCAC 89C .0402 VENDOR COMPLIANCE**

(a) The Division shall use only those training vendors, treatment vendors, community rehabilitation program vendors, and room and board vendors who have been approved by the Division and determined to be in compliance with Title VI of the Civil Rights Act of 1964. Vendors may request approval or the Division may request that a vendor or facility consider serving Division clients. In either case, a staff member of the Division shall conduct an on-site vendor review to determine that the vendor is in compliance with Title VI of the Civil Rights Act of 1964. In addition, the vendor shall sign an assurance of compliance form indicating that services will be provided in compliance with Title VI of the Civil Rights Act of 1964.

(b) Out-of-state vendors may be added to the Division's list of approved vendors upon certification from the respective state's Division of Vocational Rehabilitation Services that the vendor is in compliance with Title VI of the Civil Rights Act of 1964.

(c) Vendors who wish to be added to the Division's list of those in compliance with Title VI of the Civil Rights Act of 1964 shall contact:

Section Chief, Program Policy, Planning, and Evaluation  
Division of Vocational Rehabilitation Services  
805 Ruggles Drive  
2801 Mail Service Center  
Raleigh, North Carolina 27699-2801

*History Note:* Authority G.S. 143-546; 34 C.F.R. 76.500;

*Eff. February 1, 1976;*

*Amended Eff. March 1, 2007; July 1, 1990.*

#### **10A NCAC 89C .0502 ELIGIBILITY AND MOST SIGNIFICANT DISABILITY**

The Supported Employment Program shall serve only those individuals with the most significant disabilities as defined in 10A NCAC 89A.0102.

*History Note:* Authority G.S. 143-545; 143-546; 34 C.F.R. 363.3;

*Eff. October 1, 1994;*

*Amended Eff. March 1, 2007.*

#### **15A NCAC 02B .0306 BROAD RIVER BASIN**

(a) The Broad River Basin Schedule of Classifications and Water Quality Standards may be inspected at the following places:

- (1) Clerk of Court:  
Buncombe County  
Cleveland County  
Gaston County  
Henderson County  
Lincoln County  
McDowell County  
Polk County  
Rutherford County
- (2) North Carolina Department of Environment and Natural Resources:
  - (A) Mooresville Regional Office  
610 East Center Avenue  
Suite 301  
Mooresville, North Carolina
  - (B) Asheville Regional Office  
2090 US Highway 70  
Swannanoa, North Carolina.

(b) Unnamed Streams. Such streams entering South Carolina are classified "C."

(c) The Broad River Basin Schedule of Classifications and Water Quality Standards was amended effective:

- (1) March 1, 1977;
- (2) February 12, 1979;
- (3) August 12, 1979;
- (4) April 1, 1983;
- (5) February 1, 1986;
- (6) August 3, 1992;
- (7) September 1, 1994;
- (8) August 1, 1998;
- (9) August 1, 2000;
- (10) April 1, 2001;
- (11) March 1, 2007.

(d) The Schedule of Classifications and Water Quality Standards for the Broad River Basin 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 02B .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.

(e) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended effective September 1, 1994 with the reclassification of the Second Broad River [Index No. 9-41-(0.5)] from its source to Roberson Creek including associated tributaries was reclassified from Class WS-V to Classes WS-V, WS-IV and WS-IV CA.

(f) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended effective August 1,

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1998 with the revision to the primary classification for portions of the Broad River [Index No. 9-(23.5)] from Class WS-IV to Class C and Second Broad River [Index Nos. 9-41-(10.5) and 9-41-(14.5)] and First Broad River [Index No. 9-50-(11)] from Class WS-IV to Class WS-V.

(g) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended August 1, 2000 with the reclassification of the Green River [Index No. 9-29-(1)], including all tributaries, from its source to its mouth in Lake Summit at elevation 2011 from Class C Tr to Class B Tr.

(h) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended effective August 1, 2000 with the reclassification of Lake Montonia [Index No. 9-54-1-(1)], and all tributaries, from Class B to Class B HQW.

(i) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended effective April 1, 2001 with the reclassification of the Green River [Index No. 9-29-(1)], including all tributaries, from its source to the downstream side of the mouth of Rock Creek from Class B Tr to Class B Tr HQW.

(j) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended effective March 1, 2007 with the reclassification of the North Fork First Broad River (Index No. 9-50-4), including all tributaries, from its source to the First Broad River from Class C Tr to Class C Tr ORW.

(k) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended effective March 1, 2007 with the reclassification of a segment of the Broad River [Index No. 9-(25.5)] from a point 0.5 mile upstream of the City of Shelby proposed water supply intake to the City of Shelby proposed water supply intake from Class C to Class WS-IV CA, and from a point 0.5 mile upstream of the City of Shelby proposed water supply intake to a point approximately 0.3 mile downstream of its confluence with Cane Creek from Class C to Class WS-IV. The City of Shelby proposed water supply intake is to be placed on the Broad River at a point approximately one mile upstream of its confluence with the First Broad River.

(l) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended effective March 1, 2007 with the reclassification of a segment of the Broad River [Index No. 9-(25.5)] from a point 0.5 mile upstream of the Town of Forest City proposed water supply intake to the Town of Forest City proposed water supply intake from Class C to Class WS-IV CA, and from a point 0.5 mile upstream of the Town of Forest City proposed water supply intake to a point approximately 0.2 mile downstream of Rutherford County SR 1145 (Town of Rutherfordton water supply intake) from Class C to Class WS-IV. The Town of Forest City proposed water supply intake is to be placed on the Broad River at a point approximately 0.4 mile downstream of McKinney Creek.

*History Note:* Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);

*Eff.* February 1, 1976;

*Amended Eff.* March 1, 2007; April 1, 2001; August 1, 2000; August 1, 1998; September 1, 1994; August 3, 1992; February 1, 1986; January 1, 1985.

**15A NCAC 02D .0902 APPLICABILITY**

(a) The rules in this Section do not apply except as specifically set out in this Rule.

(b) Regardless of any other statement of applicability of this Section, this Section does not apply to:

- (1) sources whose emissions of volatile organic compounds are not more than 15 pounds per day, except that this Section does apply to the manufacture and use of cutback asphalt and to gasoline service stations or gasoline dispensing facilities regardless of levels of emissions of volatile organic compounds;
- (2) sources whose emissions do not exceed 800 pounds of volatile organic compounds per calendar month and that are:
  - (A) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non-production environmental compliance assessments;
  - (B) bench-scale experimentation, chemical or physical analyses, training or instruction from not-for-profit, non-production educational laboratories;
  - (C) bench-scale experimentation, chemical or physical analyses, training or instruction from hospitals or health laboratories pursuant to the determination or diagnoses of illness; or
  - (D) research and development laboratory activities provided the activity produces no commercial product or feedstock material; or
- (3) emissions of volatile organic compounds during startup or shutdown operations from sources which use incineration or other types of combustion to control emissions of volatile organic compounds whenever the off-gas contains an explosive mixture during the startup or shutdown operation if the exemption is approved by the Director as meeting the requirements of this Subparagraph.

(c) The following rules of this Section apply statewide:

- (1) .0925, Petroleum Liquid Storage in Fixed Roof Tanks, for fixed roof tanks at gasoline bulk plants and gasoline bulk terminals;
- (2) .0926, Bulk Gasoline Plants;
- (3) .0927, Bulk Gasoline Terminals;
- (4) .0928, Gasoline Service Stations Stage I;
- (5) .0932, Gasoline Truck Tanks and Vapor Collection Systems;
- (6) .0933, Petroleum Liquid Storage in External Floating Roof Tanks, for external floating roof tanks at bulk gasoline plants and bulk gasoline terminals;
- (7) .0948, VOC Emissions from Transfer Operations;

- (8) .0949, Storage of Miscellaneous Volatile Organic Compounds; and
- (9) .0958, Work Practices for Sources of Volatile Organic Compounds.

(d) Rule .0953, Vapor Return Piping for Stage II Vapor Recovery, of this Section applies in Davidson, Durham, Forsyth, Guilford, Wake, Dutchville Township in Granville County, and that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River in accordance with provisions set out in that Rule.

(e) All sources located in Mecklenburg County that were required to comply with any of the Rules in Subparagraphs (e)(1) or (2) of this Rule before July 5, 1995 shall continue to comply with these Rules:

- (1) .0917 through .0937 of this Section, or
- (2) .0943 through .0945 of this Section.

(f) The rules in this Section apply to sources with the potential to emit 100 tons or more volatile organic compounds per year in the following areas:

- (1) Cabarrus County,
- (2) Gaston County,
- (3) Lincoln County,
- (4) Mecklenburg County,
- (5) Rowan County,
- (6) Union County,
- (7) Davidson Township and Coddle Creek Township in Iredell County.

(g) If a violation of the ambient air quality standard for ozone is measured in accordance with 40 CFR 50.9 in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as being necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For Forsyth County, "Director" means for the purpose of notifying permitted facilities in Forsyth County, the Director of the Forsyth County local air pollution control program.) Compliance shall be in accordance with Rule .0909 of this Section.

(h) If a violation of the ambient air quality standard for ozone is measured in accordance with 40 CFR 50.9 in Durham or Wake County or Dutchville Township in Granville County, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as being necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Durham or Wake County or Dutchville Township in Granville County or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. Compliance shall be in accordance with Rule .0909 of this Section.

(i) Sources whose emissions of volatile organic compounds are not subject to limitation under this Section may still be subject to emission limits on volatile organic compounds in Rules, .0524 .1110, or .1111 of this Subchapter.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. July 1, 1979; Amended Eff. March 1, 2007; August 1, 2004; July 1, 2000; April 1, 1997; July 1, 1996; July 1, 1995; May 1, 1995; July 1, 1994.*

#### **15A NCAC 02D .0909 COMPLIANCE SCHEDULES FOR SOURCES IN NONATTAINMENT AREAS**

(a) Applicability. With the exceptions in Paragraph (b) of this Rule, this Rule applies to all sources covered by Paragraph (f), (g), or (h) of Rule .0902 of this Section.

(b) Exceptions. This Rule does not apply to:

- (1) sources in Mecklenburg County required to comply with the requirements of this Section under Rule .0902(e) of this Section;
- (2) sources covered under Rule .0953 or .0954 of this Section; or
- (3) sources required to comply with the requirements of this Section under Rule .0902(c) of this Section.

(c) Maintenance areas. The owner or operator of any source subject to this Rule because of the application of Paragraph (g) or (h) of Rule .0902 of this Section shall adhere to the following increments of progress and schedules:

- (1) if compliance is to be achieved by installing emission control equipment, replacing process equipment, or modifying existing process equipment:

- (A) The owner or operator shall submit a permit application and a compliance schedule within six months after the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone;
  - (B) The compliance schedule shall contain the following increments of progress:
    - (i) a date by which contracts for the emission control system and process equipment shall be awarded or orders shall be issued for purchase of component parts;
    - (ii) a date by which on-site construction or installation of the emission control and process equipment shall begin; and
    - (iii) a date by which on-site construction or installation of the emission control and process equipment shall be completed;
  - (C) Final compliance shall be achieved within three years after the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone.
- (2) if compliance is to be achieved by using low solvent content coating technology:
- (A) The owner or operator shall submit a permit application and a compliance schedule within six months after the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone;
  - (B) The compliance schedule shall contain the following increments:
    - (i) a date by which research and development of low solvent content coating shall be completed if the Director determines that low solvent content coating technology has not been sufficiently researched and developed;
    - (ii) a date by which evaluation of product quality and commercial acceptance shall be completed;
    - (iii) a date by which purchase orders shall be issued for low solvent content coatings and process modifications;
  - (iv) a date by which process modifications shall be initiated; and
  - (v) a date by which process modifications shall be completed and use of low solvent content coatings shall begin;
- (C) Final compliance shall be achieved within three years after the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone.
- (3) The owner or operator shall certify to the Director within five days after each increment deadline of progress in this Paragraph, whether the required increment of progress has been met.
- (d) Nonattainment areas. The owner or operator of any source subject to this Rule because of the application of Paragraphs (f) of Rule .0902 of this Section shall adhere to the following increments of progress and schedules:
- (1) if compliance is to be achieved by installing emission control equipment, replacing process equipment, or modifying existing process equipment:
    - (A) The owner or operator shall submit a permit application and a compliance schedule by August 1, 2007;
    - (B) The compliance schedule shall contain the following increments of progress:
      - (i) a date by which contracts for the emission control system and process equipment shall be awarded or orders shall be issued for purchase of component parts;
      - (ii) a date by which on-site construction or installation of the emission control and process equipment shall begin; and
      - (iii) a date by which on-site construction or installation of the emission control and process equipment shall be completed;
    - (C) Final compliance shall be achieved no later than April 1, 2009.
  - (2) if compliance is to be achieved by using low solvent content coating technology:
    - (A) The owner or operator shall submit a permit application and a compliance schedule by August 1, 2007.
    - (B) The compliance schedule shall contain the following increments:

- (i) a date by which research and development of low solvent content coating shall be completed if the Director determines that low solvent content coating technology has not been sufficiently researched and developed;
- (ii) a date by which evaluation of product quality and commercial acceptance shall be completed;
- (iii) a date by which purchase orders shall be issued for low solvent content coatings and process modifications;
- (iv) a date by which process modifications shall be initiated; and
- (v) a date by which process modifications shall be completed and use of low solvent content coatings shall begin;
- (C) Final compliance shall be achieved no later than April 1, 2009.
- (3) The owner or operator shall certify to the Director within five days after the deadline, for each increment of progress in this Paragraph, whether the required increment of progress has been met.
- (e) If the Director requires a test to demonstrate that compliance has been achieved, the owner or operator of sources subject to this Rule shall conduct a test and submit a final test report within six months after the stated date of final compliance.
- (f) Sources already in compliance.
  - (1) Maintenance Areas. Paragraph (c) of this Rule shall not apply to sources that are in compliance with applicable rules of this Section when the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone and that have determined and certified compliance to the satisfaction of the Director within six months after the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone.
  - (2) Nonattainment areas. Paragraphs (d) of this Rule shall not apply to sources in an area named in Paragraph (f) of Rule .0902 of this Section that are in compliance with applicable rules of this Section on March 1, 2007.
- (g) New sources.
  - (1) Maintenance areas. The owner or operator of any new source of volatile organic compounds not in existence or under construction before the date that the Director notices in the North Carolina Register in accordance with

Paragraphs (g) or (h) of Rule .0902 of this Section the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone, shall comply with all applicable rules in this Section upon start-up of the source.

- (2) Nonattainment areas. The owner or operator of any new source of volatile organic compounds not in existence or under construction before March 1, 2007 in an area identified in Paragraph (f) of Rule .0902 shall comply with all applicable rules in this Section upon start-up of the source.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. July 1, 1979; Amended Eff. March 1, 2007; July 1, 2000; April 1, 1997; July 1, 1995; July 1, 1994; July 1, 1988; January 1, 1985.*

#### **15A NCAC 02D .1402 APPLICABILITY**

- (a) The rules in this Section do not apply except as specifically set out in this Rule.
- (b) The requirements of this Section shall apply to all sources May 1 through September 30 of each year.
- (c) Rules .1409(b) and .1416 through .1423 of this Section apply statewide.
- (d) Rules .1407 through .1409 and .1413 of this Section apply to sources with the potential to emit 100 ton or more nitrogen oxides per year in the following areas:
  - (1) Cabarrus County
  - (2) Gaston County
  - (3) Lincoln County
  - (4) Mecklenburg County
  - (5) Rowan County
  - (6) Union County
  - (7) Davidson Township and Coddle Creek Township in Iredell County
- (e) If a violation of the ambient air quality standard for ozone is measured according to 40 CFR 50.9 in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register

containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For Forsyth County, "Director" means for the purpose of notifying permitted facilities in Forsyth County, the Director of the Forsyth County local air pollution control program.) Compliance shall be according to Rule .1403 of this Section.

(f) If a violation of the ambient air quality standard for ozone is measured according to 40 CFR 50.9 in Durham or Wake County or Dutchville Township in Granville County, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Durham or Wake County or Dutchville Township in Granville County or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. Compliance shall be in according to Rule .1403 of this Section.

(g) Regardless of any other statement of applicability of this Section, this Section does not apply to any:

- (1) source not required to obtain an air permit under 15A NCAC 02Q .0102 or is an insignificant activity as defined at 15A NCAC 02Q .0103(19);
- (2) incinerator or thermal or catalytic oxidizer used primarily for the control of air pollution;
- (3) emergency generator;
- (4) emergency use internal combustion engine;
- (5) source that is not covered under Rules .1416, .1417, or .1418, and that is at a facility with a federally enforceable potential to emit nitrogen oxides of:
  - (A) less than 100 tons per year; and
  - (B) less than 560 pounds per calendar day beginning May 1 through September 30 of any year.
- (6) stationary internal combustion engine less than 2400 brake horsepower that operates no more than the following hours between May 1 and September 30:
  - (A) for diesel engines:  
 $t = 833,333/ES$
  - (B) for natural gas-fired engines:

$$t = 700,280 / ES$$

where t equals time in hours and ES equals engine size in horsepower.

This exemption shall not apply to any of the sources listed in Rules .1417(a)(1) or (2) or .1417(b) of this Section except that it shall apply to:

- (7) stationary combustion turbine constructed before January 1, 1979, that has a federally enforceable permit that restricts:
  - (A) its potential emissions of nitrogen oxides to no more than 25 tons between May 1 and September 30;
  - (B) it to burning only natural gas or oil; and
  - (C) its hours of operation as described in 40 CFR 96.4 (b) (1)(ii) and (iii).

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (7), (10);*

*Eff. April 1, 1995;*

*Amended Eff. April 1, 1997; July 1, 1995; April 1, 1995;*

*Temporary Amendment Eff. November 1, 2000;*

*Amended Eff. April 1, 2001;*

*Temporary Amendment Eff. August 1, 2001;*

*Amended Eff. March 1, 2007; July 18, 2002.*

#### **15A NCAC 02D .1403 COMPLIANCE SCHEDULES**

(a) Applicability. This Rule applies to sources covered by Paragraph (d), (e), or (f) of Rule .1402 of this Section.

(b) Maintenance areas. The owner or operator of a source subject to this Rule because of the applicability of Paragraph (e) or (f) of Rule .1402 of this Section, shall adhere to the following increments of progress and schedules:

- (1) If compliance with this Section is to be achieved through a demonstration to certify compliance without source modification:
  - (A) The owner or operator shall notify the Director in writing within six months after the Director's notice in the North Carolina Register that the source is in compliance with the applicable limitation or standard;
  - (B) The owner or operator shall perform any required testing, according to Rule .1415 of this Section, within 12 months after the Director's notice in the North Carolina Register to demonstrate compliance with the applicable limitation; and
  - (C) The owner or operator shall implement any required recordkeeping and reporting requirements, according to Rule .1404 of this Section, within 12 months after the Director's notice in the North Carolina Register to demonstrate compliance with the applicable limitation.
- (2) If compliance with this Section is to be achieved through the installation of



combustion modification technology or other source modification:

- (A) The owner or operator shall submit a permit application and a compliance schedule within six months after the Director's notice in the North Carolina Register.
  - (B) The compliance schedule shall contain the following increments of progress:
    - (i) a date by which contracts for installation of the modification shall be awarded or orders shall be issued for purchase of component parts;
    - (ii) a date by which installation of the modification shall begin;
    - (iii) a date by which installation of the modification shall be completed; and
    - (iv) if the source is subject to a limitation, a date by which compliance testing shall be completed.
  - (C) Final compliance shall be achieved within three years after the Director's notice in the North Carolina Register unless the owner or operator of the source petitions the Director for an alternative limitation according to Rule .1412 of this Section. If such a petition is made, final compliance shall be achieved within four years after the Director's notice in the North Carolina Register.
- (3) If compliance with this Section is to be achieved through the implementation of an emissions averaging plan as provided for in Rule .1410 of this Section:
- (A) The owner or operator shall abide by the applicable requirements of Subparagraphs (b)(1) or (b)(2) of this Rule for certification or modification of each source to be included under the averaging plan;
  - (B) The owner or operator shall submit a plan to implement an emissions averaging plan according to Rule .1410 of this Section within six months after the Director's notice in the North Carolina Register.
  - (C) Final compliance shall be achieved within one year after the Director's notice in the North Carolina Register unless implementation of the emissions averaging plan requires the modification of one or more of the averaging sources. If modification of

one or more of the averaging sources is required, final compliance shall be achieved within three years.

- (4) If compliance with this Section is to be achieved through the implementation of a seasonal fuel switching program as provided for in Rule .1411 of this Section:
    - (A) The owner or operator shall make all necessary modifications according to Subparagraph (b)(2) of this Rule.
    - (B) The owner or operator shall include a plan for complying with the requirements of Rule .1411 of this Section with the permit application required under Part (A) of this Subparagraph.
    - (C) Final compliance shall be achieved within three years after the Director's notice in the North Carolina Register.
  - (5) Increments of progress certification. The owner or operator shall certify to the Director, within five days after each increment deadline of progress in this Paragraph, whether the required increment of progress has been met.
- (c) Nonattainment areas. The owner or operator of a source subject to this Rule because of the applicability of Paragraph (d) of Rule .1402 of this Section, shall adhere to the following:
- (1) If compliance with this Section is to be achieved through a demonstration to certify compliance without source modification:
    - (A) The owner or operator shall notify the Director in writing by August 1, 2007;
    - (B) The owner or operator shall perform any required testing, according to Rule .1415 of this Section, by January 1, 2008; and
    - (C) The owner or operator shall implement any required recordkeeping and reporting requirements, according to Rule .1404 of this Section, by January 1, 2008.
  - (2) If compliance with this Section is to be achieved through the installation of combustion modification technology or other source modification:
    - (A) The owner or operator shall submit a permit application and a compliance schedule by August 1, 2007.
    - (B) The compliance schedule shall contain a date by which contracts for installation of the modification shall be awarded or orders shall be issued for purchase of component parts.
    - (C) The compliance schedule shall contain a date by which installation of the modification shall begin.

- (D) The compliance schedule shall contain a date by which installation of the modification shall be completed.
- (E) If the source is subject to a limitation, the compliance schedule shall contain a date by which compliance testing shall be completed.
- (F) Final compliance shall be achieved no later than April 1, 2009.
- (3) If compliance with this Section is to be achieved through the implementation of an emissions averaging plan as provided for in Rule .1410 of this Section:
  - (A) The owner or operator shall abide by the applicable requirements of Subparagraphs (c)(1) or (c)(2) of this Rule for certification or modification of each source to be included under the averaging plan;
  - (B) The owner or operator shall submit a plan to implement an emissions averaging plan according to Rule .1410 of this Section by August 1, 2007.
  - (C) Final compliance shall be achieved within one year no later than January 1, 2008.
- (4) If compliance with this Section is to be achieved through the implementation of a seasonal fuel switching program as provided for in Rule .1411 of this Section:
  - (A) The owner or operator shall make all necessary modifications according to Subparagraph (c)(2) of this Rule.
  - (B) The owner or operator shall include a plan for complying with the requirements of Rule .1411 of this Section with the permit application required under Part (A) of this Subparagraph.
  - (C) Final compliance shall be achieved no later than April 1, 2009.
- (5) Increments of progress certification. The owner or operator shall certify to the Director, within five days after the deadline for each increment of progress in this Paragraph, whether the required increment of progress has been met.
- (d) Sources already in compliance.
  - (1) Maintenance Areas. Paragraph (b) of this Rule shall not apply to sources that are in compliance with applicable rules of this Section when the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone and that have determined and certified compliance to the satisfaction of the Director within six months after the Director notices the implementation of rules in the North Carolina

- Register that resolves a violation of the ambient air quality standard for ozone.
- (2) Nonattainment areas. Paragraphs (c) of this Rule shall not apply to sources in an area named in Paragraph (d) of Rule .1402 of this Section that are in compliance with applicable rules of this Section on March 1, 2007.
- (e) New sources.
  - (1) Maintenance areas. The owner or operator of any new source of nitrogen oxides not permitted before the date the Director notices in the North Carolina Register according to Paragraph (e), (f), or (g) of Rule .1402 of this Section, shall comply with all applicable rules in this Section upon start-up of the source. The owner or operator of any new source covered under Rules .1407, .1408, .1409, .1413, or .1418 of this Section shall comply with all applicable rules in this Section upon start-up of the source.
  - (2) Nonattainment areas. The owner or operator of any new source of nitrogen oxides not permitted before March 1, 2008 in an area identified in Paragraph (d) of Rule .1402 of this Section, shall comply with all applicable rules in this Section upon start-up of the source.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.107(a)(5), (7), (10); Eff. April 1, 1995; Amended Eff. April 1, 1997; Temporary Amendment Eff. November 1, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. August 1, 2001; Amended Eff. March 1, 2007; July 18, 2002.*

## **TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

### **21 NCAC 22B .0603 FEE SCHEDULE**

The Board hereby establishes the following fees:

- (1) For a continuing education make-up class provided by the Board, not to exceed two days (per person, per day).  
\$ 50.00
- (2) For a license examination preparation course provided by the Board, not to exceed three days (per person, per day).  
\$ 50.00
- (3) For approval of a continuing education program provider.  
\$ 40.00
- (4) Verifying and recording attendance at a continuing education program.  
(per program, per person) \$ 15.00
- (5) For a voluntary apprentice training workshop (per person, per day, not to exceed three days).  
\$ 50.00

- |      |  |          |     |
|------|--|----------|-----|
| (6)  | Examination fee.   | \$ 75.00 |     |
| (7)  | Application for a license by examination.  | \$150.00 | (5) |
| (8)  | Application for a license to fit and sell hearing aids in this state by a licensee of another state or territory.  | \$150.00 |     |
| (9)  | Issuance of certificate of license after successfully passing examination.   | \$ 25.00 |     |
| (10) | Application for registration as an apprentice  | \$100.00 | (6) |
| (11) | Renewal of apprentice registration.  | \$150.00 |     |
| (12) | Annual license renewal.  | \$150.00 | (7) |
|      | (a) Late fee to reinstate expired license within 60 days after license expiration (in addition to renewal fee).    | \$ 25.00 |     |
|      | (b) Late fee to reinstate expired license more than 60 days after license expiration (in addition to renewal fee). | \$ 50.00 | (8) |
| (13) | To reissue a suspended license more than 90 days after but not more than two years after license suspended.        | \$200.00 |     |

Pharmacy Board and the Medical Board may legally identify himself as a CPP.

"Supervising Physician" means a licensed physician who, by signing the CPP agreement, is held accountable for the on-going supervision and evaluation of the drug therapy management performed by the CPP as defined in the physician, patient, pharmacist and disease specific written agreement.

"Approval" means authorization by the Medical Board and the Pharmacy Board for a pharmacist to practice as a CPP in accordance with this Rule.

"Continuing Education or CE" is defined as courses or materials which have been approved for credit by the American Council on Pharmaceutical Education.

"Clinical Experience approved by the Boards" means work in a pharmacy practice setting which includes experience consistent with the following components as listed in Parts (b)(2)(A), (B), (C), (D), (E), (H), (I), (J), (N), (O), and (P) of this Rule. Clinical experience requirements must be met only through activities separate from the certificate programs referred to in Parts (b)(1)(B) of this Rule.

(b) CPP application for approval.

(1) The requirements for application for CPP approval include that the pharmacist:

(A) has an unrestricted and current license to practice as a pharmacist in North Carolina;

(B) meets one of the following qualifications:

(i) has earned Certification from the Board of Pharmaceutical Specialties, is a Certified Geriatric Pharmacist as certified by the Commission for Certification in Geriatric Pharmacy, or has completed an American Society of Health System Pharmacists (ASHP) accredited residency program, which includes two years of clinical experience approved by the Boards;

(ii) has successfully completed the course of study and holds the academic degree of Doctor of Pharmacy and has three years of clinical experience approved by the Boards and has completed a North Carolina Center for Pharmaceutical Care (NCCPC) or American Council on Pharmaceutical

*History Note: Authority G.S. 12-3.1; 93D-3;  
Temporary Adoption Eff. July 11, 1991, For a Period of 180 Days to Expire on January 7, 1992;  
Eff. January 1, 1992;  
Amended Eff. March 1, 2007.*

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## **21 NCAC 32T .0101 CLINICAL PHARMACIST PRACTITIONER**

(a) Definitions as used in the Rule:

- (1) "Medical Board" means the North Carolina Medical Board.
- (2) "Pharmacy Board" means the North Carolina Board of Pharmacy.
- (3) "Joint Subcommittee" means the subcommittee composed of four members of the Pharmacy Board and four members of the Medical Board to whom responsibility is given by G.S. 90-6(c) to develop rules to govern the provision of drug therapy management by the Clinical Pharmacist Practitioner in North Carolina.
- (4) "Clinical Pharmacist Practitioner or CPP" means a licensed pharmacist who is approved to provide drug therapy management under the direction of, or under the supervision of a licensed physician who has provided written instructions for a patient and disease specific drug therapy which may include ordering, changing, substituting therapies or ordering tests. Only a pharmacist approved by the

- (iii) Education (ACPE) approved certificate program in the area of practice covered by the CPP agreement; or
- (iii) has successfully completed the course of study and holds the academic degree of Bachelor of Science in Pharmacy and has five years of clinical experience approved by the Boards and has completed two NCCPC or ACPE approved certificate programs with at least one program in the area of practice covered by the CPP agreement;
- (C) submits the required application and the fee to the Medical Board;
- (D) submits any information deemed necessary by the Medical Board in order to evaluate the application; and
- (E) has a signed supervising physician agreement.

If for any reason a CPP discontinues working in the approved physician arrangement, the clinical pharmacist practitioner shall notify both Boards in writing within ten days and the CPP's approval shall automatically terminate or be placed on an inactive status until such time as a new application is approved in accordance with this Subchapter.

- (2) All certificate programs referred to in Subpart (b)(1)(B)(i) of this Rule must contain a core curriculum including the following components:
  - (A) communicating with healthcare professionals and patients regarding drug therapy, wellness, and health promotion;
  - (B) designing, implementing, monitoring, evaluating, and modifying or recommending modifications in drug therapy to insure effective, safe, and economical patient care;
  - (C) identifying, assessing and solving medication-related problems and providing a clinical judgment as to the continuing effectiveness of individualized therapeutic plans and intended therapeutic outcomes;
  - (D) conducting physical assessments, evaluating patient problems, ordering and monitoring medications and laboratory tests;
  - (E) referring patients to other health professionals as appropriate;
  - (F) administering medications;
  - (G) monitoring patients and patient populations regarding the purposes, uses, effects and pharmacoeconomics

- of their medication and related therapy;
- (H) counseling patients regarding the purposes, uses, and effects of their medication and related therapy;
- (I) integrating relevant diet, nutritional and non-drug therapy with pharmaceutical care;
- (J) recommending, counseling, and monitoring patient use of non-prescription drugs, herbal remedies and alternative medicine practices;
- (K) ordering of and educating patients regarding proper usage of devices, and durable medical equipment;
- (L) providing emergency first care;
- (M) retrieving, evaluating, utilizing, and managing data and professional resources;
- (N) using clinical data to optimize therapeutic drug regimens;
- (O) collaborating with other health professionals;
- (P) documenting interventions and evaluating pharmaceutical care outcomes;
- (Q) integrating pharmacy practice within healthcare environments;
- (R) integrating national standards for the quality of healthcare; and
- (S) conducting outcomes and other research.

- (3) The completed application for approval to practice as a CPP shall be reviewed by the Medical Board upon verification of a full and unrestricted license to practice as a pharmacist in North Carolina.

- (A) The application shall be approved and at the time of approval the Medical Board shall issue a number which shall be printed on each prescription written by the CPP; or
- (B) the application shall be denied; or
- (C) the application shall be approved with restrictions.

(c) Annual Renewal.

- (1) Each CPP shall register annually on the anniversary of his or her birth date by:
  - (A) verifying a current Pharmacist license;
  - (B) submitting the renewal fee as specified in Subparagraph (j)(2) of this Rule;
  - (C) completing the Medical Board's renewal form; and
  - (D) reporting continuing education credits as specified by the Medical Board.
- (2) If the CPP has not renewed within 30 days of the anniversary of the CPP's birth date, the approval to practice as a CPP shall lapse.

(d) Continuing Education.

- (1) Each CPP shall earn 35 hours of practice relevant CE each year approved by the Pharmacy Board.
- (2) Documentation of these hours shall be kept at the CPP practice site and made available for inspection by agents of the Medical Board or Pharmacy Board.

(e) The supervising physician who has a signed agreement with the CPP shall be readily available for consultation with the CPP; and shall review and countersign each order written by the CPP within seven days.

(f) The written CPP agreement shall:

- (1) be approved and signed by both the supervising physician and the CPP and a copy shall be maintained in each practice site for inspection by agents of either Board upon request;
- (2) be specific in regards to the physician, the pharmacist, the patient and the disease;
- (3) specify the predetermined drug therapy which shall include the diagnosis and product selection by the patient's physician; any modifications which may be permitted, dosage forms, dosage schedules and tests which may be ordered;
- (4) prohibit the substitution of a chemically dissimilar drug product by the CPP for the product prescribed by the physician without first obtaining written consent of the physician;
- (5) include a pre-determined plan for emergency services;
- (6) include a plan and schedule for weekly quality control, review and countersignature of all orders written by the CPP in a face-to-face conference between the physician and CPP;
- (7) require that the patient be notified of the collaborative relationship; and
- (8) be terminated when patient care is transferred to another physician and new orders shall be written by the succeeding physician.

(g) The supervising physician of the CPP shall:

- (1) be fully licensed with the Medical Board and engaged in clinical practice;
- (2) not be serving in a postgraduate medical training program;
- (3) be approved in accordance with this Subchapter before the CPP supervision occurs; and
- (4) supervise no more than three pharmacists.

(h) The CPP shall wear a nametag spelling out the words "Clinical Pharmacist Practitioner".

(i) The CPP may be censured or reprimanded or the CPP's approval may be restricted, suspended, revoked, annulled, denied or terminated by the Medical Board or the Pharmacy Board and the pharmacist may be censured or reprimanded or the pharmacist's license may be restricted, suspended, revoked, annulled, denied, or terminated by the Pharmacy Board, in

accordance with provisions of G.S. 150B if either Board finds one or more of the following:

- (1) the CPP has held himself or herself out or permitted another to represent the CPP as a licensed physician;
- (2) the CPP has engaged or attempted to engage in the provision of drug therapy management other than at the direction of, or under the supervision of, a physician licensed and approved by the Medical Board to be that CPP's supervising physician;
- (3) the CPP has performed or attempted to provide medical management outside the approved drug therapy agreement or for which the CPP is not qualified by education and training to perform;
- (4) The CPP commits any act prohibited by any provision of G.S. 90-85.38 as determined by the Pharmacy Board or G.S. 90-14(a)(1), (a)(3) through (a)(14) and (c) as determined by the Medical Board; or
- (5) the CPP has failed to comply with any of the provisions of this Rule.

Any modification of treatment for financial gain on the part of the supervising physician or CPP shall be grounds for denial of Board approval of the agreement.

(j) Fees:

- (1) An application fee of one hundred dollars (\$100.00) shall be paid at the time of initial application for approval and each subsequent application for approval to practice.
- (2) The fee for annual renewal of approval, due on the CPP's anniversary of birth date is fifty dollars (\$50.00).
- (3) No portion of any fee in this Rule is refundable.

*History Note* Authority G.S. 90-6(c); 90-18(c)3a; 90-18.4; Eff. April 1, 2001;  
Amended Eff. March 1, 2007; October 1, 2001.

**TITLE 23 – DEPARTMENT OF COMMUNITY COLLEGES**

**23 NCAC 02C .0202 FACULTY**

(a) General

- (1) Colleges shall employ faculty members so as to meet Southern Association of Colleges and Schools' criteria.
- (2) Colleges shall determine appropriate teaching and non-teaching loads for faculty and for technical assistants to the faculty so as to meet Southern Association of Colleges and Schools' criteria.
- (3) The Principles of Accreditation: Foundations for Quality Enhancement Commission on Colleges, Southern Association of Colleges and Schools, current edition is hereby adopted

by reference, including any subsequent amendments and editions of this book, to apply to community colleges. Copies for The Principles of Accreditation: Foundations for Quality Enhancement may be inspected in or obtained at no cost from the Office of the System President, Department of Community Colleges, 200 W. Jones Street, Raleigh, NC 27603-1379.

(b) Instructors for Extension Emergency Services Training. All instructors in the area of Emergency Services Training must be qualified as established by the respective emergency services certifying agency. Emergency services training means training delivered to personnel in law enforcement, fire and rescue services, and emergency medical services agencies.

*History Note: Authority G.S. 115D-5.*

*Eff. February 1, 1976;*

*Amended Eff. March 1, 2007; July 1, 1998; September 1, 1993; August 17, 1981; September 30, 1977.*

**Editor's Note:** Upon review by our staff of the history files for this Subchapter, we have discovered that numbering errors in filing during 1976 and 1977 have resulted in improper publication in the Code. Upon request for certified copies of rules within this Section, only the correct rule will be certified and, in order to insure clarification, all related materials and forms will be attached.

## SECTION .0100 - SALARIES

### 23 NCAC 02D .0101 ESTABLISHING PAY RATES

(a) The monthly and annual salaries or hourly rates of pay from state funds for full-time and part-time personnel in community colleges shall be established by the college president and approved by the board of trustees within the budget approved for the college by the State Board except that the state-funded portion of the president's salary shall be approved by the system president in accordance with the state salary schedule for presidents. Salary increases shall be granted annually or upon promotion to a higher position. Legislative increases shall be granted according to requirements set forth by the General Assembly. The State Board shall adopt a minimum and maximum amount of state funds which may be paid to any individual working in a college. Individuals shall be paid no less than the minimum and not more than the maximum amounts at a level determined by the salary approving authority at the college.

(b) All hourly, monthly, and annual salaries for full-time or part-time personnel shall be certified by the president of the college and reported to the System Office.

(c) The State Board shall adopt a state salary schedule for presidents in the system. The System President shall determine the proper placement of a newly-hired president on the state salary schedule based on the size of the college and the individual's years of eligible experience in accordance with the following provisions:

- (1) For the purpose of this Paragraph, an increment is defined as an additional year of experience on the state salary schedule adopted by the State Board.

(2) College size shall be determined by the total FTE served and reported in the enrollment reports furnished the system office.

(3) A president of a post-secondary education institution shall be allowed increments for prior experience on a year-for-year basis for a maximum of 20 years.

(4) An executive vice president, vice president, other senior administrator of a post-secondary institution, a state-level administrative department, or a superintendent of a public school system may be given increment experience on the president salary schedule upon recommendation of the board of trustees and approval of the System President as follows:

- one increment for three years of actual experience;
- two increments for five years of actual experience;
- three increments for seven years of actual experience;
- four increments for 10 or more years of actual experience.

A president, chief operating officer or chief financial officer of a business or industry may be granted increment experience as provided in this Part.

(A) Progression from the minimum or "0" step to the midpoint or step "20" shall be based on additional years of experience;

(B) Advancement toward grade maximum after attaining the midpoint of the grade shall be based on merit increases as recommended by the local boards and within state allocations available;

(C) Newly-hired presidents shall not receive salary increments for any years in which a salary freeze was in effect for community college presidents.

(5) Changes in grade levels:

(A) Presidents with 0 to 20 years of eligible experience moving to another grade shall be placed in the new grade's range at the current experience level; and

(B) Presidents with greater than 20 years of experience moving to a lower grade will receive a salary adjustment only if the current salary exceeds the new salary grade's maximum salary limit, in which case, the salary will be adjusted to the maximum of the new grade.

(6) Total salary compensation from all sources shall not exceed the maximum for the salary grade as determined by the college's size.

Salary compensation is defined as those monies paid from whatever source for which no documentation or expense is required, or which is treated as salary for retirement benefit purposes.

- (7) An interim or acting president's salary will be set at the step of the salary grade for the respective college. Years of eligible experience will be awarded up to 20 years for placement on the appropriate step. However, a board of trustees may grant a college employee appointed interim or acting president a 10 percent salary increase instead of placing the employee on the president's salary schedule.
- (8) Presidential salary grades shall reflect the following:

FTE	Minimum
	Midpoint
	Maximum

These data shall be increased annually based on legislative action and reviewed no less than every three years to assure their continued national competitiveness.

(d) Post-secondary institution as used in this Rule means a junior college, community college or four-year institution of higher education.

*History Note: Authority G.S. 115D-5; 115D-54; S.L. 2005-276;*

*Eff. February 1, 1976;*

*Amended Eff. March 1, 2007; December 1, 2004; September 1, 1993; December 1, 1989; July 1, 1984; August 1, 1981.*

## **TITLE 25 – STATE PERSONNEL COMMISSION**

### **25 NCAC 01H .0631 POSTING AND ANNOUNCEMENT OF VACANCIES**

(a) Vacant positions shall be publicized by the agency having the vacancy.

(b) Vacancies which shall be filled from within the agency workforce shall have an application period of not less than five working days and shall be prominently posted in at least the following locations:

- (1) The personnel office of the agency having the vacancy; and
- (2) The particular work unit of the agency having the vacancy.

(c) Vacancies to be filled from within or outside the state government workforce shall be listed with the Office of State Personnel and the Employment Security Commission as required by G.S. 96-29. Such vacancies shall have an application period of not less than five working days. For purposes of this Rule, "state government workforce" shall mean those employees who are subject to Articles 1, 2, 5, 6, 7, 8, 13 and 14 of Chapter 126 of the North Carolina General Statutes.

(d) Each vacancy shall be described in an announcement which includes:

- (1) For graded classes: the position number, classification title, salary grade and range, essential functions, knowledge, skills, abilities, minimum training and experience, and any vacancy-specific qualifications as determined by the agency in accordance with 25 NCAC 01H .0607(c), the application period, and the appropriate contact information;
- (2) For banded classes: the position number, banded class title, banded class salary range or recruitment range corresponding to the competencies and duties, salary grade equivalency, essential functions, competencies, minimum training and experience, vacancy-specific qualifications as determined by the agency in accordance with 25 NCAC 01H .0607(c), the application period, and the appropriate contact information; and
- (3) For all vacancy listings: a closing date shall be given unless the classification has been determined as critical. Factors used in determining critical classifications shall include: agency turnover; number of positions in class; geographic location; scarcity of skills; safety, health or quality of care for clients. Such critical classifications shall be approved by the State Personnel Commission. On those classes determined to be critical, which are considered open and continuous postings, agencies shall determine how long applications shall be considered active.

(e) Posting is not required when an agency determines that it will not openly recruit. This decision shall be based upon a bona fide business need and is the responsibility of the agency head. Examples are:

- (1) Vacancies that are committed to a budget reduction;
- (2) Vacancies used to avoid a reduction in force;
- (3) Vacancies used for disciplinary transfers or demotions;
- (4) Vacancies to be filled by transfer of an employee to avoid the threat of bodily harm;
- (5) Vacancies that are designated exempt policymaking under G.S. 126-5(d);
- (6) Vacancies that must be filled immediately to prevent work stoppage in constant demand situations, or to protect the public health, safety, or security;
- (7) Vacancies to be filled by chief deputies and chief administrative assistants to elected or appointed department heads; and vacancies for positions to be filled by confidential assistants and confidential secretaries to elected or appointed department heads, chief deputies, or chief administrative assistants;
- (8) Vacancies to be filled by an eligible exempt employee who has been removed from an exempt position and is being placed back in a

position subject to all provisions of the State Personnel Act;

- (9) Vacancies to be filled by a legally binding settlement agreement;
- (10) Vacancies to be filled in accordance with a formal, pre-existing written agency workforce plan; and
- (11) Vacancies that must be filled immediately because of a widespread outbreak of a serious communicable disease.

(f) The Office of State Personnel may withhold approval for an agency to fill a job vacancy as set out in G.S. 126-7.1.

*History Note: Authority G.S. 96-29; 126-4(4); 126-5(d); 126-7.1;*  
*Eff. March 1, 2007.*

**25 NCAC 01H .0635 MINIMUM QUALIFICATIONS**

(a) The employee or applicant must possess at least the minimum qualifications set forth in the class specification of the vacancy being filled. Additional minimum qualifications, if any, included on the specific vacancy announcement must also be met. The additional qualifications shall have a documented business need. Qualifications include training, experience,

competencies and knowledge, skills and abilities. The minimum qualifications on the vacancy announcement shall bear a direct and logical relationship to the minimums on the class specification, class administration guidelines developed by the Office of State Personnel, and the specific position description. This requirement shall apply in new appointments, promotions, demotions or reassignments, transfers, and reinstatements.

(b) Qualifications necessary to perform successfully may be attained in a variety of combinations. Reasonable substitutions of formal training and job-related experience, one for the other, may be made.

(c) Agency management is responsible for determining and defending the vacancy-specific qualifications that are in addition to minimum training and experience requirements. Such vacancy-specific qualifications shall bear a logical and job-related relationship to the minimum requirements.

(d) The Office of State Personnel shall make the final determination as to whether the employee or applicant meets the minimum qualifications in questionable selection situations.

*History Note: Authority G.S. 126-4(4);*  
*Eff. March 1, 2007.*



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## **RULES REVIEW COMMISSION**

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*This Section contains information for the meeting of the Rules Review Commission on Thursday March 15, 2007 & April 19, 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**

April 19, 2007	May 17, 2007
June 21, 2007	July 19, 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: Joe DeLuca at 919-715-8655, or Bobby Bryan at 919-733-0928.

### **RULES REVIEW COMMISSION**

#### **March 15, 2007 MINUTES**

The Rules Review Commission met on Thursday, March 15, 2007, in the Division of Community Assistance Conference Room B of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Jim Funderburk; Jeff Gray; Thomas Hilliard, III; Mary Shuping; Robert Saunders; John Tart; and David Twiddy.

Staff members present were: Joe DeLuca, Commission Counsel; Bobby Bryan, Commission Counsel; and Barbara Townsend, Administrative Assistant.

The following people attended the meeting:

Wendy A. Craig	Elder Law Section, NCBAR
Susan Ryan	Division of Medical Assistance
Marjorie Morris	Division of Medical Assistance
Andy Wilson	Division of Medical Assistance
Elliot A. Rushing	Secretary of State
Robert Croom	Dept. of Justice
Robert A. Potter	Department of Insurance
John Hoomani	Department of Labor
Erin Gould	Department of Labor
Jan Moxley	DHHS – Office of Long Term Care
Daniel Garner	Office of the Commissioner of Banks
Lonnie Christopher	Office of the Commissioner of Banks
Belinda Smith	Department of Justice
Donna Smith	Department of Justice
Angela Floyd	Division of Medical Assistance
Ellie Sprenkel	Department of Insurance
Nancy Pate	Department of Environment and Natural Resources
Gretchen Aycock	Department of Administration

Nadine Pfeiffer	Division of Facility Services
Sam Clark	Health Care Facilities Association
Mike Lopazanski	Division of Coastal Management
Elizabeth Bishop	NCDVRS
Mary Bethel	AARP
Bill Wilson	AARP
Jan Withers	Division of Deaf and Hard of Hearing
Denise Stanford	Pharmacy Board/General Contractors Board
Alice Lenihan	DHHS – Division of Public Health
Jean Stanley	Board of Nursing
David Kalbacker	Board of Nursing
Julie Edwards	Office of Administrative Hearings
Molly Masich	Office of Administrative Hearings
Curtis Venable	Pisgah Legal Services
Felicia Williams	Office of Administrative Hearings

### **APPROVAL OF MINUTES**

The meeting was called to order at 10:10 a.m. with Mr. Funderburk presiding. He reminded the Commission that all members have a duty to avoid conflicts of interest and the appearances of conflict as required by NCGS 138A-15(e). Chairman Funderburk asked for any discussion, comments, or corrections concerning the minutes of the February 15, 2007 meeting. There were none and the minutes were approved as distributed.

### **FOLLOW-UP MATTERS**

10A NCAC 21B .0314: DHHS/Medical Assistance – The Commission approved the rewritten rule submitted by the agency with Commissioners Tart, Saunders, Shuping and Funderburk voting for approval of the rule and Commissioners Hilliard, Twiddy and Gray voting against.

10A NCAC 21B .0314(Temporary Rule): DHHS/Medical Assistance – The rule was withdrawn by the agency.

10A NCAC 89C .0103: DHHS/Vocational Rehabilitation – The Commission approved the rewritten rule submitted by the agency.

10A NCAC 89D .0101; .0204: DHHS/Vocational Rehabilitation – The Commission approved the rewritten rules submitted by the agency.

18 NCAC 07B .0107; .0902: Secretary of State – The Commission approved the rewritten rules submitted by the agency.

Prior to the review of the rules from the Pharmacy Board Commissioner Saunders recused himself and did not participate in any discussion or vote concerning these rules because his law firm represents the Pharmacy Board. His written explanation is part of the record of the meeting.

21 NCAC 46 .1601; .1608; .2613; .3101: Pharmacy Board – The Commission approved the rewritten rules submitted by the agency.

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.

### **LOG OF FILINGS**

Chairman Funderburk presided over the review of the log of permanent rules. All rules were approved unanimously with the following exceptions:

Prior to the review of the rule from the Department of Insurance, the rules from the Office of the Commissioner of Banks, and the rules from DHHS/Mental Health Commissioner Twiddy recused himself and did not participate in any discussion or vote concerning these rules because he is a licensed insurance agent, president of Gateway Bank and is on the Board for Albemarle Mental Health. This written explanation is part of the record of the meeting.

Prior to the review of the rule for the Medical Board and the rule for the Board of Nursing Commissioner Shuping left the meeting.

01 NCAC 41D .0101-.0102; .0201-.0203; .0301-.0304; .0401: Department of Administration – These rules were withdrawn by the agency and will be refiled for the April meeting.

10A NCAC 17C .0108: DHHS/Division of Services for the Deaf and Hard of Hearing – The Commission objected to this rule due to lack of statutory authority, ambiguity, and lack of necessity. Staff had originally proposed an objection based on lack of authority to classify or otherwise qualify interpreters as apparently set out in (a). That objection still applies to the language of the rule. However, after a conversation with the Program Planner, it became apparent that the actual reason for this rule, the intent of this rule, is to describe and implement the list that is maintained of qualified and licensed interpreters and their classifications. (These classifications are grandfathered in from an earlier time.) This rule, at least as far as (a) is concerned, does not do that. Therefore (a) is either ambiguous or unnecessary.

10A NCAC 17C .0204: DHHS/Division of Services for the Deaf and Hard of Hearing – The Commission objected to this rule due to ambiguity and lack of necessity. First, this rule appears to be a restatement of statutory law and is therefore unnecessary. However, based on my conversations with the agency staff, I believe that the rule is included for two reasons: 1.) It is to replace and essentially repeats an existing rule that is to be repealed; and 2.) It was believed by the agency that this rule would allow them to pay for interpreter services rendered only by "qualified" interpreter – a "qualified interpreter is one licensed by the state. This rule does not accomplish the latter aim. To the extent that is the aim of this rule, then it is ambiguous.

10A NCAC 17C .0205: DHHS/Division of Services for the Deaf and Hard of Hearing – The Commission objected to this rule due to ambiguity. This rule informs people that in order to become a qualified interpreter, they must apply to (and presumably be licensed by, although that is not stated) the state licensing board for interpreters. This is a restatement of the law and is unnecessary.

10A NCAC 17D .0206: DHHS/Division of Services for the Deaf and Hard of Hearing – The Commission objected to this rule due to ambiguity. In (b)(4) of this rule and Rule .0211, there are similar time limits set out for either "eligibility" to receive equipment or eligibility to reapply for new equipment. Since the two rules overlap but are not identical, and may actually apply to different situations, it is unclear what the requirements and limitations of the two rules are.

10A NCAC 17D .0211: DHHS/Division of Services for the Deaf and Hard of Hearing – The Commission objected to this rule due to ambiguity. In this rule and Rule .0206 (b)(4), there are similar time limits set out for either "eligibility" to receive equipment or eligibility to reapply for new equipment. Since the two rules overlap but are not identical, and may actually apply to different situations, it is unclear what the requirements and limitations of the two rules are. There is also a similar provision in Rule .0213, but with a different "lease" or "loan" period.

10A NCAC 17D .0213: DHHS/Division of Services for the Deaf and Hard of Hearing – The Commission objected to this rule due to ambiguity. This rule has the same problem concerning eligibility or renewal time limits as Rules .0206 and .0211.

10A NCAC 17D .0219: DHHS/Division of Services for the Deaf and Hard of Hearing – The Commission objected to this rule due to lack of necessity. There does not appear to be any substantive provisions binding on the agency that is not an internal matter. The necessity to verify the applicant's income is already found, at least by implication, in Rules .0206 and .0210.

10A NCAC 17D .0220: DHHS/Division of Services for the Deaf and Hard of Hearing – The Commission objected to this rule due to ambiguity and lack of necessity. Paragraph (a) does contain a substantive provision in that vendors must submit "information" along with invoices for payments. However, it is unclear what information must be submitted. Paragraphs (b) and (c) are unnecessary since they are internal matters.

10A NCAC 17D .0302: DHHS/Division of Services for the Deaf and Hard of Hearing – The Commission objected to this rule due to lack of necessity. This rule is unnecessary. It creates neither rights nor obligations for anyone and is probably solely related to internal agency operations.

10A NCAC 17D .0304: DHHS/Division of Services for the Deaf and Hard of Hearing – The Commission objected to this rule due to ambiguity. It is unclear in (b) how the actual length of the lease period is determined within the "one month to two years" period allowed in (b).

10A NCAC 41B .0301: Department of Health and Human Services – The Commission objected to this rule due to lack of statutory authority and ambiguity. In (b)(1), it is not clear what method or methods for the performance of chemical analyses have been approved by the Department. There is no authority cited for setting these standards outside rulemaking. In (c), it is not clear what courses are on the application. There is no authority cited for setting requirements on an application. This objection applies to existing language in the rule.

10A NCAC 41B .0304: Department of Health and Human Services – The Commission objected to this rule due to lack of statutory authority and ambiguity. In (c), it is not clear when the Director will grant an exception from meeting the requirements of the paragraph. This is a waiver provision without specific guidelines in violation of G.S. 150B-19(6). This objection applies to existing language in the rule.

10A NCAC 41B .0306: Department of Health and Human Services – The Commission objected to this rule due to lack of statutory authority and lack of necessity. This rule is not consistent with G.S. 20-139.1(b2). The statute requires the Department to perform preventive maintenance, not to grant certificates to others to do so. If these personnel are Department employees, then the rule is unnecessary as applying only to the Department's internal management. This objection applies to existing language in the rule.

10A NCAC 41B .0313: Department of Health and Human Services – The Commission objected to this rule due to lack of statutory authority, ambiguity, and lack of necessity. In (a)(1), it is not clear what standards the Department uses in approving methods of performing chemical analysis. It is also not clear what are the Department's standards of accuracy, reliability, convenience, and efficiency of operation. There is no authority cited for setting these outside rulemaking. As written, (a)(2) is an internal management provision and not a rule. It is therefore unnecessary. The second sentence in (b)(1) and all of (b)(2) are beyond the agency's authority. It has cited no authority for it to establish the purpose for which results can be used, and the statutes determine what evidence is admissible. This objection applies to existing language in the rule.

13 NCAC 12 .0601: Department of Labor – The Commission objected to the rule due to lack of statutory authority. This rule defines "complaint" as used in G.S. 95-25.15(a) as only an oral complaint and prohibits written complaints. That definition appears to be more limited than envisioned by the statute.

21 NCAC 46 .1505; .1507: Pharmacy Board – These rules were withdrawn by the agency.

#### **COMMISSION PROCEDURES AND OTHER BUSINESS**

Commissioner Saunders made a motion on behalf of the committee that was appointed to review and discuss RRC rules, policies and procedures that the RRC schedule a public hearing to take comment concerning whether the RRC should amend its existing rules (otherwise known as RRC Policies and Procedures) or adopt any new rules. The motion passed. The RRC will have a hearing at 10:00 a.m. prior to the Commission's regular meeting Thursday, May 17, 2007. The hearing will last no longer than 45 minutes. The RRC will accept any written or oral comments, including proposed rules or amendments offered prior to or at the hearing.

The meeting adjourned at 12:02 p.m.

The next scheduled meeting of the Commission is Thursday, April 19, 2007 at 10:00 a.m.

Respectfully submitted,  
Dana Sholes

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#### **LIST OF APPROVED PERMANENT RULES** **March 15, 2007 Meeting**

##### **BANKS, OFFICE OF THE COMMISSIONER**

<u>Examining Committee Report</u>	04 NCAC 03C .0701
<u>Reports of Condition and Income</u>	04 NCAC 03C .0702
<u>Publisher's Copy Report of Condition</u>	04 NCAC 03C .0703
<u>Loan Documentation</u>	04 NCAC 03C .1001
<u>Leasing of Personal Property</u>	04 NCAC 03C .1002
<u>Definitions: Issuance of Capital Notes and Debentures</u>	04 NCAC 03C .1101
<u>Capital Debentures and Notes</u>	04 NCAC 03C .1102
<u>Annual Vacation</u>	04 NCAC 03C .1301

USS NORTH CAROLINA BATTLESHIP COMMISSION

<u>Hours of Operation</u>	07 NCAC 05 .0202
<u>Admission Prices</u>	07 NCAC 05 .0203
HEALTH AND HUMAN SERVICES, DEPARTMENT OF	
<u>Scope</u>	10A NCAC 01G .0101
<u>Application for NC NOVA Special Licensure Designation</u>	10A NCAC 01G .0102
HHS-FACILITY SERVICES	
<u>Performance Standards</u>	10A NCAC 14C .2103
<u>Definitions</u>	10A NCAC 14C .3301
HHS - DEAF AND HARD OF HEARING, DIVISION OF SERVICES FOR THE	
<u>Petitions</u>	10A NCAC 17A .0101
<u>Notice</u>	10A NCAC 17A .0102
<u>Hearing Officer</u>	10A NCAC 17A .0103
<u>Hearings</u>	10A NCAC 17A .0104
<u>Statement of Reasons for and Against Rulemaking Decision</u>	10A NCAC 17A .0105
<u>Record of Rulemaking Proceedings</u>	10A NCAC 17A .0106
<u>Fees</u>	10A NCAC 17A .0107
<u>Declaratory Rulings</u>	10A NCAC 17A .0108
<u>Contested Cases</u>	10A NCAC 17A .0109
<u>Relationship to the Department of Health and Human Services</u>	10A NCAC 17B .0101
<u>Function and Responsibilities</u>	10A NCAC 17B .0201
<u>Maintenance of Classification Records</u>	10A NCAC 17C .0101
<u>Reciprocity</u>	10A NCAC 17C .0102
<u>Applicability</u>	10A NCAC 17C .0103
<u>Definitions</u>	10A NCAC 17C .0104
<u>Eligibility</u>	10A NCAC 17C .0105
<u>Application</u>	10A NCAC 17C .0106
<u>Classification Team and Evaluators</u>	10A NCAC 17C .0107
<u>Review and Appeal of Classification Decisions</u>	10A NCAC 17C .0109
<u>Change of Name or Address of Classification Holders</u>	10A NCAC 17C .0110
<u>Eligibility</u>	10A NCAC 17C .0201
<u>Contracted Interpreter Services</u>	10A NCAC 17C .0202
<u>Licensure of Interpreters</u>	10A NCAC 17C .0203
<u>Eligibility</u>	10A NCAC 17D .0101
<u>Contracted Interpreter Services</u>	10A NCAC 17D .0102
<u>Certification of Interpreters</u>	10A NCAC 17D .0103
<u>Interpreter Services: Judicial: Leg. and Admin. Proc.</u>	10A NCAC 17D .0104
<u>Interpreter Application: Judicial: Leg. and Admin. Proc.</u>	10A NCAC 17D .0105
<u>Definitions</u>	10A NCAC 17D .0202
<u>Division Responsibilities</u>	10A NCAC 17D .0203
<u>Information Concerning the Program</u>	10A NCAC 17D .0204
<u>Application Information and Procedures</u>	10A NCAC 17D .0205
<u>Certification of Impairment</u>	10A NCAC 17D .0207
<u>Age Requirements</u>	10A NCAC 17D .0208

<u>Residency Requirements</u>	10A NCAC 17D .0209
<u>Financial Eligibility</u>	10A NCAC 17D .0210
<u>Provision of Equipment Sets</u>	10A NCAC 17D .0212
<u>Telephone Bills: Maintenance: Reporting Loss, Damage, or ...</u>	10A NCAC 17D .0214
<u>Relocation or Death or Recipients</u>	10A NCAC 17D .0215
<u>Rights/Consumer Appeals</u>	10A NCAC 17D .0221
<u>Purpose</u>	10A NCAC 17D .0301
<u>Eligibility Requirements</u>	10A NCAC 17D .0303
<u>Maintenance: Reporting Loss, Damage, or Theft</u>	10A NCAC 17D .0305

#### HHS-MEDICAL ASSISTANCE

<u>Waiver of Transfer of Assets Penalty Due to Undue Hardship</u>	10A NCAC 21B .0314
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#### HHS - MENTAL HEALTH

<u>Scope</u>	10A NCAC 29A .0101
<u>Definitions</u>	10A NCAC 29A .0102
<u>Criteria For Admissions</u>	10A NCAC 29A .0103
<u>Application for Admission</u>	10A NCAC 29A .0104
<u>Priority for Admission</u>	10A NCAC 29A .0105
<u>Maximum Number of Class Members to be Served</u>	10A NCAC 29A .0106
<u>Funds for Assaultive Children</u>	10A NCAC 29A .0107
<u>Scope</u>	10A NCAC 29A .0108
<u>Definitions</u>	10A NCAC 29A .0109
<u>General Provisions</u>	10A NCAC 29A .0110
<u>Eligibility Criteria</u>	10A NCAC 29A .0111
<u>Emotional, Mental or Neurological Handicap Defined</u>	10A NCAC 29A .0112
<u>Violent or Assaultive Behavior Defined</u>	10A NCAC 29A .0113
<u>Determination that State has not Provided Appropriate Tre...</u>	10A NCAC 29A .0114
<u>Application for Designation as Youth Behavioral Services ...</u>	10A NCAC 29A .0115
<u>Determination of Eligibility</u>	10A NCAC 29A .0116
<u>Re-review of Eligibility Decisions</u>	10A NCAC 29A .0117
<u>Needs Assessment</u>	10A NCAC 29A .0118
<u>Service Planning</u>	10A NCAC 29A .0119
<u>Privision of Services</u>	10A NCAC 29A .0120
<u>Area Program Requirements</u>	10A NCAC 29A .0121
<u>Division Requirements</u>	10A NCAC 29A .0122
<u>Prior Notice of Decision</u>	10A NCAC 29A .0123
<u>Mediation</u>	10A NCAC 29A .0124
<u>Contested Case Hearings</u>	10A NCAC 29A .0125
<u>Administrative Review by Review Officer</u>	10A NCAC 29A .0126
<u>Evaluation Reports</u>	10A NCAC 29A .0127
<u>Thomas S. Community Services</u>	10A NCAC 29B .0101
<u>Scope</u>	10A NCAC 29B .0102
<u>Definitions</u>	10A NCAC 29B .0103
<u>Reporting Requirements</u>	10A NCAC 29B .0104
<u>Death Review Requirements</u>	10A NCAC 29B .0105

<u>Thomas S. Mortality Review Committee</u>	10A NCAC 29B .0106
<u>Scope</u>	10A NCAC 29D .0201
<u>Explanation of Terms</u>	10A NCAC 29D .0202
<u>Designation Procedures</u>	10A NCAC 29D .0203
HEALTH AND HUMAN SERVICES, DEPARTMENT OF	
<u>Limitation of Permit</u>	10A NCAC 41B .0302
<u>Screening Test for Alcohol Concentration</u>	10A NCAC 41B .0501
<u>Approval: Alcohol Screening Test Devices: Use</u>	10A NCAC 41B .0502
HEALTH SERVICES, COMMISSION FOR	
<u>Definitions</u>	10A NCAC 43D .0202
<u>Authorized WIC Vendors</u>	10A NCAC 43D .0706
HHS - VOCATIONAL REHABILITATION SERVICES	
<u>Rates of Payment</u>	10A NCAC 89C .0103
<u>General Policies</u>	10A NCAC 89D .0101
<u>Community Rehabilitation Program Standards</u>	10A NCAC 89D .0204
CODE OFFICIALS QUALIFICATION BOARD	
<u>Continuing Education Requirements</u>	11 NCAC 08 .0713
<u>Approved Courses</u>	11 NCAC 08 .0720
INSURANCE, DEPARTMENT OF	
<u>Model Regulation Permitting the Recognition of Preferred ...</u>	11 NCAC 11F .0801
LABOR, DEPARTMENT OF	
<u>Exceptions to Civil Penalty</u>	13 NCAC 12 .0703
<u>Notification at Time of Hiring</u>	13 NCAC 12 .0804
<u>Amusement Device Inspection Fee Schedule</u>	13 NCAC 15 .0703
CRIME CONTROL AND PUBLIC SAFETY	
<u>Definitions</u>	14A NCAC 09H .0308
<u>Securing Vehicles When Operator is Arrested</u>	14A NCAC 09H .0310
<u>Vehicles Trasnported and Stored Over Objection of Owner</u>	14A NCAC 09H .0311
<u>Transporting and Storing Vehicles</u>	14A NCAC 09H .0313
<u>Notification</u>	14A NCAC 09H .0314
<u>Release of Vehicles</u>	14A NCAC 09H .0315
<u>Vehicle Inventory</u>	14A NCAC 09H .0316
<u>Reimbursement of Wrecker Operators</u>	14A NCAC 09H .0317
<u>Rotation, Zone, Contract, and Deviation from System</u>	14A NCAC 09H .0320
<u>Rotation Wrecker Service Regulations</u>	14A NCAC 09H .0321
<u>Recording Wrecker Requests/Incidents</u>	14A NCAC 09H .0322

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**RULES REVIEW COMMISSION**

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<u>Sanctions for Violations</u>	14A NCAC 09H .0323
<u>Hearing Procedures</u>	14A NCAC 09H .0324
 COASTAL RESOURCES COMMISSION	
<u>General Use Standards for Ocean Hazard Areas</u>	15A NCAC 07H .0306
 HEALTH SERVICES, COMMISSION FOR	
<u>Identification and Listing of Hazardous Wastes - Part 261</u>	15A NCAC 13A .0106
 SECRETARY OF STATE, DEPARTMENT OF	
<u>Continuing Obligations of Notaries</u>	18 NCAC 07B .0107
<u>General Application Denial</u>	18 NCAC 07B .0902
 GENERAL CONTRACTORS, LICENSING BOARD FOR	
<u>Definitions</u>	21 NCAC 12 .0901
<u>Filing Deadline and Service</u>	21 NCAC 12 .0904
<u>Processing of Application</u>	21 NCAC 12 .0906
 MEDICAL BOARD	
<u>Disciplinary Action</u>	21 NCAC 32M .0112
 NURSING, BOARD OF	
<u>Disciplinary Action</u>	21 NCAC 36 .0812
 PHARMACY, BOARD OF	
<u>Pharmacy Permits</u>	21 NCAC 46 .1601
<u>Device and Medical Equipment Permits</u>	21 NCAC 46 .1608
<u>Storage of Devices and Medical Equipment in Possession of...</u>	21 NCAC 46 .2613
<u>Clinical Pharmacist Practitioner</u>	21 NCAC 46 .3101

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**AGENDA**  
**RULES REVIEW COMMISSION**  
**Thursday, April 19, 2007, 10:00 A.M.**

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-Up Matters:
  - A. DHHS/Division of Services for the Deaf and Hard of Hearing - 10A NCAC 17C .0108; .0204; .0205 (Deluca)
  - B. DHHS/Division of Services for the Deaf and Hard of Hearing – 10A NCAC 17D .0206; .0211; .0213; .0219; .0220; .0302; .0304 (Deluca)
  - C. Department of Health and Human Services – 10A NCAC 41B .0301; .0304; .0306; .0313 (Bryan)



- D. Department of Labor – 13 NCAC 12 .0601 (Bryan)
- E. Board of Community Colleges – 23 NCAC 3A .0113 (DeLuca)
- IV. Review of Log of Permanent Rule filings for RRC review filed between February 21 and March 20, 2007 (attached)
- V. Review of Temporary Rules (If Any)
- VI. Commission Business
  - Next meeting: May 17, 2007

**Commission Review**  
***Log of Permanent Rule Filings***  
***February 21, 2007 through March 20, 2007***

**ADMINISTRATION, DEPARTMENT OF**

The rules in Chapter 41 are from the State Energy Office.

The rules in Subchapter 41D concern the energy policy act credit and banking selling program including general provisions (.0100); credit banking and selling program provisions (.0200); proceeds and distribution (.0300); and reports (.0400).

<u>Purpose and Organization</u>	01	NCAC	41D	.0101
Adopt/*				
<u>Definitions</u>	01	NCAC	41D	.0102
Adopt/*				
<u>Program</u>	01	NCAC	41D	.0201
Adopt/*				
<u>Banking</u>	01	NCAC	41D	.0202
Adopt/*				
<u>Proceeds and Distribution</u>	01	NCAC	41D	.0301
Adopt/*				
<u>Alternative Fuel Revolving Fund</u>	01	NCAC	41D	.0302
Adopt/*				
<u>Reports</u>	01	NCAC	41D	.0401
Adopt/*				

**MENTAL HEALTH, COMMISSION OF**

The rules in Subchapter 27G are from either the department or the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services including general information (.0100); operation and management rules (.0200); physical plant rules (.0300); licensing procedures (.0400); area program requirements; over-authority on county program monitoring of facilities and services (.0600); accreditation of area programs and services (.0700); waivers and appeals (.0800); general rules for infants and toddlers (.0900); partial hospitalization for individuals who are mentally ill (.1100); psychological rehabilitation facilities for individuals with severe and persistent mental illness (.1200); residential treatment for children and adolescents who are emotionally disturbed or who have a mental illness (.1300); day treatment for children and adolescents with emotional or behavioral disturbances (.1400); intensive residential treatment for children and adolescents who are emotionally disturbed or who have a mental illness (.1500); residential treatment staff secure facilities for children or adolescents (.1700); psychiatric residential treatment facilities for children and adolescents (.1900); specialized community residential centers for individuals with developmental disabilities (.2100); before/after school and summer developmental day services for children with or at risk for developmental delays or disabilities, or atypical development (.2200); adult developmental and vocational programs for individuals with developmental disabilities (.2300); developmental day services for children with or at risk for developmental delays or disabilities, or atypical development (.2400); early childhood intervention services (ECIS) for children with an at risk for developmental delays or disabilities, or atypical development and their families (.2500); nonhospital medical detoxification for individuals who are substance abusers (.3100); social setting detoxification for substance abuse (.3200); outpatient detoxification for substance abuse (.3300); residential treatment/rehabilitation for individuals with substance abuse disorders (.3400); outpatient facilities for individuals with substance abuse disorders (.3500); outpatient opioid treatment (.3600); day treatment facilities for individuals with substance abuse disorders (.3700); substance abuse services for DWI offenders (.3800); drug education schools (DES) (.3900); treatment alternatives to street crimes (TASC) (.4000); substance abuse primary prevention services (.4200); therapeutic community (.4300); facility based crises services for individual of all disability groups (.5000); community respite services for individuals of all disability groups (.5100); residential therapeutic (habilitative) camps for children and adolescents of all disability groups (.5200); day activity for individuals of all disability groups (.5400); sheltered workshops for individuals of all disability groups (.5500); supervised living for individuals of all disability groups (.5600); assertive community treatment service (.5700); supportive employment for individuals of all disability groups (.5800); case management for individuals of all disability groups (.5900); inpatient hospital treatment for individuals who have mental illness or substance abuse disorders (.6000); emergency services for individuals of all disability groups (.6100); outpatient services for individuals of all disability groups (.6200); companion respite services for individuals of all disability groups (.6300); personal assistants for individuals of all disabilities groups (.6400); employment assistance programs (.6500);

specialized foster care services (.6600); forensic screening and evaluation services for individuals of all disability groups (.6700); prevention services (.6800); and consultation and education services (.6900).

<u>Scope</u>	10A	NCAC	27G	.1501
Repeal/*				
<u>Staff</u>	10A	NCAC	27G	.1502
Repeal/*				
<u>Operations</u>	10A	NCAC	27G	.1503
Repeal/*				
<u>Physical Plant</u>	10A	NCAC	27G	.1504
Repeal/*				

The rules in Subchapter 28I concern other rules pertaining to state operated facilities and services including rules governing deportment: traffic, parking and registration of vehicles at division facilities (.0100); procedures for obtaining adult protective services (.0200); and prescribing of medication above recommended dosages (.0300).

<u>Firearms</u>	10A	NCAC	28I	.0401
Repeal/*				

## HEALTH AND HUMAN SERVICES, DEPARTMENT OF

The rules in Chapter 28 are mental health rules about state operated facilities and services.

The rules in Subchapter 28I concern other rules pertaining to state operated facilities and services including rules governing deportment: traffic, parking and registration of vehicles at division facilities (.0100); procedures for obtaining adult protective services (.0200); and prescribing of medication above recommended dosages (.0300).

<u>Firearms</u>	10A	NCAC	28I	.0402
Adopt/				

## 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>	12	NCAC	11	.0105
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>Location of Sampling Sites and Mixing Zones</u>	15A	NCAC	02B	.0204
Amend/*				
<u>Standards for Toxic Substances and Temperature</u>	15A	NCAC	02B	.0208
Amend/*				
<u>Fresh Surface Water Quality Standards for Class C Waters</u>	15A	NCAC	02B	.0211
Amend/*				
<u>Fresh Surface Water Quality Standards for Class WS-I Waters</u>	15A	NCAC	02B	.0212

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**RULES REVIEW COMMISSION**

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Amend/\*

Fresh Surface Water Quality Standards for Class WS-II Waters 15A NCAC 02B .0214

Amend/\*

Fresh Surface Water Quality Standards for Class WS-III Wa... 15A NCAC 02B .0215

Amend/\*

Fresh Surface Water Quality Standards for Class Ws[IV Waters 15A NCAC 02B .0216

Amend/\*

Fresh Surface Water Quality Standards for Class WS-V Waters 15A NCAC 02B .0218

Amend/\*

Tidal Salt Water Quality Standards for Class SC Waters 15A NCAC 02B .0220

Amend/\*

Tidal Salt Water Quality Standards for Class SA Waters 15A NCAC 02B .0221

Amend/\*

Tidal Salt Water Quality Standards for Class SB Waters 15A NCAC 02B .0222

Amend/\*

Catawba River Basin 15A NCAC 02B .0308

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).

Best Available Retrofit Technology 15A NCAC 02D .0543

Amend/\*

**WILDLIFE RESOURCES COMMISSION**

The rules in Chapter 10 are promulgated by the Wildlife Resources Commission and concern wildlife resources and water safety.

The rules in Subchapter 10A cover general WRC practices and procedures including petitions for rulemaking (.0400); declaratory rulemaking (.0500); warning tickets (.1000); and waivers (.1100).

Particular Offenses 15A NCAC 10A .1001

Amend/\*

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

Migratory Game Birds 15A NCAC 10B .0105

Amend/\*

big Game Kill Reports 15A NCAC 10B .0113

Amend/\*

Permitted Archery Equipment 15A NCAC 10B .0116

Amend/\*

Possession of Mute Swans 15A NCAC 10B .0125

Adopt/\*

Bear 15A NCAC 10B .0202

Amend/\*

Deer 15A NCAC 10B .0203

Amend/*				
<u>Wild Boar (Both Sexes)</u>	15A	NCAC	10B	.0204
Amend/*				
<u>Raccoon and Opossum</u>	15A	NCAC	10B	.0205
Amend/*				
<u>Wild Turkey</u>	15A	NCAC	10B	.0209
Amend/*				
<u>Open Seasons</u>	15A	NCAC	10B	.0302
Amend/*				
<u>Traps</u>	15A	NCAC	10B	.0304
Adopt/*				

The rules in Subchapter 10C cover inland fishing including jurisdictional issues involving the Marine Fisheries Commission (.0100), general rules (.0200), game fish (.0300), non-game fish (.0400) and primary nursery areas (.0500).

<u>Public Mountain Trout Waters</u>	15A	NCAC	10C	.0205
Amend/*				
<u>Fishing License Exemptions</u>	15A	NCAC	10C	.0216
Adopt/*				
<u>Open Seasons: Creel and Size Limits</u>	15A	NCAC	10C	.0305
Amend/*				
<u>Manner of Taking Non-game Fishes</u>	15A	NCAC	10C	.0401
Amend/*				
<u>Taking Non-game Fishes for Bait</u>	15A	NCAC	10C	.0402
Amend/*				
<u>Special Device Fishing</u>	15A	NCAC	10C	.0404
Amend/*				
<u>Permitted Special Devices and Open Seasons</u>	15A	NCAC	10C	.0407
Amend/*				
<u>Descriptive Boundaries</u>	15A	NCAC	10C	.0503
Amend/*				

The rules in Subchapter 10D are game lands rules.

<u>General Regulations</u>	15A	NCAC	10D	.0102
Amend/*				
<u>Hunting On Game Lands</u>	15A	NCAC	10D	.0103
Amend/*				

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

<u>Application for Certificate of Vessel Number</u>	15A	NCAC	10F	.0102
Amend/*				
<u>Transfer of Ownership</u>	15A	NCAC	10F	.0103
Amend/*				
<u>Certificate of Number</u>	15A	NCAC	10F	.0104
Amend/*				
<u>Numbering Pattern</u>	15A	NCAC	10F	.0105
Amend/*				
<u>Display of Vessel Numbers</u>	15A	NCAC	10F	.0106
Amend/*				

<u>Validation Decal</u>	15A	NCAC	10F	.0107
Amend/*				
<u>Temporary Certificate of Number</u>	15A	NCAC	10F	.0109
Amend/*				
<u>Abandoned Vessels</u>	15A	NCAC	10F	.0110
Adopt/*				
<u>Durham and Wake Counties</u>	15A	NCAC	10F	.0350
Amend/*				

The rules in Subchapter 10G concern distribution and sale of hunting; fishing; and trapping license including license agents (.0100); boat registration agents (.0200); fur tag agents (.0300); wildlife service agents (.0400); and licensee requirements (.0500).

<u>Purpose of Wildlife Service Agents</u>	15A	NCAC	10G	.0401
Amend/*				
<u>Appointment of Wildlife Service Agents</u>	15A	NCAC	10G	.0402
Amend/*				
<u>Wildlife Service Agent Agreement</u>	15A	NCAC	10G	.0403
Amend/*				
<u>Customer Support System</u>	15A	NCAC	10G	.0404
Repeal/*				
<u>Wildlife Service Agent Terms and Conditions</u>	15A	NCAC	10G	.0405
Adopt/*				

The rules in Subchapter 10H concern activities regulated by the Commission including controlled hunting preserves for domestically raised game birds (.0100), holding wildlife in captivity (.0300), commercial trout ponds (.0400), fish propagation (.0700), falconry (.0800), game bird propagators (.0900), taxidermy (.1000), furbearer propagation (.1100), controlled fox hunting preserves (.1200), and reptiles and amphibians (.1300).

<u>Supplement Feeding</u>	15A	NCAC	10H	.0110
Adopt/*				
<u>Definitions</u>	15A	NCAC	10H	.0801
Amend/*				
<u>Commercial Take of Certain Turtles and Terrapins</u>	15A	NCAC	10H	.1301
Adopt/*				
<u>Possession of Reptiles and Amphibians</u>	15A	NCAC	10H	.1302
Adopt/*				

The rules in Subchapter 10J cover wildlife conservation areas.

<u>General Regulations Regarding Use of Conservation Areas</u>	15A	NCAC	10J	.0102
Amend/*				

## HEALTH SERVICES, COMMISSION FOR

The rules in Chapter 18 are from the Commission for Health Services and cover environmental aspects of health such as sanitation (18A), mosquito control (18B), water supplies (18C), and water treatment facility operators (18D). The rules in Subchapter 18A deal with sanitation and include handling, packing and shipping of crustacean meat (.0100); sanitation of scallops (.0200) and shellfish (.0300 and .0400); operation of shellstock plants and reshippers (.0500); shucking and packing plants (.0600); depuration facilities (.0700); wet storage of shellstock (.0800); shellfish growing waters (.0900); summer camps (.1000); food and beverage vending machines (.1100); grade A milk (.1200); hospitals, nursing homes, rest homes, etc. (.1300); mass gatherings (.1400); local confinement facilities (.1500); residential care facilities (.1600); protection of water supplies (.1700); lodging places (.1800); sewage treatment and disposal systems (.1900); migrant housing (.2100); bed and breakfast homes (.2200); delegation of authority to enforce rules (.2300); public, private and religious schools (.2400); public swimming pools (.2500); restaurants meat markets, and other food handling establishments (.2600); child day care facilities (.2800); restaurant and lodging fee collection program (.2900); bed and

breakfast inns (.3000); lead poisoning prevention (.3100); tattooing (.3200); adult day service facilities (.3300); primitive camps (.3500); and rules governing the sanitation of resident camps (.3600).

<u>Definitions</u>	15A	NCAC	18A	.3601
Adopt/*				
<u>Standards and Approval of Plans</u>	15A	NCAC	18A	.3602
Adopt/*				
<u>Permits</u>	15A	NCAC	18A	.3603
Adopt/*				
<u>Public Display of Grade Card</u>	15A	NCAC	18A	.3604
Adopt/*				
<u>Inspections and Reinspections</u>	15A	NCAC	18A	.3605
Adopt/*				
<u>Grading</u>	15A	NCAC	18A	.3606
Adopt/*				
<u>Procedure When Infections Suspected</u>	15A	NCAC	18A	.3607
Adopt/*				
<u>Site</u>	15A	NCAC	18A	.3608
Adopt/*				
<u>Water Supply</u>	15A	NCAC	18A	.3609
Adopt/*				
<u>Liquid Wastes</u>	15A	NCAC	18A	.3610
Adopt/*				
<u>Solid Wastes</u>	15A	NCAC	18A	.3611
Adopt/*				
<u>Swimming Pools</u>	15A	NCAC	18A	.3612
Adopt/*				
<u>Camp Building Construction and Maintenance Requirements</u>	15A	NCAC	18A	.3613
Adopt/*				
<u>Lodging Facilities</u>	15A	NCAC	18A	.3614
Adopt/*				
<u>Toilet: Handwashing: Laundry: and Bathing Facilities</u>	15A	NCAC	18A	.3615
Adopt/*				
<u>Drinking Water Facilities</u>	15A	NCAC	18A	.3616
Adopt/*				
<u>Premises: Vermin Control and Miscellaneous</u>	15A	NCAC	18A	.3617
Adopt/*				
<u>Food Service Facilities</u>	15A	NCAC	18A	.3618
Adopt/*				
<u>Field Sanitation</u>	15A	NCAC	18A	.3619
Adopt/*				
<u>Food Service Employees</u>	15A	NCAC	18A	.3620
Adopt/*				
<u>Food Supplies</u>	15A	NCAC	18A	.3621
Adopt/*				
<u>Food Protection</u>	15A	NCAC	18A	.3622
Adopt/*				
<u>Milk and Milk Products</u>	15A	NCAC	18A	.3623
Adopt/*				
<u>Ice Handling</u>	15A	NCAC	18A	.3624
Adopt/*				
<u>Seafood</u>	15A	NCAC	18A	.3625
Adopt/*				

<u>Refrigeration: Thawing: and Preparation of Food</u> Adopt/*	15A	NCAC	18A	.3626
<u>Re-Serving of Food</u> Adopt/*	15A	NCAC	18A	.3627
<u>Food Service Utensils and Equipment</u> Adopt/*	15A	NCAC	18A	.3628
<u>Cleaning of Equipment and Utensils</u> Adopt/*	15A	NCAC	18A	.3629
<u>Storage and Handling of Utensils and Equipment</u> Adopt/*	15A	NCAC	18A	.3630
<u>Food Service Area Storage Spaces</u> Adopt/*	15A	NCAC	18A	.3631
<u>Food Service Area Lighting</u> Adopt/*	15A	NCAC	18A	.3632
<u>Food Service Area Ventilation</u> Adopt/*	15A	NCAC	18A	.3633
<u>Food Service Area and Lavatory Facilities</u> Adopt/*	15A	NCAC	18A	.3634
<u>Food Service Area Toilet Facilities</u> Adopt/*	15A	NCAC	18A	.3635
<u>Food Service Area Floors</u> Adopt/*	15A	NCAC	18A	.3636
<u>Food Service Area Walls and Ceilings</u> Adopt/*	15A	NCAC	18A	.3637
<u>Kitchen Premises: Miscellaneous</u> Adopt/*	15A	NCAC	18A	.3638
<u>Informal Review Process and Appeals Procedure</u> Adopt/*	15A	NCAC	18A	.3639

#### **COSMETIC ART EXAMINERS, BOARD OF**

The rules in Chapter 14 are from the Cosmetic Art Examiners.

The rules in Subchapter 14H are from the Cosmetic Art Examiners and cover sanitation for both operators and facilities.

<u>Sanitary Ratings and Posting of Ratings</u> Amend/*	21	NCAC	14H	.0105
<u>Footspa Sanitation</u> Amend/*	21	NCAC	14H	.0120
<u>Sanitation Prohibited Practices</u> Amend/*	21	NCAC	14H	.0121

The rules in Subchapter 14J cover the cosmetology curriculum including the beginners' department (.0100); the advanced department (.0200); combined studies (.0300); the course of study (.0400); and credit for study outside of North Carolina (.0500).

<u>Equipment for Beginner Department</u> Amend/*	21	NCAC	14J	.0106
<u>Equipment in Advanced Department</u> Amend/*	21	NCAC	14J	.0206
<u>Equipment</u> Amend/*	21	NCAC	14J	.0302
<u>Students' Personal Supplies</u> Amend/*	21	NCAC	14J	.0303



The rules in Subchapter 14N deal with examinations including general provisions (.0100), cosmetologist exam (.0200), manicurist exam (.0300), cosmetologist teacher exam (.0400), and manicurist teach examination (.0500), esthetician examination (.0600), and esthetician teacher examination (.0700).

<u>Initial Application and Fees</u>	21	NCAC	14N	.0102
Amend/*				
<u>Re-examination</u>	21	NCAC	14N	.0113
Amend/*				
<u>Full Time and Part Time Equivalency</u>	21	NCAC	14N	.0115
Adopt/*				

The rules in Subchapter 14R are continuing education rules.

<u>Application Criteria and Continuing Education Course Appr...</u>	21	NCAC	14R	.0102
Amend/*				

## **LANDSCAPE CONTRACTORS REGISTRATION BOARD**

Chapter 28 contains rules for the Registration Board of Landscape Contractors including statutory and administrative provision (.0100); practice of landscape contractor (.0200); examination and licensing procedures (.0300); rules: petitions: hearings (.0400); declaratory rulings (.0500); administrative hearings: procedures (.0600).

<u>Authority: Name and Location of Board</u>	21	NCAC	28	.0101
Amend/*				
<u>Applications and Examination</u>	21	NCAC	28	.0301
Amend/*				
<u>Reinstatement After Revocation</u>	21	NCAC	28	.0304
Amend/*				

## **OCCUPATIONAL THERAPY, BOARD OF**

The rules in Chapter 38 are from the Board of Occupational Therapy and cover organization and general provisions (.0100); application for license (.0200); licensing (.0300); general (.0400); rules (.0500); administrative hearing procedures (.0600); and professional corporations (.0700); continuing competence activity (.0800); supervision, supervisory roles, and clinical responsibilities of occupational therapist and occupational therapy assistants (.0900); supervision of limited permittees (.1000); and supervision of unlicensed personnel (.1100).

<u>Purpose</u>	21	NCAC	38	.0101
Amend/*				
<u>Board Office</u>	21	NCAC	38	.0102
Amend/*				
<u>Definitions</u>	21	NCAC	38	.0103
Amend/*				
<u>Application Process</u>	21	NCAC	38	.0201
Amend/*				
<u>Fees</u>	21	NCAC	38	.0204
Amend/*				
<u>License Number: Display of License</u>	21	NCAC	38	.0301
Amend/*				
<u>License Renewal</u>	21	NCAC	38	.0302
Amend/*				
<u>Limited Permits</u>	21	NCAC	38	.0303
Amend/*				

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**RULES REVIEW COMMISSION**

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<u>Grounds for License Denial or Discipline</u> Amend/*	21	NCAC	38	.0304
<u>Continuing Duty to Report Certain Crimes and Civil Suits</u> Amend/*	21	NCAC	38	.0305
<u>Change of Address or Business Name</u> Amend/*	21	NCAC	38	.0401
<u>Advertising</u> Amend/*	21	NCAC	38	.0402
<u>Procedure for Adoption of Rules</u> Amend/*	21	NCAC	38	.0502
<u>Authority and Definitions</u> Amend/*	21	NCAC	38	.0701
<u>Prerequisites for Incorporation</u> Amend/*	21	NCAC	38	.0702
<u>Certificate of Registration</u> Amend/*	21	NCAC	38	.0703
<u>General and Administrative Provisions</u> Amend/*	21	NCAC	38	.0704
<u>Continuing Competence Definitions</u> Adopt/*	21	NCAC	38	.0801
<u>Continuing Competence Requirements for Licensure</u> Adopt/*	21	NCAC	38	.0802
<u>Approval of Activities for Maintaining Continuing Competence</u> Adopt/*	21	NCAC	38	.0803
<u>Scope of Qualified Activities for Maintaining Continuing ...</u> Adopt/*	21	NCAC	38	.0804
<u>Qualified Activities for Maintaining Continuing Competence</u> Adopt/*	21	NCAC	38	.0805
<u>Waiver of Requirements</u> Adopt/*	21	NCAC	38	.0806
<u>Documentation/Reporting Procedures</u> Adopt/*	21	NCAC	38	.0807
<u>Audit of Continuing Competence Activities</u> Adopt/*	21	NCAC	38	.0808
<u>Notification of Supervision Change</u> Adopt/*	21	NCAC	38	.0901
<u>Supervision is an Interactive Process</u> Adopt/*	21	NCAC	38	.0902
<u>Types of Supervision</u> Adopt/*	21	NCAC	38	.0903
<u>Documentation of Supervision</u> Adopt/*	21	NCAC	38	.0904
<u>Delineation of Clinical Responsibilities</u> Adopt/*	21	NCAC	38	.0905
<u>Limited Permit Defined</u> Adopt/*	21	NCAC	38	.1001
<u>Supervision of Limited Permittee</u> Adopt/*	21	NCAC	38	.1002
<u>Service Competency of Limited Permittee</u> Adopt/*	21	NCAC	38	.1003
<u>Signature of Limited Permittee</u> Adopt/*	21	NCAC	38	.1004
<u>Board Notification</u>	21	NCAC	38	.1005

Adopt/\*

<u>Responsibility of the Occupational Therapy Practitioner</u>	21	NCAC	38	.1101
Adopt/*				

<u>Delegation of Duties to Unlicensed Personnel</u>	21	NCAC	38	.1102
Adopt/*				

**COMMUNITY COLLEGES, BOARD OF**

The rules in Chapter 2 concern Community Colleges.

The rules in Subchapter 2E cover educational programs including program classification (.0100); curriculum programs (.0200); adult, extension, and community service programs (.0300); industrial services (.0400); articulation (.0500); and vocational curriculum (.0600).

<u>Courses and Standards for Curriculum Programs</u>	23	NCAC	02E	.0204
Amend/*				

**STATE PERSONNEL COMMISSION**

The rules in Chapter 1 are from the Office of State Personnel.

The rules in Subchapter 1C concern personnel administration including employment (.0100); general employment policies (.0200); personnel records and reports (.0300); appointment (.0400); work schedule (.0500); competitive service (.0600); secondary employment (.0700); requirements for teleworking programs (.0800); employee recognition programs (.0900); and separation (.1000).

<u>Temporary Employment Services</u>	25	NCAC	01C	.0216
Adopt/*				

<u>Temporary Appointment</u>	25	NCAC	01C	.0405
Amend/*				

<u>Temporary Part-time Appointment</u>	25	NCAC	01C	.0407
Repeal/*				

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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	
Teresa M. Marley v. Crime Victims Compensation Commission	03 CPS 0185	Elkins	01/19/07	
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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	
Jacqueline D. Dupree v. Crime Victims Compensation	06 CPS 1360	Overby	12/15/06	
Pervis R. Owens Sr v. OAH, Crime Victims Compensation Commission	06 CPS 1492	Morrison	09/28/06	
Brian Curlee v. Crime Victims Compensation Commission	06 CPS 1677	Wade	12/13/06	
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 Miner 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	
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Marquelle's Enrichment Center for Edith James and Wilhelmenia				

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Annie Ruth Laws v. Caldwell County DSS	03 DHR 0824	Lassiter	01/29/07	
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Michael Eugene Dalton v. DHHS, DFS	04 DHR 0288	Lassiter	10/06/06	
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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	
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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	
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Shannon Woodell Glidewell v. DHHS, DFS	05 DHR 1514	Gray	09/29/06	
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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	
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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	
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Keith L. Mallory Jr., v. DHHS, DFS	06 DHR 0023	Wade	12/27/06	
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	
Helen A. Robinson, Administrator for New Life Early Childhood Development Center v. DHHS, Div. of Child Development	06 DHR 0171	Wade	12/29/06	
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	

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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	
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	
Abid Ali d/b/a Durham Food Mart v. DHHS, Division of Public Health, Women and Children's Health Section	06 DHR 0686	Morrison	12/15/06	
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	
Forsyth Memorial Hospital, Inc d/b/a Forsyth Medical Center and Community General Health Partners, Inc. d/b/a Thomasville Medical Center v. DHHS, DFS, CON and North Carolina Baptist Hospital Lexington Memorial Hospital, Inc. and Hight Point Regional Health System	06 DHR 0810	Mann	01/18/07	21:18 NCR 1632
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	
Kenyetta Shaw v. DMH/DD/SAS	06 DHR 0966	Elkins	01/23/07	
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	
Hospice and Palliative Care Center of Alamance-Caswell, LLC v. DHHS, DFS, CON Section, Licensure and Certification Section and Community Home Care of Vance County, Inc. d/b/a Community Home Care and	06 DHR 1247	Elkins	12/15/06	

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Hospice				
Hospice and Palliative Care Center of Alamance-Caswell, LLC v. DHHS	06 DHR 1248	Elkins	12/15/06	
DFS, Licensure and Certification Section, CON Section and Liberty Home Care, LLC				
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	
April Ivelisse Truitt v. DHHS	06 DHR 1288	Elkins	12/12/06	
Willie P. Little v. Medicaid	06 DHR 1315	Gray	11/09/06	
Debra Brown v. DHHS	06 DHR 1323	Gray	11/27/06	
Grandma's House Night Care, Shirley Brown v. Jeff Gaster, Dept. of Child Development	06 DHR 1331	Overby	11/27/06	
Mary Jane Rutledge v. NCOAH	06 DHR 1332	Gray	09/12/06	
Rebecca G Banks v. Dept. of Social Services, Crystal Jackson	06 DHR 1333	Overby	11/28/06	
Jamie Deyton for Crystal Cooper v. DHHS, Div. of MH/DD/SAS Customer Service Section	06 DHR 1357	Webster	12/15/06	
Scott Andrew Broadway v. DHHS (Medicaid)	06 DHR 1395	Gray	11/13/06	
Kyle Collier, a minor, by his mother and legal guardian, Orbie Etheridge v. DHHS	06 DHR 1412	Morrison	12/22/06	21:18 NCR 1643
Betty Betts v. Division of Medical Assistance	06 DHR 1449	Morrison	11/02/06	
Rita Perterson v. OAH	06 DHR 1456	Wade	12/13/06	
Phyllis Hale for daughter Haley Hale v. OAH	06 DHR 1467	Elkins	12/11/06	
Lots of Love Child Development Center v. DHHS	06 DHR 1471	Lassiter	12/15/06	
Rodney Winstead Jr v. DHHS	06 DHR 1475	Morrison	10/26/06	
Aunt Alice Daycare Center, Alice Camara v. DHHS, Nutrition Program	06 DHR 1490	Lassiter	10/13/06	
Mr. Timmy K Pless, Barry Moore, Advocate v. DHHS, Div. of Medical Assistance	06 DHR 1500	Wade	12/13/06	
LaShawn Hardy v. Health Care Personnel Registry	06 DHR 1501	Overby	01/04/07	
Connie Lee Yates v. DHHS	06 DHR 1558	Morrison	09/27/06	
Valyncia J. London v. DHHS	06 DHR 1601	Lassiter	11/13/06	
Kelly A. Schofield, M.D., v. DHHS, Mental Health Licensure and Certification	06 DHR 1602	Gray	02/21/07	
Rose Marie (Allala) Sevorwell v. Wake County & Johnston County, DHHS	06 DHR 1623	Gray	11/09/06	
Uniquely Supported, Inc, Shawn Kuhl (provide appropriate supervision)	06 DHR 1634	Lassiter	12/04/06	
Julian Jones v. EDS – Prior Approval	06 DHR 1679	Gray	12/20/06	
Natasha Renee McNeely v. Western Carolina Center, J Iverson Riddle Development Center	06 DHR 1682	Lassiter	10/31/06	
Tishea Talley v. Nurse Registry	06 DHR 1724	Overby	11/22/06	
Diane Jenkins-Mother/Gaurdian for Erzal Carl Johnson v. DHHS, Div. of Mental Health Developmental Disabilities and Substance Abuse	06 DHR 1784	Lassiter	01/24/07	
Linda Lea, Grace Manor v. Lincensure Section	06 DHR 1789	Lassiter	01/24/07	
Polley Clinic of Dermatology & Dermatological Surgery PA	06 DHR 1939	Gray	01/08/07	
Medical Mobility Center v. Div. of Medical Medicaid Program	06 DHR 2034	Gray	12/14/06	
Kim Michelle Sinclair, Kim Sinclair (Jasmine) v. DHHS	06 DHR 2117	Overby	01/11/07	
Shanon B. Kesler (mother), Cassie L. Kesler (daughter) v. Social Services	06 DHR 2170	Overby	01/25/07	
Teresa B. Morton, v. Santana T. Deberry and Drexal Pratt, Chief of OEMS, Office of Emergency Medical Services	06 DHR 2180	Webster	02/08/07	
Emily Thompson, Drug America v. Medicaid/NCDHHS	06 DHR 2341	Gray	02/20/07	
Marijuana Fisher Ford v. DHHS, DFS	06 DHR 2358	Lassiter	02/20/07	

## 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

Michael Eugene Hunt v. DOC	06 DOC 0498	Gray	06/20/06	
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## DEPARTMENT OF JUSTICE

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	
Bobbie Jo Bullins v. Sheriffs' Education and Training Standards Comm.	06 DOJ 0071	Lassiter	12/13/06	
Todd Franklin Wyke v. DOJ, Company Police Program	06 DOJ 0146	Lassiter	09/15/06	
Scotty Eugene Robinson v. Sheriffs' Education and Training Standards Commission	06 DOJ 0200	Mann	12/08/06	
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 Commission	06 DOJ 0229	Gray	07/12/06	
Virble Leake, Jr. v. Private Protective Services Board	06 DOJ 0397	Morrison	10/05/06	

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Jason Matthew Lish v. Criminal Justice Education and Training Standards Commission	06 DOJ 0579	Wade	09/12/06
Matthew Vicente Saylors v. Criminal Justice Education and Training Standards Commission	06 DOJ 0597	Wade	12/27/06
Christopher Brian Mingia v. Criminal Justice Education and Training Standards Commission	06 DOJ 0598	Wade	09/12/06
Thomas M. Combs v. DOJ, Company Police Program	06 DOJ 0640	Elkins	10/16/06
Russell Lee Weaver v. Criminal Justice Education and Training Standards Commission	06 DOJ 0662	Gray	01/03/07
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
Sean Thomas Roberts v. Sheriffs' Education and Training Standards Comm.	06 DOJ 1061	Elkins	11/30/06
William Eugene Lemke v. Sheriffs' Education and Training Standards Commission	06 DOJ 1293	Overby	11/28/06
Amy Pearl King v. Sheriffs' Education and Training Standards Comm.	06 DOJ 1295	Lassiter	10/10/06
Marcellus Moore v. Criminal Justice Education and Training Standards Commission	06 DOJ 1296	Mann	01/22/07
Frankey Denese White v. Sheriffs' Education and Training Standards Commission	06 DOJ 1297	Gray	11/03/06
John Robert Fedyszyn v. Alarm Systems Licensing Board	06 DOJ 1345	Wade	12/27/06
Jerry Lynn Cheek v. Sheriffs' Education and Training Standards Comm.	06 DOJ 1496	Elkins	12/11/06
Quintin G. Burnett v. Criminal Justice Education and Training Standards Commission	06 DOJ 1646	Gray	12/20/06
Michael Abbot Copeland v. Sheriffs' Education and Training Standards Commission	06 DOJ 1742	Gray	02/05/07
James Phillip Daniel v. Sheriffs' Education and Training Standards Comm.	06 DOJ 1743	Gray	01/08/07
Ronnie Lee Blount v. Criminal Justice Education and Training Standards Commission	06 DOJ 1749	Gray	01/18/07
Annette Lassiter Joyner v. Sheriffs' Education and Training Standards Commission	06 DOJ 1750	Gray	01/08/07
Joshua Michael Richardson v. Sheriffs' Education and Training Standards Commission	06 DOJ 1788	Gray	01/08/07
Katrina Moore Bowden v. Sheriffs' Education and Training Standards Commission	06 DOJ 1919	Gray	01/18/07
<b>DEPARTMENT OF STATE TREASURER</b>			
Phyllis Dianne Smith v. Department of State Treasurer Retirement Systems Division	05 DST 1378	Wade	12/27/06
Percy E. Myers v. Retirement Systems Division, LGERS,	06 DST 0048	Chess	05/31/06
Larry D. Beck v. Local Governmental Employees' Retirement System, a Corporation, et al	06 DST 0366	Overby	01/03/07
Mary B. Spencer v. State Treasurer, Retirement Systems Division	06 DST 0534	Chess	11/09/06
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
Robin C. Fish v. Department of Treasurer Retirement Systems Division	06 DST 1353	Overby	01/11/07
<b>EDUCATION, STATE BOARD OF</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
Charlie L. Richardson v. Department of Public Instruction Licensure Section	06 EDC 1131	Gray	11/03/06
Brenda H. Cox v. Center for Recruitment & Retention National Board for Professional Teaching Standards, Dept. of Public Instruction	06 EDC 1546	Elkins	12/11/06
Catherine (Cathy) Rush v. State Board of Education, Dept. of Public Instruction	06 EDC 1622	Gray	11/09/06
Melissa Thomas v. State Board of Education	06 EDC 1667	Gray	01/29/07
Katrina Walker v. DPI	06 EDC 1804	Gray	01/29/07
Jeffrey Wayne McClain v. Wake Co. Public School System	06 EDC 2042	Elkins	01/05/07
James Aaron Swafford v. DPI	06 EDC 2175	Elkins	01/17/07
Wendy Holloway v. State Board of Education	07 EDC 0048	Gray	02/22/07



**DEPT. OF ENVIRONMENT AND NATURAL RESOURCES**

Howard L. Hardy v. Co. of Craven Department of Health	00 EHR 0803	Gray	06/26/06	
Waterkeeper Alliance, et al., and Richard Dove v. DENR, Division of Water Quality, Murphy-Brown, LLC, Brown's of Carolina, LLC, Carroll's Foods, LLC, and Murphy Farms, LLC, North Carolina Pork Council, Inc, NC Poultry Federation, Inc	02 EHR 1353	Gray	01/30/07	
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	
Coastland Corporation, James E. Johnson, Jr., Pres v. Pamlico County Health Department, Environmental Health	04 EHR 0842	Lassiter	10/31/06	
Partners Recycling, Inc v. DENR	04 EHR 1503	Wade	12/15/06	
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
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	
William P. Ferris v. DENR, Division of Coastal Management	06 EHR 0908	Gray	02/22/07	
William & Valerie Brodie v. DENR/Division of Coastal Management and Town of Carolina Beach	06 EHR 0910	Mann	11/08/06	
Robin R. Moore v. DENR, Div. of Waste Management	06 EHR 0986	Lassiter	11/07/06	
Danny Ray Thorpe v. Brunswick Co. Health Dept., Environmental Health Department	06 EHR 1041	Gray	08/07/06	
David Edgar Hine v. DENR, Div of Waste Management, Solid Waste Section	06 EHR 1044	Mann	12/15/06	
John Darlington v. Division of Water Quality	06 EHR 1081	Gray	02/01/07	
Dianne D. Vereen v. Brunswick Co. Health Department	06 EHR 1126	Elkins	09/27/06	
Princeton Recreational Park v. DENR	06 EHR 1196	Wade	12/13/06	
American Canoe Association, ET.AL v. DENR and DM Farms of Rosehill LLC	06 EHR 1254	Overby	01/02/07	
C.F. Little and Patsy H. Little v. DENR	06 EHR 1340	Lassiter	09/22/06	
Fall Creek Land Co Lot#201 Yellowtop Mountain Estates	06 EHR 1436	Wade	12/27/06	
Cliff S. Barnes v. EMC	06 EHR 1450	Wade	12/08/06	
Joe Walter Sprouse and Talitha LeeAnn Bradburn Sprouse v. The Buncombe County Health Center, Environmental Health Division	06 EHR 1472	Lassiter	01/24/07	
John P. Leonard, Agent for Magnolia Pointe LP v. County of Durham Engineering Department	06 EHR 1568	Gray	10/13/06	
Alvin R. Newell and Barbara A. Newell v. Haywood Co. Health Dept. Environmental Health	06 EHR 1652	Lassiter	01/24/07	

**DEPARTMENT OF INSURANCE**

Robert Bryan Bender and James V. Bender, Jr. and Wife, Sheron Bender v. Teachers' and State Employees' Comprehensive Major Medical Plan	05 INS 0067	Lassiter	10/06/06	
Heidi L. Roth v. Teachers' and State Employees' Comprehensive Major Medical Plan	05 INS 1779	Lassiter	10/19/06	
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	
Donna Jones/Mark Jones v. Teachers' and State Employees' Comprehensive Major Medical Plan	06 INS 0779	Wade	12/29/06	
Rebecca P. Murray v. George C. Stokes, Executive Administrator N.C. State Health Plan	06 INS 0864	Elkins	12/21/06	
Kerry Stewart v. Teachers' and State Employees' Comprehensive Major Medical Plan	06 INS 1113	Elkins	01/04/07	
Lou Ann Ostadi v. Teachers' and State Employees' Comprehensive Major Medical Plan	06 INS 1141	Lassiter	01/24/07	
Harry F. Reynolds v. Teachers' and State Employees' Comprehensive Major Medical Plan	06 INS 1348	Morrison	12/22/06	

**LICENSING BOARD FOR GENERAL CONTRACTORS**

Licensing Board for General Contractors v. S.N. Davis Company, Inc (License No. 49245) and Shelby G. Davis, as Qualifier	06 LBC 0827	Webster	01/24/07	
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**OFFICE OF STATE PERSONNEL**

Sgt. Gerry R. Mouzon v. Crime Control & Public Safety, NC State Highway	02 OSP 0392	Gray	06/15/06	
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# CONTESTED CASE DECISIONS

Patrol, and Brian Beatty, Secretary CC & PS 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	
Ricky Dixon v. County of Buncombe	03 OSP 0822	Lassiter	01/26/07	21:18 NCR 1648
Emily Flores v. College of Agriculture and Life Sciences NC State	04 OSP 1518	Lassiter	10/13/06	
Isaiah Green, Jr v. DMV	05 OSP 0500	Morrison	11/02/06	
C.W. McAdams v. DMV	05 OSP 0626	Morrison	11/02/06	
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	
Clayton Richardson v. Winston-Salem State University	05 OSP 1343	Mann	01/09/07	
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	
Eleanor J. Parker v. DHHS, Dorothea Dix Hospital	05 OSP 1527	Owens	01/19/07	21:18 NCR 1653
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	
Pamela C. Granger v. UNC-CH	06 OSP 0007	Gray	12/22/06	21:18 NCR 1676
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	
Sharon B. Matthews v. DOT, DMV	06 OSP 0207	Elkins	10/23/06	
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	
Todd R. Holbrook v. DOT, DMV	06 OSP 0644	Gray	12/13/06	
Thomasina Burrows v. DHHS, Div. of Vocational Rehabilitation Services/ Independent Living Program	06 OSP 0665	Elkins	11/06/06	
Robin D. Long v. UNC Greensboro	06 OSP 0684	Lassiter	06/27/06	
Reginald Hargrave v. Lexington City Schools	06 OSP 0669	Lassiter	11/02/06	
Rena Coltraine McLeod v. Guilford Co. Dept. of Public Health	06 OSP 0703	Wade	06/28/06	
Jan-Lee Wells v. Fayetteville State	06 OSP 0731	Gray	08/10/06	
Katrina Pittman v. DHHS, Division of Vocational Rehabilitation Services	06 OSP 0768	Wade	12/27/06	
Pamela Y. Turner v. DHHS, Whitaker School	06 OSP 0787	Wade	12/29/06	
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	
Walter Giese v. Onslow County Board of Health	06 OSP 0989	Gray	01/22/07	
Connie W. Williams v. DOC, Division of Prisons	06 OSP 1028	Morrison	12/28/06	
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	
Alonzo Vann v. DOT	06 OSP 1145	Wade	12/29/06	
Hattie Miller v. DOA, Food and Drug Protection Division	06 OSP 1278	Gray	02/06/07	
Tamra M. Burroughs v. Div. of Services for the Deaf and Hard of Hearing	06 OSP 1280	Elkins	09/07/06	
Febby Manuel v. DMA, DHHS	06 OSP 1282	Overby	01/29/07	
Melvin Daniels v. DOC	06 OSP 1299	Elkins	12/11/06	
Calvin D. Ellis v. Fayetteville State University	06 OSP 1336	Wade	12/08/06	
James D. Abrams v. Craven Co. DOT	06 OSP 1358	Gray	10/13/06	
Douise Morris v. DOC	06 OSP 1409	Gray	11/21/06	
Claudette Johnson v. NCSU Dining	06 OSP 1509	Gray	12/07/06	
Wendy Anderson v. Agricultural and Technical State University	06 OSP 1562	Elkins	01/05/07	
Melvin Sutton v. DOT	06 OSP 1657	Gray	11/21/06	
Sandra S. Denmark v. Dorothea Dix Hospital, DHHS	06 OSP 1685	Gray	01/16/07	
James Ray Merrill v. Broughton Hospital	06 OSP 1767	Lassiter	12/13/06	
Brenda Stroud v. DST	06 OSP 1722	Gray	01/18/07	
Darian Lee Hybl v. Halifax Community College (HCC)	06 OSP 1773	Gray	12/14/06	

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**CONTESTED CASE DECISIONS**

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Teresa S Weedon v. UNC-CH	06 OSP 1864	Elkins	02/22/07
Tabitha McAdoo v. UNCW	06 OSP 1881	Morrison	12/29/06
Todd Williams v. Appalachian State University	06 OSP 1895	Overby	02/05/07
Terry D. Moses v. DOT	06 OSP 2204	Gray	02/15/07
Tobias Guillaume v. Fayetteville State University	06 OSP 2257	Gray	02/16/07
Karen Denise Mikeal v. DHHS, Developmental Disabilities and Substance Abuse	06 OSP 2412	Gray	02/16/07
Anthony W. Allen v. Wake County Human Service	06 OSP 2416	Overby	02/14/07
Katharine V. Raleigh Ph.D, MPH v. Disability Determination Services General Counsel	07 OSP 0035	Overby	02/14/07

**SECRETARY OF STATE**

Regina H. Autry v. SOS	05 SOS 1774	Chess	11/28/06
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
Mary P. Lee v. SOS	06 SOS 1329	Mann	01/12/07
Gerald Haskins v. SOS, Notary Division	06 SOS 1605	Gray	01/03/07

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**UNC HOSPITALS**

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
Ricky Hayes v. UNC-CH	06 UNC 1426	Overby	12/01/06
Bonnie G. Cheek v. UNC-CH	06 UNC 1561	Gray	12/14/06
Regina H. Autry v. SOS			

**WELL CONTRACTOR'S CERTIFICATION COMMISSION**

Stuart Spruill, Remediation Equipment Specialist Inc v. Well Contractor's Certification Commission	06 WCC 193	Gray	02/28/07
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