

NORTH CAROLINA REGISTER

VOLUME 22 • ISSUE 02 • Pages 105 - 145

July 16, 2007

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PUBLISHED BY

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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.

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Fiscal Notes & Economic Analysis

Office of State Budget and Management
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Raleigh, North Carolina 27603-8005
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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@nclm.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 th day from publication in the Register
21:13	01/02/07	12/07/06	01/17/07	03/05/07	03/20/07	05/01/07	05/08	09/29/07
21:14	01/16/07	12/20/06	01/31/07	03/19/07	03/20/07	05/01/07	05/08	10/13/07
21:15	02/01/07	01/10/07	02/16/07	04/02/07	04/20/07	06/01/07	05/08	10/29/07
21:16	02/15/07	01/25/07	03/02/07	04/16/07	04/20/07	06/01/07	05/08	11/12/07
21:17	03/01/07	02/08/07	03/16/07	04/30/07	05/21/07	07/01/07	05/08	11/26/07
21:18	03/15/07	02/22/07	03/30/07	05/14/07	05/21/07	07/01/07	05/08	12/10/07
21:19	04/02/07	03/12/07	04/17/07	06/01/07	06/20/07	08/01/07	05/08	12/28/07
21:20	04/16/07	03/23/07	05/01/07	06/15/07	06/20/07	08/01/07	05/08	01/11/08
21:21	05/01/07	04/10/07	05/16/07	07/02/07	07/20/07	09/01/07	05/08	01/26/08
21:22	05/15/07	04/24/07	05/30/07	07/16/07	07/20/07	09/01/07	05/08	02/09/08
21:23	06/01/07	05/10/07	06/16/07	07/31/07	08/20/07	10/01/07	05/08	02/26/08
21:24	06/15/07	05/24/07	06/30/07	08/14/07	08/20/07	10/01/07	05/08	03/11/08
22:01	07/02/07	06/11/07	07/17/07	08/31/07	09/20/07	11/01/07	05/08	03/28/08
22:02	07/16/07	06/22/07	07/31/07	09/14/07	09/20/07	11/01/07	05/08	04/11/08
22:03	08/01/07	07/11/07	08/16/07	10/01/07	10/22/07	12/01/07	05/08	04/27/08
22:04	08/15/07	07/25/07	08/30/07	10/15/07	10/22/07	12/01/07	05/08	05/11/08
22:05	09/04/07	08/13/07	09/19/07	11/05/07	11/20/07	01/01/08	05/08	05/31/08
22:06	09/17/07	08/24/07	10/02/07	11/16/07	11/20/07	01/01/08	05/08	06/13/08
22:07	10/01/07	09/10/07	10/16/07	11/30/07	12/20/07	02/01/08	05/08	06/27/08
22:08	10/15/07	09/24/07	10/30/07	12/14/07	12/20/07	02/01/08	05/08	07/11/08
22:09	11/01/07	10/11/07	11/16/07	12/31/07	01/21/08	03/01/08	05/08	07/28/08
22:10	11/15/07	10/25/07	11/30/07	01/14/08	01/21/08	03/01/08	05/08	08/11/08
22:11	12/03/07	11/08/07	12/18/07	02/01/08	02/20/08	04/01/08	05/08	08/29/08
22:12	12/17/07	11/26/07	01/01/08	02/15/08	02/20/08	04/01/08	05/08	09/12/08

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

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

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

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

NOTICE OF TEXT

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

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

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

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

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

**EXECUTIVE ORDER NO. 119
EXTENDING EXECUTIVE ORDER NO. 77,
TEACHER ADVISORY COMMITTEE**

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. 77 regarding the Teacher Advisory Committee is hereby extended until June 15, 2009.

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 eleventh day of June 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.



U.S. Department of Justice

Civil Rights Division

JKT:RPL:ANS:maf
DJ 166-012-3
2007-2374
2007-3054

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

June 13, 2007

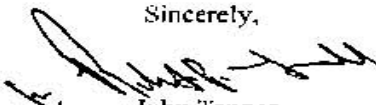
Mr. David A. Holec
City Attorney
P.O. Box 7207
Greenville, North Carolina 27835-7207

Dear Mr. Holec:

This refers to eight annexations (Ordinance Nos. 07-21, 07-22, 07-23, 07-24, 07-31, 07-32, 07-47, and 07-48 (2007)) and their designation to districts of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on April 17 and June 5, 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 these submissions 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 BOARD OF ELECTIONS

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

GARY O. BARTLETT
Executive Director

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

June 14, 2007

Mr. John Wallace
3605 Glenwood Avenue, Suite 240
Raleigh, NC 27612

Re: Request of the Bev Perdue Committee
Pursuant to N.C.G.S. § 163-278.23

Dear Mr. Wallace:

I am in receipt of your letter dated June 13, 2007, in which you request an advisory opinion pursuant to N.C.G.S. § 163-278.23 as to whether an executive officer of a principal may contribute to and sponsor a fundraising event for the Bev Perdue Committee during the Session.

As you provide in your letter, the Bev Perdue Committee is a political committee as defined in N.C.G.S. § 163-278.6(14), and is therefore subject to the provisions and regulations of Chapter 163, Article 22A of the North Carolina General Statutes. N.C.G.S. § 163-278.13B provides limitations on fundraising during a regular session of the North Carolina General Assembly. The Bev Perdue Committee would be considered a "limited contributee" as defined in this statute and therefore would be prohibited from receiving contributions from "limited contributors" during the Session. "Limited contributors" have been defined as North Carolina lobbyists, the agent of the lobbyist, the principal of the lobbyist and political committees that employ a lobbyist. Additional provisions contained in the ethics and lobbying statutes provide prohibitions on contributions from lobbyists at other times as well. However, the jurisdiction of the State Board of Elections is to administer Chapter 163, which only speaks to contributions by "limited contributors" during regular sessions of the North Carolina General Assembly.

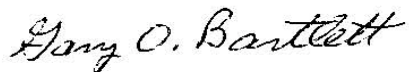
Given that the executive officer is not a North Carolina lobbyist or the agent of the lobbyist and is not defined as the principal as provided in N.C.G.S. § 120C-100(11), there would be no prohibition on this individual contributing to the Bev Perdue Committee during the Session. As you have noted, the contributor and Committee would be subject to the contribution limitations of N.C.G.S. § 163-278.13.

This opinion is based upon the facts as stated in your letter of June 13, 2007. If those facts should change, you should evaluate whether this opinion is still applicable and binding. You may wish to contact the ethics and lobbying divisions to ensure they do

LOCATION: 506 NORTH HARRINGTON STREET • RALEIGH, NORTH CAROLINA 27603 • (919) 733-7173

not have any rulings that would conflict with this opinion. Finally, this opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,



Gary O. Bartlett

cc: Julian Mann, III, Codifier of Rules



STATE BOARD OF ELECTIONS

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

GARY O. BARTLETT
Executive Director

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

June 15, 2007

Mr. Jay Reiff
The Richard Moore Committee
Post Office Box 749
Raleigh, NC 27602

Re: Request of The Richard Moore Committee
Pursuant to N.C.G.S. § 163-278.23

Dear Mr. Reiff:

I am in receipt of your letter dated June 1, 2007, in which you request an advisory opinion pursuant to N.C.G.S. § 163-278.23 as to whether the hourly reimbursement rates you have submitted for the future use of aircraft by The Richard Moore Committee are acceptable.

Based on the information provided in your letter as to the type, make, model and year of each of the aircraft you may use for campaign travel, we find the proposed hourly rates to be acceptable. In arriving at this conclusion, our staff researched the information provided and compared operating costs for similar aircraft.

This opinion is based upon the information provided in your letter of June 1, 2007. If the information should change, you should evaluate whether this opinion is still applicable and binding. Finally, this opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,

Gary O. Bartlett

Gary O. Bartlett

cc: Julian Mann, III, Codifier of Rules

LOCATION: 506 NORTH HARRINGTON STREET • RALEIGH, NORTH CAROLINA 27603 • (919) 733-7173

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 Commission for Health Services intends to amend the rule cited as 10A NCAC 41A .0401.

Proposed Effective Date: November 1, 2007

Public Hearing:

Date: August 13, 2007

Time: 2:00 p.m.

Location: Cardinal Room, 5605 Six Forks Road, Raleigh, NC

Reason for Proposed Action: During 2006, the Advisory Committee on Immunization Practices (ACIP) added the newly FDA approved Tdap (tetanus/ diphtheria/ pertussis) vaccine for adolescents to the childhood immunization schedule [MMWR 2006/55 (RR03); 1-43], and revised the recommended administration schedule of mumps vaccine in order to further improve protection against the disease [ACIP resolution 6/06-3, June 29, 2006]. These changes to 10A NCAC 41A .0401 are proposed to ensure that our rules are consistent with the current recommendations of the ACIP.

Procedure by which a person can object to the agency on a proposed rule: Objections may be submitted in writing to Chris G. Hoke, JD, the Rule-Making Coordinator, during the public comment period. Additionally, objections may be made verbally and/or in writing at the public hearing for this rule.

Comments may be submitted to: Chris G. Hoke, JD, 1931 Mail Service Center, Raleigh, NC 27699-1913, phone (919) 707-5006, email Chris.Hoke@ncmail.net

Comment period ends: September 14, 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 41 – HEALTH: EPIDEMIOLOGY

SUBCHAPTER 41A – COMMUNICABLE DISEASE CONTROL

SECTION .0400 - IMMUNIZATION

10A NCAC 41A .0401 DOSAGE AND AGE REQUIREMENTS FOR IMMUNIZATION

(a) Every individual in North Carolina required to be immunized pursuant to G.S. 130A-152 through 130A-157 shall be immunized against the following diseases by receiving the specified minimum doses of vaccines by the specified ages:

- (1) Diphtheria, tetanus, and whooping cough vaccine -- five doses: three doses by age seven months and two booster doses, one by age 19 months and the second on or after the fourth birthday and before enrolling in school (K-1) for the first time. However:

(A) ~~An individual who has attained his or her seventh birthday without having been immunized against whooping cough shall not be required to be immunized with a vaccine preparation containing whooping cough antigen; Individuals who receive the first booster dose of diphtheria, tetanus, and whooping cough vaccine on or after the fourth birthday shall not be required to have a second booster dose;~~

(B) ~~Individuals who receive the first booster dose of diphtheria, tetanus, and whooping cough vaccine on or after the fourth birthday shall not be required to have a second booster dose; Individuals attending school, college or university or those who began their tetanus/diphtheria toxoid series on or after the age of seven years, or those adults who cannot~~

- provide documentation of their primary series, shall be required to have three doses of tetanus/diphtheria toxoid, one of which must have been within the last 10 years; for individuals entering college or university for the first time or after July 1, 2008, one of these doses must have been a tetanus/diphtheria/pertussis (Tdap) preparation, unless the individual has received a booster dose of tetanus/diphtheria toxoid within the last 10 years. A dose of Tdap is not required for any student over the age of 64 years;
- ~~(C) — Individuals attending school, college or university or who began their tetanus/diphtheria toxoid series on or after the age of seven years shall be required to have three doses of tetanus/diphtheria toxoid of which one must have been within the last 10 years; A booster dose of Tdap vaccine is required for all children entering 6th grade or those who have reached 12 years of age on or after August 1, 2008, if 5 years or more have passed since the last dose of tetanus-containing vaccine.~~
- ~~(D) — The requirements for booster doses of diphtheria, tetanus, and whooping cough vaccine shall not apply to individuals who enrolled for the first time in the first grade before July 1, 1987.~~
- (2) Poliomylitis vaccine--four doses: two doses of trivalent type by age five months; a third dose trivalent type before age 19 months, and a booster dose of trivalent type before enrolling in school (K-1) for the first time. However:
- (A) An individual attending school who has attained his or her 18th birthday shall not be required to receive polio vaccine;
- (B) Individuals who receive the third dose of poliomyelitis vaccine on or after the fourth birthday shall not be required to receive a fourth dose;
- (C) The requirements for booster doses of poliomyelitis vaccine shall not apply to individuals who enrolled for the first time in the first grade before July 1, 1987.
- (3) Measles (rubeola) vaccine--two doses of live, attenuated vaccine administered at least 28 days apart: one dose on or after age 12 months and before age 16 months and a second dose before enrolling in school (K-1) for the first time. However:
- (A) An individual who has been documented by serological testing to have a protective antibody titer against measles shall not be required to receive measles vaccine;
- (B) An individual who has been diagnosed prior to January 1, 1994, by a physician licensed to practice medicine as having measles (rubeola) disease shall not be required to receive measles vaccine;
- (C) An individual born prior to 1957 shall not be required to receive measles vaccine;
- (D) The requirement for a second dose of measles vaccine shall not apply to individuals who enroll in school (K-1) or in college or university for the first time before July 1, 1994.
- (4) Rubella vaccine--one dose of live, attenuated vaccine on or after age 12 months and before age 16 months. However:
- (A) An individual who has been documented by serologic testing to have a protective antibody titer against rubella shall not be required to receive rubella vaccine;
- (B) An individual who has attained his or her fiftieth birthday shall not be required to receive rubella vaccine except in outbreak situations;
- (C) An individual who entered a college or university after his or her thirtieth birthday and before February 1, 1989 shall not be required to meet the requirement for rubella vaccine except in outbreak situations.
- (5) Mumps vaccine--one dose of live, attenuated vaccine administered on or after age 12 months and before age 16 ~~months~~ months and a second dose before enrolling in school (K-1), college or university for the first time. However:
- (A) An individual born prior to 1957 shall not be required to receive mumps vaccine;
- (B) The requirements for mumps vaccine shall not apply to individuals who enrolled for the first time in the first grade before July 1, 1987 or in college or university before July 1, ~~1994, 1994;~~
- (C) An individual who has been documented by serological testing to have a protective antibody titer against mumps shall not be required to receive mumps ~~vaccine~~ vaccine;

- (D) An individual entering school (K-1), college or university prior to July 1, 2008 shall not be required to receive a second dose of mumps vaccine.
- (6) *Haemophilus influenzae, b*, conjugate vaccine--three doses of HbOC or PRP-T or two doses of PRP-OMP before age seven months and a booster dose of any type on or after age 12 months and by age 16 months. However:
- (A) Individuals born before October 1, 1988 shall not be required to be vaccinated against *Haemophilus influenzae, b*;
- (B) Individuals who receive the first dose of *Haemophilus influenzae, b*, vaccine on or after 12 months of age and before 15 months of age shall be required to have only two doses of HbOC, PRP-T or PRP-OMP;
- (C) Individuals who receive the first dose of *Haemophilus influenzae, b*, vaccine on or after 15 months of age shall be required to have only one dose of any of the *Haemophilus influenzae* conjugate vaccines, including PRP-D;
- (D) No individual who has passed their fifth birthday shall be required to be vaccinated against *Haemophilus influenzae, b*.
- (7) Hepatitis B vaccine--three doses: one dose by age three months, a second dose before age five months and a third dose by age 19 months. However:
- (A) The last dose of the hepatitis B vaccine series shall not be administered prior to 24 weeks of age;
- (B) Individuals born before July 1, 1994 shall not be required to be vaccinated against hepatitis B.
- (8) Varicella vaccine--1 dose administered on or after age 12 months and before age 19 months. However:
- (A) An individual with a laboratory test indicating immunity or with a history of varicella disease, documented by a health care provider, parent, guardian or person in loco parentis shall not be required to receive varicella vaccine. Serologic proof of immunity or documentation of previous illness must be presented whenever a certificate of immunization is required by North Carolina General Statute. The documentation shall include the name of the individual with a history of varicella disease and the approximate date or age of infection. Previous illness shall be documented by:
- (i) a written statement from a health care provider documented on or attached to the lifetime immunization card or certificate of immunization; or
- (ii) a written statement from the individual's parent, guardian or person in loco parentis attached to the lifetime immunization card or certificate of immunization.
- (B) An individual born prior to April 1, 2001 shall not be required to receive varicella vaccine.
- (9) The healthcare provider shall administer immunizations in accordance with this Rule. However, if a healthcare provider administers vaccine up to and including the fourth day prior to the required minimum age, the individual dose is not required to be repeated. Doses administered more than 4 days prior to the requirements are considered invalid doses and shall be repeated.
- (b) The State Health Director may suspend temporarily any portion of the requirements of these immunization rules due to emergency conditions, such as the unavailability of vaccine. The Department shall give notice in writing to all local health departments and other providers currently receiving vaccine from the Department when the suspension takes effect and when the suspension is lifted. When any vaccine series is disrupted by such a suspension, the next dose shall be required to be administered within 90 days of the lifting of the suspension and the series resumed in accordance with intervals determined by the most recent recommendations of the Advisory Committee on Immunization Practices.
- Authority G.S. 130A-152(c); 130A-155.1.*
- *****
- Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to adopt the rules cited as 10A NCAC 71R .0405, .0605 - .0606, amend the rules cited as 10A NCAC 67A .0107, .0202; 71R .0101, .0103, .0201, .0303, .0401 - .0404, .0501 - .0503, .0505 - .0506, .0601 - .0604, .0701 - .0704, .0801, .0803, .0907 - .0908, .0916; 71V .0202, and repeal the rules cited as 10A NCAC 71R .0302, .0504.*
- Proposed Effective Date:** November 1, 2007
- Public Hearing:**
Date: September 19, 2007
Time: 10:00 a.m.
Location: Room 832, Albemarle Building, 325 North Salisbury Street, Raleigh, NC 27699

Reason for Proposed Action:

10A NCAC 67A .0107, .0202; 71R .0101, .0103, .0201, .0302 - .0303, .0401 - .0404, .0501 - .0506, .0601 - .0604, .0701 - .0704, .0801, .0803, .0907 - .0908, .0916 – The Adult and Family Services of the Division of Social Services merged with Division of Aging in September 2003. Responsibility for updating the Family Services Manual, Volume VI, Chapter II: Conditions for the Provision of Services was assigned to DAAS. The manual was quite old with the last changes occurring in April 1986. DAAS created a work group comprised of staff from county departments of social services, the Division of Social Services, Division of Child Development, Division of Deaf and Hard of Hearing Services, and Division of Aging and Adult Services representatives. The work group met over a two-year span to create a new manual and update relevant APA codes. The draft of the new manual has been presented to Adult Services – Older and Disabled Committee and the Children and Their Families Services Committee policy committees of the NC Association of County Directors of Social Services and the committees have approved the changes. Additionally, drafts of the rule changes were presented to the Division of Social Services, the Division of Child Development, and the Division of Deaf and Hard of Hearing Services for their concurrence. The current manual is 21 years old and outdated. Much of the policy requirements have no underwriting in APA code or in the general statutes. Further, much of the existing code no longer meets the current standards for Administrative Procedures Act. For instance, code must now be written in the active tense rather than the passive tense; code must clearly state the requirements against which agencies will be evaluated, rather than reference a manual; etc.

10A NCAC 71V .0202 – The Crisis Intervention Program provides assistance to eligible families that are experiencing a heating or cooling emergency. This rule defines the maximum assistance amounts that can be authorized through the Crisis Intervention Program. This request is to increase the maximum allowable assistance from \$300 per state fiscal year to up to \$600 per state fiscal year, and to remove the exception language that the maximum yearly assistance is increased upon receipt of emergency contingency funds released at the federal level. This amendment is requested to allow county departments of social services to more effectively resolve heating or cooling crisis situations. Energy prices have risen steadily in recent years; the current assistance cap of \$300 often limits the capacity of the agency to authorize enough funds to keep the heat or air conditioning service from being terminated. Many heating oil companies require a minimum order to deliver oil that often exceeds the current \$300 limit. This amendment will allow authorization of up to \$600 in state fiscal year to alleviate a heating or cooling crisis. County departments of social services will be able to streamline the provision of crisis assistance from a single source rather than piecing together the funds from several places when the amount needed is greater than \$300.

Procedure by which a person can object to the agency on a proposed rule: Carlotta Dixon, NC Division of Social Services, 325 North Salisbury Street, 2401 Mail Service Center, Raleigh, NC 27699-2401, phone (919) 733-3055, email Carlotta.dixon@ncmail.net

Comments may be submitted to: Carlotta Dixon, NC Division of Social Services, 325 North Salisbury Street, 2401 Mail Service Center, Raleigh, NC 27699-2401, phone (919) 733-3055, fax (919) 733-9386, email Carlotta.dixon@ncmail.net

Comment period ends: September 19, 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 67 – SOCIAL SERVICES - PROCEDURES

SUBCHAPTER 67A – GENERAL ADMINISTRATION

SECTION .0100 - ADMINISTRATION

10A NCAC 67A .0107 FORMS

(a) In order to comply with the budgeting, planning and reimbursement requirements of G.S. Chapter 108A and 45 CFR 228.17, each county department of social services shall complete all forms specified and approved by the Department of ~~Human Resources~~ Health and Human Services.

(b) The forms, initial service client information record, and service client information change notice, shall be completed by the case manager for each client requesting social services. All required fields must be completed and required fields not properly completed will be considered an error and returned to the worker. Clients may refuse to provide their social security numbers and cannot be denied benefits, but the social security numbers, or alternate unique identifiers as assigned by county departments of social services or the North Carolina Division of Social Services, numbers of case managers shall be required in order to allocate costs for federal financial participation.

(c) The form, worker daily report of services to clients, shall be completed by the county services workers and division of services for the blind services workers. This form will provide information to meet reporting requirements at the federal, state and local levels and will provide the basis for county reimbursement. All required fields must be completed and

required fields not properly completed will be considered an error and returned to the worker. The social security numbers or alternate unique identifiers as assigned by county departments of social services or the North Carolina Division of Social Services of service workers shall be required in order to allocate costs for federal financial participation.

(d) Further information on these forms and their use is contained in the services information system (SIS) user's manual. Copies of this manual are available from Division of Social Services, 325 North Salisbury Street, 2415 Mail Service Center, Raleigh, North Carolina 27699-2415.

Authority G.S. 143B-10(j); 108A-92; 45 CFR 228.17; 5 USC 552a.

10A NCAC 67A .0202 EXCEPTIONS FOR NOTIFICATION

~~With respect to social services, no~~ Except as otherwise provided by applicable program specific federal regulations, the county department of social services does not need to provide notification of action to the client ~~is required~~ when:

- (1) ~~the service recipient dies;~~ the agency is terminating services based on factual information confirming the death of the client;
- (2) the provision of protective services to children or protective services—services-evaluation to adults is initiated or terminated;
- (3) the county department of social services has applied for services in behalf of an individual for whom they have custody or guardianship; guardianship for adults;
- (4) the county department of social services has applied for services in behalf of an individual who is incompetent— ~~or incapacitated.~~ incapacitated; or
- (5) the service is terminated at the end of a period of eligibility and the recipient has not requested that the services be continued.

Authority G.S. 108A-25; 143B-153; 45 C.F.R. 205.10.

CHAPTER 71 – ADULT AND FAMILY SUPPORT

SUBCHAPTER 71R – SOCIAL SERVICES BLOCK GRANT

SECTION .0100 - SERVICES TO BE PROVIDED

10A NCAC 71R .0101 SOCIAL SERVICES BLOCK GRANT FUNDED SERVICES

The following services ~~Services which~~ may be reimbursed with Social Services Block Grant ~~Funds are:~~ Funds:

- (1) adjustment services for the blind or visually impaired;
- (2) adoption services;
- (3) ~~adult developmental activity programs for individuals who are substantially mentally retarded or severely physically disabled;~~
- (4)(3) adult placement services;

- (5) ~~before/after school and summer developmental day centers for children who are mentally retarded;~~
- (6)(4) child day-care services;
- (5) children and adults needing mental health, developmental disability or substance abuse services;
- (7) ~~chore services for the blind;~~
- (8)(6) community living services;
- (9)(7) day care services for adults;
- (10) ~~day treatment programs for children and adolescents who are emotionally disturbed;~~
- (11)(8) delinquency prevention services;
- (12) ~~developmental day centers for preschool children who are mentally retarded;~~
- (13) ~~early childhood intervention services for children who are mentally retarded or at high risk for mental retardation;~~
- (14)(9) employment and training support services;
- (15)(10) family planning services;
- (11) family preservation services;
- (12) family support services;
- (16)(13) foster care services for adults;
- (17)(14) foster care services for children;
- (18)(15) health support services;
- (16) home health services (includes skilled nursing, physical therapy, speech therapy, occupational therapy, medical social services and nutrition care);
- (19)(17) housing and home improvement services;
- (20)(18) individual and family adjustment services;
- (21)(19) in-home aide services (levels I through IV); ~~services;~~
- (20) in-home aide services for the blind;
- (21) intensive family preservation services;
- (22) ~~nutrition services;~~
- (23) ~~outpatient services for individuals of all disability groups;~~
- (24) ~~partial hospitalization services for adults and elderly individuals who are acutely mentally ill or are substance abusers;~~
- (25)(22) personal and family counseling;
- (26)(23) preparation and delivery of meals;
- (27)(24) problem pregnancy services;
- (28)(25) protective services for adults;
- (29)(26) protective services for children;
- (30)(27) residential treatment for the emotionally disturbed;
- (31) ~~residential treatment programs for children and adolescents who are emotionally disturbed;~~
- (32) ~~residential treatment/rehabilitation programs for individuals who are alcohol or other drug abusers;~~
- (33)(28) respite care services;
- (34) ~~social setting and non-hospital medical detoxification services for individuals who are alcoholics;~~
- (35) ~~transitional residence programs for adult and elderly individuals who are mentally ill;~~

~~(36)(29)~~ transportation ~~services; services; and~~
~~(37)(30)~~ youth services.

Authority G.S. 108A-71; 143B-10; 143B-153.

10A NCAC 71R .0103 MANDATED AND OPTIONAL SERVICES

(a) The following services funded with Social Services Block Grant funds shall be made available in each county. These services are:

- (1) adjustment services for the blind and visually impaired;
- (2) adoption services;
- (3) ~~child day-care services to support employment, provided in conjunction with protective services for children or to support training leading to employment; services;~~
- (4) in-home aide services for the blind;
- (5) family planning services;
- (6) adult placement services;
- (7) foster care services for adults;
- (8) foster care services for children;
- (9) ~~health support services; services (sterilization component is optional);~~
- (10) individual and family adjustment services;
- (11) in-home aide services;
- (12) protective services for adults;
- (13) protective services for children.

(b) With the exception of those mandated services specified in Paragraph (a) of this Rule, all other services shall be considered optional for purposes of the Social Services Block Grant.

Authority G.S. 143B-153.

SECTION .0200 - ADMINISTRATIVE REQUIREMENTS

10A NCAC 71R .0201 FISCAL MANAGEMENT

The fiscal requirements for the Social Services Block Grant (SSBG) are as follows:

- (1) Allocation of Funds. Any allocation of SSBG Funds made directly to Department of Health and Human Services divisions or public or private agencies by the Department of Health and Human Services is based on the following criteria:
 - (a) identified need for the service program as specified in Rule .0101 of this Subchapter;
 - (b) established priorities of the department as specified in Rules .0101 and .0103 of this Subchapter;
 - (c) allowability of the program under federal and state rules and regulations as specified in Rule .0102 of this Subchapter and as established by the General Assembly;
 - (d) assessed or potential performance of the service program as specified in Rule .0102 of this Subchapter;

- (e) resource utilization as specified in this Rule and as established by the General Assembly; and
- (f) availability of funds necessary to secure federal financial participation as specified in this Rule and as established in federal regulations and by the General Assembly.

(2) The amount of SSBG funds allocated by the Department of Health and Human Services through the Division of Social Services to each county department of social services will be based on the average of the following two factors applied to the total amount of SSBG funds available for county departments of social services:

- (a) the percentage of the statewide population residing within each county; and
- (b) the percentage of the statewide unduplicated count of SSI recipients, food stamp recipients, TANF recipients and medicaid eligible individuals residing in each county.

(3) Matching Rates for Financial Participation. The following matching rates apply to financial participation in services funded by the SSBG:

- (a) 75 percent financial participation - financial participation for provision of any service listed in Rule .0201 of this Subchapter is available at a rate of 75 percent of the cost of providing the service;
- (b) 87-1/2 percent financial participation - financial participation for provision of in-home services - day care services for adults, preparation and delivery of meals, housing and home improvement services, and in-home aide services (levels I through IV) -- is available at a rate of 87-1/2 percent of the cost of providing the service;
- (c) 90 percent financial participation - financial participation for provision of family planning services and the family planning component of health support services is available at a rate of 90 percent of the cost of providing the service;
- (d) 100 percent financial participation - financial participation for provision of ~~child day-care services and developmental day services for children~~ is available at a rate of 100 percent of the cost of services for those child ~~day-care~~ services reimbursed from an agency's

designated 100 percent day care allocation.

- (4) Transferred Funds. If funds from the Temporary Assistance for Needy Families (TANF) Block Grant are transferred to the SSBG for services previously funded by SSBG, the matching rates outlined in Item (3) of this Rule shall apply. If funds from TANF are transferred to SSBG for services not previously funded by SSBG, the matching rates as outlined in Item (3) of this Rule shall not apply.

Authority G.S. 143B-153.

SECTION .0300 – GENERAL CONDITIONS FOR PROVISION OF SERVICES

10A NCAC 71R .0302 FAMILY SERVICES MANUAL AND POLICY DIRECTIVES

~~In order to set forth methods and procedures for applying policies which govern the social services programs, the Division of Social Services has developed and publishes the Family Services Manual, policy directives and forms. Copies of the manual, directives, and required forms may be obtained by submitting a written request to the Division of Social Services, Adult and Family Services Section, 325 N. Salisbury Street, 2405 Mail Service Center, Raleigh, North Carolina, 27699-2405.~~

Authority G.S. 143B-153; 1985 S.L., c. 479, s. 93.

10A NCAC 71R .0303 RECIPIENT SERVICE RECORDS

(a) ~~An agency must open and maintain a~~ service record ~~must be opened and maintained~~ for each individual for whom an application for social services is made and for each recipient of protective services. Recipient service records must be documented and maintained in accordance with procedures set forth in ~~the Family Services Manual, as described in Rule .0302 of this Subchapter.~~

(b) Recipient service records shall be treated in accordance with policies governing confidentiality and access to client records as set forth in 10A NCAC 69.

(c) The service record must be updated and documented as necessary to reflect changes in a recipient's circumstances and to keep all information in the record current.

(d) All changes must be documented in the service record. These changes include addition of a service to a recipient's service plan, termination of service, redetermination of eligibility, changes in the recipient's circumstances that affect his/her need for or use of services, and any other action taken by the agency that affects the recipient's receipt of a service and termination of the recipient's service.

Authority G.S. 143B-153.

SECTION .0400 - APPLICATION FOR SOCIAL SERVICES

10A NCAC 71R .0401 APPLICATION REQUIREMENT
All applicants for social services must initiate entry into the social services system via a written application except that no application shall be required for the following:

- (1) evaluation of the need for protective services for adults;
- (2) guardianship services for adults;
- ~~(2)(3)~~ protective services for children;
- ~~(3)(4)~~ foster care services for children;
- ~~(4)(5)~~ employment program services.

Authority G.S. 143B-153.

10A NCAC 71R .0402 OPPORTUNITY TO APPLY

~~Each An individual wishing to do so has the right to may apply for social services and has a right to have his his/her application acted upon promptly no more than 30 calendar days from the application date.~~

Authority G.S. 143B-153.

10A NCAC 71R .0403 WHO MAY APPLY

Application for social services may be made ~~by any of the following individuals:~~by:

- (1) ~~by an individual adult or emancipated minor in his on his/her own behalf or in on behalf of others in his family, his/her except that each adult who is not incompetent or incapacitated must make his own application except as provided in Subparagraph (3) of this Rule; family;~~
- (2) a parent, custodian or guardian acting on behalf of a minor;
- ~~(2)(3)~~ by someone acting responsibly for the applicant if the applicant is believed to be incompetent or incapacitated; or
- ~~(3)(4)~~ by agency staff in on behalf of an individual in the event of an emergency, or when there is some urgency to provide services, or if arranging for the individual to make application would create a barrier to the receipt of services.

Authority G.S. 143B-153.

10A NCAC 71R .0404 RESIDENCY

In order to apply for social services, individuals must be residents of North Carolina. The definition of residency is found in G.S. 108A-24(6).

~~Application for social services may be made by either of the following methods:~~

- ~~(1) in person, at the agency's office, on the form designated by the agency; or~~
- ~~(2) through a written request which identifies the services and is signed by the applicant, recipient, or his authorized representative and mailed to the agency.~~

Authority G.S. 143B-153.

10A NCAC 71R .0405 APPLICATION DOCUMENTATION REQUIREMENTS

(a) The application for services shall be made through a form provided by the Department of Health and Human Services or an equivalent form.

(b) When the request is made through a mailed or electronically transmitted request for service(s), the agency shall transfer the information to the application form and maintain the written request in the service record.

(c) The application form shall include:

- (1) identification of the individual for whom the service(s) is (are) requested;
- (2) identification of the specific service(s) requested for both initial requests and additional requests;
- (3) date of the request;
- (4) signature of the applicant or his/her representative, the date of the signature and for situations where the person making the application executes his/her signature by making a mark (X), the signature of a witness;
- (5) signature of the social worker determining eligibility and date that determination was made; and
- (6) documentation that the application is voluntary and that the individual has been informed of the following rights and responsibilities associated with applications for social services:

(A) The right to request and obtain a fair hearing if his/her application is not acted on as required by the rules of this Subchapter or if (s)he disagrees with the agency' action in response to his/her application for services;

(B) the right to confidentiality and that the information given to the agency will be confidential and not released without written consent except for information necessary to establish eligibility, information that may be revealed in the course of agency audits and monitoring and as otherwise required by law; and

(C) his/her responsibilities to provide accurate and complete information necessary to determine eligibility and, if requested, to provide documentation of such information; to notify the agency within five days of any change in address, employment, income, living arrangement or family size; and that failure to provide accurate and complete information may subject him/her to prosecution.

(d) The date of the application is when the applicant signs the application, the date of request for guardianship for adults or the

date of the report for Adult Protective Services or Children's Protective Services.

(e) When a signature of the applicant or his/her representative is not obtained because obtaining the signature would create a barrier to the receipt of the service, the social worker shall document the request indicating the service(s) requested, the date of the request and the circumstances that prevented the worker from obtaining the signature.

(f) In the case of applications for Heath Support Services-Family Planning Component, the signature of the applicant must not be waived.

Authority G.S. 143B-153.

SECTION .0500 - CONDITIONS OF ELIGIBILITY

10A NCAC 71R .0501 BASIC ELIGIBILITY CRITERIA

In addition to the requirements of Section .0600 of this Subchapter, in order for an individual to be determined eligible to receive services funded under the Social Services Block Grant (Title XX), it must be established that ~~he (s)he~~ is eligible on the basis of need as specified in the target population for the services requested as set forth in ~~10A NCAC 71~~ this Chapter except that for purposes of providing child day-care services, transportation services, or the federally funded sterilization resource item of health support services, eligibility must also be determined on the basis of ~~his~~ his/her income maintenance or income eligible status.

Authority G.S. 143B-153.

10A NCAC 71R .0502 INCOME MAINTENANCE STATUS

(a) For an individual to be eligible on the basis of income maintenance status, it must be established that the individual is either:

- (1) a current recipient of ~~Aid to Families with Dependent Children (AFDC)~~ of Work First Family Assistance, Benefit Diversion; or Work First Services for Low Income Families (below 200% of the Federal poverty level) as defined in G.S. 108A-24; or a person whose needs were taken into account in determining the needs of AFDC-Work First recipients;
- (2) a current recipient of Supplemental Security Income (~~SSI~~); or (SSI);
- (3) an individual who receives Optional State Supplementation payments from the State, known as State/County Special Assistance for Adults in North Carolina; or
- (~~3~~)(4) a child with respect to whom foster care maintenance payments or adoption assistance payments are made under Title IV-E of the ~~Social Security Act~~ Public Law 96-272.

(b) An individual whose eligibility is based on income maintenance status is eligible for any service funded under the Social Services Block Grant (Title XX) that is available in the county in which ~~he (s)he~~ lives.

Authority G.S. 143B-153.

10A NCAC 71R .0503 INCOME ELIGIBLE STATUS

(a) Individuals other than those eligible on the basis of income maintenance status may be determined eligible on the basis of that individual's income unit's monthly gross income.

(b) To determine income eligibility, it is necessary to ~~determine~~ determine the number of individuals who reside in the same ~~household; household~~ who are financially obligated to one another (the income ~~unit~~); unit) and the amount of the gross monthly income available to them.

(c) The following are defined as separate income units for purposes of determining eligibility and fees.

- (1) Biological or adoptive parents and their minor children;
- (2) A minor parent and his or her children;
- (3) Each adult, whether related or unrelated, other than spouses;
- (4) Children living with adults other than their biological or adoptive parents;
- (5) Minors who are emancipated through a court proceeding, marriage or participation in the armed services.

(d) ~~Income that is considered in computing monthly gross income is listed in the Family Services Manual, as described in Rule .0302 of this Subchapter. Sources of income which shall be considered for purposes of computing family monthly gross income are:~~

- (1) Gross earned wages or salary (earnings received for work performed as an employee, including wages, salary, commissions, tips, piece-rate payments, and cash bonuses earned, before any deductions are made for taxes, bonds, pensions, union dues);
- (2) Adjusted gross income from taxable self-employment income;
- (3) Social Security benefits (includes Social Security pensions, survivors' benefits and permanent disability insurance payments);
- (4) Dividends; interest (on savings or bonds); income from estates or trusts; royalties; adjusted gross rental income on houses, stores or other property;
- (5) Pensions and annuities paid directly by an employer or union or through an insurance company;
- (6) Workers' compensation for injuries incurred at work;
- (7) Unemployment insurance benefits;
- (8) Alimony (includes direct and indirect payments, such as rent and utility payments);
- (9) Child support, direct or indirect;
- (10) Pensions paid to veterans or survivors of deceased veterans;
- (11) On-the-Job Training (OJT) payments;
- (12) Job Training Partnership Act (JTPA) payments made to an adult;
- (13) AmeriCorps stipend (living allowance);

(14) Armed Forces pay (only the amounts taxable, such as base pay);

(15) Work release payments;

(16) Cherokee Tribal Per Capita Income paid to adult family members;

(17) Work-study payments, if the income is from a program not administered under Title IV of the Higher Education Act or the Bureau of Indian Affairs; and

(18) Recurring cash contributions paid directly to the parent.

(e) Sources of income that shall not be counted when computing family gross monthly are :

- (1) Work First Family Assistance;
- (2) Supplemental Security Income (SSI);
- (3) Lump sum payments (e.g. Social Security benefits, workers' compensation, alimony, veteran's benefits, HUD);
- (4) Foster care assistance payments;
- (5) Adoption Assistance payments;
- (6) Payments/trust funds under the Indian Claims Commission;
- (7) Payments from the Alaska Native Claims Settlement Act;
- (8) Income from sale of personal assets (stocks, bonds, house, car, and insurance);
- (9) Bank withdrawals;
- (10) Money borrowed;
- (11) Tax refunds;
- (12) Gifts or contributions;
- (13) In-kind contributions from non-legally responsible adults;
- (14) Emergency Assistance, Low Income Energy Assistance Program, Crisis Intervention Program, General Assistance, or Progress Energy Share Program payments;
- (15) Section VIII housing subsidy;
- (16) Capital gains;
- (17) Value of food stamp benefits allotted under the Food Stamp Act of 1977;
- (18) Free and reduced lunch program;
- (19) Any and all food subsidy programs;
- (20) Relocation/Acquisition Act payments;
- (21) Earnings of a dependent child under 18 years of age, unless a minor parent of a child needing child care;
- (22) Loans, grants, scholarships, money received through job training, Pell or Carl Perkins grants;
- (23) Home produce utilized for household consumption;
- (24) Volunteers in Service to America (VISTA) earnings;
- (25) Payments received as Earned Income Tax Credits or Dependent Care Credits;
- (26) All subsidized housing and housing allotments, including military housing allotments. If rent is provided directly to the landlord, it shall not be counted. If, however,

- the rent monies are paid to the individual, it shall be counted as income;
- (27) Money received from an employer as an employee benefit for child care; and
- (28) Work-study payments, if the income is from the College Work-Study Program administered under Title IV of the Higher Education Act or the Bureau of Indian Affairs. (Likewise, if the income from college work-study goes directly to the college, it is not counted as income.)

Authority G.S. 50-13.4; 110.129(2); 143B-153.

10A NCAC 71R .0504 DEFINITION OF ESTABLISHED INCOME

The established income is 150% of the Federal Poverty Level of 1992 set by the federal government and printed in Volume 57, No. 31, page 5456 of the Federal Register of 1992. A copy of page 5456 of Volume 57, No. 31 of the Federal Register may be obtained from the Planning and Information Section, N.C. Division of Social Services, 325 N. Salisbury Street, Raleigh, NC 27603, (919) 733-4530, at a cost of ten cents (\$.10) at the time of adoption of this Rule.

Authority G.S. 143B-153.

10A NCAC 71R .0505 MAXIMUM INCOME LEVELS FOR SERVICES

- (a) Sixty Percent of Established Income-the Federal Poverty Guidelines. An individual whose income unit's gross monthly income is less than 60 percent of the state's established income, adjusted according to size of the income unit as defined in Rule .0503 of this Section, Federal Poverty Guidelines as published annually in the Federal Register by the U.S. Department of Health and Human Services (HHS) may be is eligible for transportation services or the federally funded sterilization resource item of health support services funded under the Social Services Block Grant (Title XX) if available in the county in which ~~he~~ (s)he lives.
- (b) Eighty Percent of Established Income-the Federal Poverty Guidelines. An individual whose income unit's gross monthly income is ~~as much as 60 percent but~~ less than 80 percent of the state's established income, adjusted according to size of the income unit as defined in Rule .0503 of this Section, Federal Poverty Guidelines may be is eligible for the federally funded sterilization resource item of health support services if available in the county in which ~~he lives~~ (s)he lives and if conditions for payment as set out in 10A NCAC 71J .0105 have been satisfied.

Authority G.S. 143B-153(2a)b.

10A NCAC 71R .0506 WITHOUT REGARD TO INCOME STATUS

Individuals ~~may be determined are~~ eligible for the following services on the basis of need for the service and without regard to their income:

- (1) adjustment services for the blind and visually impaired;
- (+)(2) adoption services;

- (2)(3) adult placement services;
- (3)(4) foster care services for children;
- (4)(5) protective services for adults;
- (5)(6) protective services for children;
- (6)(7) child day-care services, ~~transportation services, and the federally funded sterilization resource item of health support services funded under the Social Services Block Grant (Title XX)~~ that are needed in conjunction with protective services may be provided without regard to income during the first 12 months that protective services are provided if such service is available in the county in which the individual lives and the agency has received a report pursuant to G.S. 7A-543 or G.S. 108A-102, has initiated protective services in accordance with program policies, and has determined that such other services are needed to support the provision of protective services; when needed to support child protective services, child welfare services and for children receiving foster care services;
- (7)(8) delinquency prevention ~~(including residential care);~~ services;
- (8)(9) employment and training support services ~~(including transportation and resource items);~~ services;
- (9)(10) health support services ~~(including transportation and resources for the aging, disabled or handicapped but excluding the sterilization resource item); (excluding the optional voluntary sterilization component);~~
- (40)(11) individual and family adjustment services ~~(including camping component);~~ services;
- (41)(12) problem pregnancy ~~(including residential services);~~ services;
- (42)(13) community living ~~services;~~ services;
- (43)(14) day care services for adults;
- (44)(15) housing and home improvement services ~~(including resource items);~~ services;
- (45)(16) in-home aide services (levels I through IV) as described in 10A NCAC 06X .0203 and .0204, which is incorporated by reference, including subsequent amendments and editions. Copies of these Rules may be obtained from the Office of Administrative Hearings, 6714 Mail Service, Raleigh, NC 27699-6714, (919) 733-2678, at a cost of two dollars and fifty cents (\$2.50) for up to ten pages and fifteen cents (\$.15) for each additional page at the time of the adoption of this Rule; services;
- (46)(17) personal and family counseling;
- (47)(18) preparation and delivery of ~~meals; and~~ meals;
- (48)(19) residential treatment for the emotionally ~~disturbed.~~ disturbed;
- (20) respite care services;
- (21) transportation services provided by the North Carolina Commission of Indian Affairs;
- (22) youth services;

- (23) family planning services;
- (24) children and adults needing mental health, developmental disability and/or substance abuse services;
- (25) family preservation services;
- (26) family support services;
- (27) foster care services for adults;
- (28) home health services (includes skilled nursing, physical therapy, speech therapy, occupational therapy, medical social services, and nutrition care; and
- (29) intensive family preservation services.

Authority G.S. 143B-153(2a)b.

SECTION .0600 - ELIGIBILITY DETERMINATION

10A NCAC 71R .0601 ELIGIBILITY DETERMINATION

(a) ~~An~~For purposes of the rules in this Subchapter, an eligibility determination means a decision pursuant to an application for social services which is based on information necessary ~~certified and, if required, verified information necessary~~ to determine whether an individual meets the conditions of eligibility for the services requested. Conditions of eligibility include basic eligibility criteria from Section .0500 of this Subchapter applicable to the program or funding source under which the service is made available and conditions of need specified in the target population for the service requested, as set forth in ~~10A NCAC 71~~this Chapter. ~~Procedures for applying eligibility criteria in order to reach an eligibility decision are set forth in the Family Services Manual, as described in Rule .0302 of this Subchapter.~~

(b) The individual making application ~~is responsible for providing~~ shall provide information which will enable the agency to reach an eligibility decision. Failure on the part of the individual making application to provide such information or to cooperate with the agency in determining eligibility are ~~acceptable~~ grounds for delay in processing an application and reaching an eligibility decision or for denial of services.

Authority G.S. 143B-153.

10A NCAC 71R .0602 BASIS FOR ESTABLISHING ELIGIBILITY

Eligibility for services is established on the basis of:

- (1) a signed, dated application, if required;
- (2) the agency's determination that the individual meets the conditions of eligibility;
- (3) availability of the service in the county in which the individual ~~lives;~~ has legal residence; and
- (4) availability of the service to the individual's category of eligibility.

Authority G.S. 143B-153.

10A NCAC 71R .0603 BASIS FOR DENIAL OR TERMINATION OF SERVICES

(a) Reasons for denial of an application for services and reasons for the termination of services include the following:

- (1) The individual has failed to cooperate with the agency in determining (or redetermining) eligibility;
- (2) The individual cannot be located to allow for determination (or redetermination) of eligibility;
- (3) The individual has been determined to be not eligible for the services requested on the basis that ~~he-(s)he~~ does not meet (or because of changing circumstances, no longer meets) the conditions of eligibility for the program funding sources under which the service is provided or the definition of the target population for receipt of the service;
- (4) The service is not available in the county in which the individual ~~lives;~~ has legal residence;
- (5) ~~There is reasonable certainty that the~~ The service will not be available in sufficient time to ensure its prompt provision, as set forth in Rules .0802 and .0803 of this Subchapter;
- (6) The agency has exhausted its funds for the provision of the service for that program year;
- (7) The individual has notified the agency that ~~he~~ (s)he no longer wants or needs the service;
- (8) The agency has determined that the individual is no longer able to avail ~~himself~~ himself/herself of the service because ~~he-(s)he~~ has moved to another county or has been admitted to an institution;
- (9) The individual has failed to utilize the service or to cooperate in service delivery;
- (10) The individual is residing in a facility or institution and the funding source prohibits provision of the service to clients in facilities or institutions; and
- ~~(40)~~(11) The individual fails to meet any other conditions set forth in policies—rules in Chapters 70 and 71 of this Title governing delivery of the service.

(b) The agency must document the basis for denial or termination of services on the notice to the client, except in cases where notice is not required as set forth in 10A NCAC 67A .0202.

Authority G.S. 143B-153.

10A NCAC 71R .0604 REDETERMINATION OF ELIGIBILITY

(a) ~~In order to provide child day care services, transportation services, or the federally funded abortion and sterilization resource items of health support services, eligibility must be redetermined on a routine basis of at least every 12 months or when required on the basis of new information provided to the agency about actual changes in the client's circumstances that affect his eligibility. The agency shall make a redetermination of eligibility and need for the following services every 12 months:~~

- (1) child care services;
- (2) transportation; and
- (3) health support – abortion and sterilization components which are federally funded.

(b) Eligibility for services provided without regard to income ~~or under the Child Welfare Act~~ is based on need, and services shall continue until determined no longer appropriate.

(c) The agency shall make a redetermination of eligibility and need when there is new information provided to the agency about changes in the client's circumstances that affect his/her eligibility.

(d) The agency shall make a redetermination of eligibility and need every 12 months for services available with regard to income.

(e) Requirements and procedures for a redetermination are the same as those for eligibility determination for services provided with regard to income.

Authority G.S. 143B-153.

10A NCAC 71R .0605 DOCUMENTATION OF ELIGIBILITY DECISION

(a) The agency shall document information pertinent to meeting conditions of eligibility in the individual's service record.

(b) The agency shall document the eligibility decision, the date of the decision and the service worker/case manager making the decision on the application form.

(c) The agency shall document the beginning and ending date for all services provided with regard to income.

(d) For all services provided without regard to income, except for child care services, the agency shall document the beginning date, which is the eligibility date.

Authority G.S. 143B-153.

10A NCAC 71R .0606 QUARTERLY REVIEW

(a) The agency shall review and document the client's situation and service plan at least quarterly from the date of application except for clients whose only service(s) is (are):

- (1) transportation;
- (2) child care;
- (3) foster care;
- (4) adoptions; and
- (5) housing and home improvement.

(b) The agency shall conduct the review in the month it is due. The month the quarterly review is due is determined by the month in which the application was made.

(c) The agency must label and date the quarterly review in the record.

Authority G.S. 143B-153.

SECTION .0700 - ELIGIBILITY DETERMINATION

10A NCAC 71R .0701 METHODS OF ELIGIBILITY DETERMINATION

~~(a) When the services being provided have income as a condition of eligibility, except as set forth in (b) of this Rule, the eligibility for services funded under the Social Services Block~~

~~Grant (Title XX) in accordance with the verification method of eligibility determination, as described in Rule .0702 of this Subchapter.~~

~~(b) In lieu of utilizing the verification method, the declaration method of eligibility determination, as described in Rule .0703 of this Subchapter may be adopted and utilized as the sole method of determining eligibility for services funded under the Social Services Block Grant (Title XX). The authority to adopt the declaration method shall rest with each county board of social services. When the services being provided have income as a condition of eligibility, each county board of social services shall decide whether to use the verification method of eligibility as described in Rule .0702 of this Section, or the declaration method of determining eligibility as described in Rule .0703 of this Section.~~

Authority G.S. 143B-153.

10A NCAC 71R .0702 VERIFICATION METHOD

Under the verification method of eligibility determination, an agency shall verify an individual's statement as to eligibility status ~~shall be verified in accordance with procedures set forth in the Family Services Manual, as described in Rule .0302 of this Subchapter by~~ obtaining evidence which supports the individual's statement. Evidence which supports the individual's statement includes a copy of a source document or the agency worker's written statement concerning the contents of a source document, the contents of a telephone conversation confirming the required information or the identification of any existing agency record confirming the required information.

- (1) When an individual's eligibility for services is based on ~~his—his/her~~ status as an income maintenance recipient, an agency shall verify such status must be verified status.
- (2) When an individual's eligibility for services is based on family monthly gross income, an agency shall verify the individual's statement as to the source and amount of income must be verified except in the following circumstances:
 - (a) If the individual is ~~a—an~~ authorized Medicaid recipient, recipient of medicaid who has been authorized, his—the individual's statement as to both sources and amount of family income will—shall be accepted. The agency shall verify the individual's status as a medicaid recipient must be verified—Medicaid recipient.
 - (b) If the individual declares that ~~his~~ his/her only source of family income is from Old Age, Survivors and Disability Insurance (OASDI) benefits, the agency shall accept his/her statement as to both the source and amount of income—will be accepted—income.
 - (c) If the individual declares no income, the agency worker shall accept the statement and document it.

Authority G.S. 143B-153.

10A NCAC 71R .0703 DECLARATION METHOD

Under the declaration method of eligibility determination, an agency shall accept an individual's statement as to his/her status as an income maintenance recipient or statement as to both the sources and amount of his/her family gross income shall be accepted in accordance with established procedures set forth in the Family Services Manual, as described in Rule .0302 of this Subchapter-income. ~~The declaration method includes provisions for verifying an individual's eligibility status. When an agency has~~ When there is reason to believe that the individual's declaration may be inaccurate, an agency shall use the verification method as described in Rule .0702 of this Subchapter, provided that the decision to verify is made in accordance with established guidelines.

Authority G.S. 143B-153.

10A NCAC 71R .0704 METHOD OF DETERMINING NEED FOR SERVICES

An agency shall make an assessment of need shall be required for services provided on the basis of need without regard to income and funded under the Social Services Block Grant (Title XX). The determination of need is met when the client's situation fits the criteria contained in the target population, described for each service in Section .0900 of this Subchapter.

Authority G.S. 143B-153.

**SECTION .0800 – NOTICE TO APPLICANT:
RECIPIENT: AUTHORIZED REPRESENTATIVE**

10A NCAC 71R .0801 NOTIFICATION TIME FRAMES

~~Each applicant for services, in order to protect his right to confidentiality, may request that notice of action not be sent by mail. Requests for confidentiality of notice must be signed by the applicant and must designate the manner in which notice is to be conveyed.~~

(a) The agency shall ensure that the notice of the eligibility decision on the applicant's request for service(s) is delivered to the client or mailed and postmarked no later than 15 calendar days after the eligibility decision is made or within 30 calendar days of the date of application, whichever comes first.

(b) For additional services requested after the initial application, but while the recipient is still receiving service(s), the agency shall deliver notice to the client or mail and postmark the notice no later than 15 calendar days after the date the mailed request is received in the agency.

(c) Time frames for termination or modification of services are provided in G.S. 108A-79.

(d) Notice of termination may be given or sent on the day of termination, in the following circumstances:

- (1) The agency receives a written statement, signed by the recipient or his/her representative requesting that the services be terminated because they are no longer needed or wanted;

- (2) The recipient has been admitted to an institution and is no longer able to avail himself/herself to the service(s); or
- (3) The recipient has moved to another county or state.

Authority G.S. 143B-153.

10A NCAC 71R .0803 REQUIREMENTS FOR PROMPT PROVISION

(a) Where an individual's eligibility for a service is established in accordance with Rule .0602 of this Subchapter, the service must be provided ~~promptly~~ as follows:

- (1) Initial service(s) must be provided within 15 calendar days of the date the notice of eligibility is given or sent to the client; and
- (2) For additional service(s) requested during an ongoing period of eligibility, the service must be provided within 30 calendar days of the date the request was received by the agency.

~~Arrangements for the prompt provision of services shall be made in accordance with procedures set forth in the Family Services Manual, as described in Rule .0302 of this Subchapter.~~

(b) Where a requested service cannot be provided ~~promptly, within timeframes listed in paragraph (a),~~ the application for the service must be denied unless, for services funded with Social Services Block Grant (Title XX) funds administered by the Division of Social Services, the agency has adopted a local waiting list policy that provides ~~otherwise, otherwise~~ as follows:

- (1) Local waiting list policies must be in writing and must be approved by the county board of social services.
- (2) Local waiting list policies must designate whether the waiting list is used for purposes of meeting prompt provision requirements or to respond to inquiries about services or both.
- (3) Local waiting list policies must assure that all individuals are treated equitably in terms of the manner in which they are advised of the upcoming availability of services.
- (4) Local waiting list policies must ensure that an individual's name does not remain on the waiting list indefinitely without the individual being notified of the status of his/her request and the anticipated availability of the service. To this extent, the waiting list policy must designate a reasonable time period, not to exceed 90 days, that an individual's name can remain on the waiting list prior to providing the service or notifying the individual that the service cannot be provided.

Authority G.S. 143B-153.

SECTION .0900 - SERVICE DEFINITIONS

10A NCAC 71R .0907 FOSTER CARE SERVICES FOR CHILDREN

(a) Primary Service. Foster care services for children means social casework services through which a plan for substitute care appropriate to a child's needs is evaluated, arranged, maintained and supervised either in the home of ~~an a court approved~~ relative or in a licensed or a court approved home or facility when neither of the child's parents are able to care for ~~him adequately or to provide a suitable environment him/her in an environment free of neglect or abuse.~~ Services include the following:
~~diagnostic~~

- (1) Diagnostic study and evaluation, and medical examinations when not otherwise available, to determine the appropriate plan for service and type of placement to meet the child's needs; ~~preparation~~
- (2) Preparation of the child and natural family for the separation and placement; ~~supervision~~
- (3) Supervision of the care of the child and of the foster care facility to assure that the child receives proper care during ~~placement, the provision placement;~~
- (4) Provision of social casework and other treatment services to facilitate the child's psychosocial adjustment and to assist the parents or other responsible relatives to improve conditions and enable the child to return to ~~his his/her own home; planning~~
- (5) Planning and providing services as necessary for the placement of the child in the home of other relatives, in an adoptive home or in continued foster care as ~~appropriate. Foster care services includes providing appropriate;~~
- (6) Provision of casework services and supervision to a child and ~~his his/her family from the time the child is returned to the home of his his/her parents to the time court action is completed returning legal custody of the child to the parents. At county option, services may include the provision of legal services to facilitate permanent planning for a child. Foster parents;~~
- (7) Foster care services includes identifying children who require placement across state lines, ensuring that such placements are in ~~suitable~~ environments with persons or caretaking facilities having ~~appropriate~~ licenses and effecting such placements pursuant to the interstate compact on the placement of ~~children. "Placement" children; and~~
- (8) At county option, the provision of legal services to facilitate permanent planning for a child.

(b) "Placement" pursuant to the interstate laws means the arrangement for the care of a child in either a family or foster care facility but does not include any medical facility or facility licensed under standards adopted by ~~mental health. the North Carolina Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.~~ Services include the following: ongoing

- (1) ~~Ongoing supervision. Services also include recruitment, supervision;~~
- (2) Recruitment, study and development of foster families and child care facilities, assessment and periodic reassessment to determine if the home or facility meets the needs of children it ~~serves, serves; and consultation;~~
- (3) Consultation, technical assistance, and training to assist foster families and care facilities to expand and improve the quality of care provided.

~~(b)(c)~~ Components. At county option, ~~there are two options; the~~

- (1) The provision by a foster family home of services, in addition to basic foster care, services which meet the special needs of children in that home home; and
- (2) Basic foster care.

~~(e)(d)~~ Resource Items. At county option, the agency may ~~payment of pay for resource items may be provided to support the child's participation in school. Resource items include supplies, special clothes, and fees for membership in school sponsored extracurricular activities.~~

~~(d)(e)~~ Target Population. ~~Children~~ The target population is children in need of a supervised plan of substitute care.

Authority G.S. 143B-153.

10A NCAC 71R .0908 HEALTH SUPPORT SERVICES

(a) Primary Service. Health support services means helping individuals and families ~~to to recognize~~

- (1) Recognize health needs including those related to alcohol and drug abuse; ~~to cope~~
- (2) Cope with incapacities and limited functioning resulting from aging, disability, or ~~handicap handicap; and to choose;~~
- (3) Choose, obtain and use resources and mechanisms of support under Medicaid (including the early and periodic screening, diagnosis and treatment program), medicare, maternal and child health programs and from other public or private agencies or providers of health services; ~~counseling and planning, as appropriate, with individuals, families, and~~
- (4) Receive counseling and planning for the individuals, families and health providers to help assure continuity of treatment and the carrying out of health recommendations; helping individuals to secure
- (5) Secure admission to medical institutions and children to secure admission to other health-related facilities as needed; and family planning services as described in Paragraph (b) of this Rule. Rule; and
- (6) At county option, receive transportation, when not otherwise available, may be provided as necessary to access needed medical and health care resources.

(b) Components. There are two components to Health Support Services:

- (1) The Primary Service as described in Paragraph (a) of this Rule; and
- (2) Family planning services to enable individuals and families to voluntarily limit the family size or to space the children, and to prevent or reduce the incidence of births out of wedlock. Such services include educational activities, the provision of printed materials, counseling about family planning and genetics, and help in utilizing medical and educational services available in the community and state. Also included are educational services in human sexuality appropriate to an individual's emotional and social adjustment and physical development.

(c) Optional Resource Items.

- (1) Medical Services: Services. For An agency may pay for medical services for nontherapeutic sterilization for individuals who are recipients of AFDC, Work First Family Assistance, SSI, or protective services or whose family income is less than 80 percent of the state's established income maximum for social services eligibility, Federal Poverty Guidelines as provided annually in the Federal Register by the U.S. Department of Health and Human Services (HHS), payment for medical services for nontherapeutic sterilization.
- (2) Resources for the Aging, Disabled or Handicapped: Aging or Persons with Disabilities. At county option the agency may provide any combination of the following resource items may be provided as needed and appropriate to enable aging, disabled or handicapped individuals the aging or persons with disabilities to attain or maintain the highest level of functioning possible, to promote their well-being and to prevent or reduce inappropriate institutional care:
 - (A) Assistance with communication to enable individuals to utilize needed health and medical resources and other community services and resources through the provision of interpreters for the deaf and the provision of telephones when not otherwise available for the aging, disabled, or handicapped who are alone and homebound, or who have a health or medical condition which necessitates ready access to or frequent use of a telephone in their home.
 - (B) Mobility assistance for aging, disabled and handicapped persons, through the installation of ramps, rails and other safety measures at the individual's home and the provision of escort service to health facilities

and other needed resources for individuals unable to travel or wait alone.

- (C) Arranging for or providing friendly visitors or companions for part of a day to assist individuals who, because of frailty, physical or mental disability or social isolation, have limited contacts with other people. ~~Such companionship service offers mental and physical stimulation and provides an opportunity for observation as to the need for professional help of any kind.~~
- (D) Provision of special health needs and supplies such as ostomy supplies, oxygen, bandages, orthopedic and other appliances needed by aging and disabled individuals in their own homes and not available through Medicaid, Medicare or resources without cost.

(d) Target Population: The target population includes:

- (1) individuals or families experiencing health related problems;
- (2) for the family planning component, individuals (male or female) who are of age to produce children.

Authority G.S. 143B-153.

10A NCAC 71R .0916 PROTECTIVE SERVICES FOR CHILDREN

(a) Primary Service. Protective services for children are social services provided to children and their parents or other caretakers in response to instances of actual or suspected child neglect, abuse or ~~exploitation, dependency.~~ The primary elements of protective services consist of ~~identifying of:~~

- (1) Identifying children at risk; receiving
- (2) Receiving and investigating assessing reports of neglect, abuse or ~~exploitation; dependency;~~ evaluating
- (3) Evaluating the degree of damage or risk to the child; ~~cooperation~~
- (4) Cooperating with law enforcement agencies as required to obtain suitable care and services for children in or out of their own homes and initiation of court action where necessary; ~~counseling~~
- (5) Counseling and planning with the child's family toward the solution and prevention of problems causing neglect, abuse or ~~exploitation; dependency; and arranging~~
- (6) Arranging for the provision of, and assisting families in utilizing appropriate services and community resources such as foster care, ~~daychild~~ care, health and mental health services, homemaker services, etc. as needed. These services are included for runaways,

harm or threatened with harm by virtue of their status as runaways. Included also are service activities necessary to carry out statutory responsibility to approve or disapprove the separation of a child under six months of age from its parent. At its option, the county may provide counseling and therapy for children and their parents or guardians, training courses for parents or guardians of the individual child, and services of lawyers to represent the agency where court action is necessary to protect children.

(b) Components:

- (1) the provision of medical, psychological and medicolegal diagnostic studies and evaluations where needed to substantiate, find services needed and assess the circumstances of abuse or neglect are included;
- (2) the provision of emergency shelter, at county option.

(c) Resource Items. ~~None.~~ There are no resource items.

(d) Target Population. ~~Children~~ The target population is children (birth through 17 years) in actual or suspected danger of child neglect, abuse, or exploitation dependency.

Authority G.S. 143B-153.

SUBCHAPTER 71V - LOW INCOME ENERGY ASSISTANCE PROGRAM

SECTION .0200 – CRISIS INTERVENTION PROGRAM

10A NCAC 71V .0202 BENEFIT LEVELS

~~The maximum payment~~ Payments to a household is shall not exceed ~~three hundred dollars (\$300.00)~~ six hundred dollars (\$600.00) in a state fiscal year. ~~Except, when the federal government releases emergency contingency funds for severe weather conditions an additional payment up to three hundred dollars (\$300.00) may be authorized. Payments may vary.~~ Counties may set lower maximums in their annual business plans for operating Low Income Home Energy Assistance Programs. Assistance is based upon the needs of the community, the severity of the crisis and the services needed.

Authority G.S. 108A-25; 143B-153.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Private Protective Services Board intends to amend the rule cited as 12 NCAC 07D .0801 and repeal the rule cited as 12 NCAC 07D .1109.

Proposed Effective Date: December 1, 2007

Public Hearing:

Date: July 31, 2007

Time: 1:00 p.m.

Location: Conference Room, PPSB Offices, 1631 Midtown Place, Suite 104, Raleigh, NC 27609

Reason for Proposed Action:

12 NCAC 07D .0801 - The Board has determined that it is in the interest of the public health, safety, and welfare to require all armed security guards to be at least 21 years of age before being issued an armed registration permit.

12 NCAC 07D .1109 – The Board has not developed a training video and training test and does not currently have the necessary funds. Further, because of the substantial experience that is required to hold a license, the Board does not find that it is necessary to develop a training video and training test.

Procedure by which a person can object to the agency on a proposed rule: Written objections to the proposed amendment and repeal may be submitted prior to the end of the comment period to the Private Protective Services Board, c/o Terry Wright, Director, 1631 Midtown Place, Suite 104, Raleigh, NC 27609.

Comments may be submitted to: Charles F. McDarris, 434 Fayetteville Street, Suite 2500, Raleigh, NC 27601

Comment period ends: September 14, 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 07 – PRIVATE PROTECTIVE SERVICES

SUBCHAPTER 07D - PRIVATE PROTECTIVE SERVICES BOARD

SECTION .0800 - ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT

12 NCAC 07D .0801 APPLICATION/ARMED SECURITY GUARD FIREARM REGISTRATION

PERMIT

(a) Each employer or his designee shall submit and sign an application form for the registration of each employee to the Board. This form shall be accompanied by:

- (1) two sets of classifiable fingerprints on an applicant fingerprint card;
- (2) two recent head and shoulders color photographs of the applicant of acceptable quality for identification, one inch by one inch in size;
- (3) certified statement of the result of a criminal records search from the appropriate governmental authority housing criminal record information or clerk of superior court in each area where the applicant has resided within the immediate preceding 48 months;
- (4) the applicant's non-refundable registration fee; and
- (5) a statement signed by a certified trainer that the applicant has successfully completed the training requirements of 12 NCAC 07D-~~0807~~.
.0807;
- (6) a certification by the applicant that they are 21 years of age.

(b) The employer of each applicant for registration shall give the applicant a copy of the application and shall retain a copy of the application in the individual's personnel file in the employer's office.

(c) The applicant's copy of the application shall serve as a temporary registration card which shall be carried by the applicant when he is within the scope of his employment and which shall be exhibited upon the request of any law enforcement officer or other authorized representative of the Board.

(d) Applications submitted without firearms certificates shall not serve as temporary registration cards unless the contract security company or proprietary security organization has obtained prior approval from the administrator and provides satisfactory proof that the applicant has received prior firearms training.

(e) The provisions of Paragraphs (a), (b), and (c) of this Rule shall also apply to any employee whose employment is terminated within 30 days of employment.

Authority G.S. 74C-5; 74C-13.

SECTION .1100 - TRAINING AND SUPERVISION FOR PRIVATE INVESTIGATOR ASSOCIATES

12 NCAC 07D .1109 TRAINING VIDEO AND TRAINING TEST

~~The Board will develop a training video and test which will be administered by the sponsoring Private Investigator. Each Associate must view and successfully pass the training test prior to submitting the initial application for a training permit. The sponsoring Private Investigator must submit written certification stating that the applicant has watched the training video and passed the test.~~

Authority G.S. 74C-5(2).

TITLE 18 – DEPARTMENT OF SECRETARY OF STATE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of the Secretary of State intends to adopt the rules cited as 18 NCAC 13 .0101 - .0103, .0201 - .0209, .0301, .0401 - .0419, .0501, .0601, .0701 - .0702, .0801 - .0805, .0901.

Proposed Effective Date: *November 1, 2007*

Public Hearing:

Date: *Monday, August 6, 2007*

Time: *3:15 p.m. – 4:30 p.m.*

Location: *Hearing Room #2115, Dobbs Building, 430 North Salisbury Street, Raleigh, NC 27603-5918*

Reason for Proposed Action: *The Department proposes these permanent rules as permitted under G.S. 150B-21.2. The proposed rules pertain to administration of the Department's state franchise for cable television service administration function as established effective January by S.L. 2006-151, which amends the General Statutes by adding a new Article 42 to Chapter 66, entitled "State Franchise for Cable Television Service." If you wish to speak at the scheduled public hearing, please let us know in advance by calling or sending electronic mail to us using the contact information below. Formatting Note: The Department submits this notice of text for proposed permanent rules as the next step in a continuing rulemaking effort which began with temporary rulemaking. To assist the reader and increase process transparency, the Department presents these proposed permanent rules in a format designed to highlight changes between the current effective temporary rules and the new proposed permanent rules. This format is used under the permission of and with the assistance of the NC Register's editorial staff. The formatting for the following proposed permanent rule text works as follows: (1) If a temporary rule is proposed for permanent rule adoption without any changes, the rule text is presented without any underlining or other formatting marks. (2) If a temporary rule is proposed for permanent rule adoption with changes, the text is formatted to show these changes, with deletions struck through and additions underlined. (3) If a rule proposed for permanent rule adoption is completely new, the entire rule text is underlined. (4) Finally, if an existing temporary rule is not proposed as a permanent rule, the Department will let that temporary rule expire normally as provided by law. The Department appreciates all previously received public comment and participation and looks forward to continuing public involvement with this process point forward.*

Procedure by which a person can object to the agency on a proposed rule: *Written comments, including objections, may be sent to Ann Wall, Secretary of State's Office, 2 South Salisbury Street, Raleigh, NC 27601-2903 or P.O. Box 29622, Raleigh,*

NC 27626-0622, telephone number (919) 807-2070, facsimile number (919) 807-2010, email address: rules@sosnc.com.

Comments may be submitted to: Ann Wall, General Counsel, NC Department of the Secretary of State, P.O. Box 29622, Raleigh, NC 27626-0622, telephone number (919) 807-2070, facsimile number (919) 807-2010, email address: rules@sosnc.com.

Comment period ends: September 14, 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 13 – STATE FRANCHISE FOR CABLE
TELEVISION SERVICE**

SECTION .0100 – GENERAL REQUIREMENTS

18 NCAC 13 .0101 SCOPE

The rules in this Chapter implement Article 42 of Chapter 66 of the General Statutes.

Authority G.S. 55D-5; 55D-10; 66-354(a).

18 NCAC 13 .0102 DEFINITIONS

The following terms and definitions shall apply to the rules in this Chapter:

- (1) "Act" means Article 42 of Chapter 66 of the North Carolina General Statutes entitled "State Franchise for Cable Television Service";
- (2) "Correspond" means to conform to or be obviously similar to, although not agreeing in every detail;
- (2)(3) "Department" means the Department of the Secretary of State;
- (3)(4) "Filed" means received by the Department and filed pursuant to G.S. 55D-15 and this Chapter;

- ~~(4)(5)~~ "Filer" means a person submitting a filing pursuant to the Act and this Chapter;
- ~~(5)(6)~~ "Filing" and "record" mean those completed forms, reports, attachments and information submitted in paper or electronic form; and
- ~~(6)(7)~~ "Form" means a form or report promulgated by the Department and required or permitted to be filed pursuant to the Act.

Authority G.S. 55D-5; 55D-10; 66-354(a).

18 NCAC 13 .0103 TIME

Time periods are calculated according to the provisions of G.S. 1A-1, Rule 6.

Authority G.S. 1A-1, Rule 6; 55D-5; 55D-10(b)(7); 66-354(a).

SECTION .0200 – FILING

18 NCAC 13 .0201 FILING LOCATIONS AND METHODS

Each required filing must be submitted to and received by the Department using one of the following methods:

- (1) By United States mail at the following address: Department of the Secretary of State, P.O. Box 29622, Raleigh, NC 27626-0622.
- (2) In person or by a designated delivery service authorized pursuant to G.S. 1A-1, Rule 04 at the following street address: Secretary of State's Office, 2 South Salisbury Street, Raleigh, NC 27601-2903.

Authority G.S. 1A-1, Rule 4; 55D-5; 55D-10; 66-354(a).

18 NCAC 13 .0202 FILING USING DEPARTMENT'S FORMS

- (a) Filers shall use forms promulgated by the Department.
- (b) For each filing, a filer shall submit an original consisting of:
 - (1) A completed and signed form;
 - (2) A map which complies with ~~Rule .0401~~ Section .0400 of this Chapter;
 - (3) Any attachments.
- ~~(c) For each filing for which a map is required an electronic copy of the map shall be submitted which:~~
 - ~~(1) Is prepared:~~
 - ~~(A) In PDF format; or~~
 - ~~(B) In a GIS "shapefile".~~
 - ~~(2) Is prepared:~~
 - ~~(A) In compliance with 04 NCAC 11 R09 04; or~~
 - ~~(B) At a scale of 1:24,000; or~~
 - ~~(C) At a scale legibly depicting one or more entire counties, cities or the entire State.~~
- ~~(d)(c)~~ For each filing, a filer shall also submit three copies of the documents submitted to Paragraph (b) of this Rule.

Authority G.S. 55D-5; 55D-10; 66-354(a).

18 NCAC 13 .0203 FORM COMPLETION REQUIREMENTS

- (a) All information requested on a form shall be completed by the filer whether requested by means of a block to be marked or a line to be completed.
- (b) If a question or item is not applicable to the filer, the filer shall ~~not leave the question or item blank but shall enter "not applicable" or check the "not applicable" box.~~ blank.
- (c) A form is not complete unless it complies with all other applicable filing requirements in this Chapter and Article 2 of Chapter 55D of the General Statutes.

Authority G.S. 55D-5; 55D-10; 55D-15; 66-354(a).

18 NCAC 13 .0204 FILING SUBMISSION DATE AND TIME

A filing is submitted on the day it is received in paper form by the Department before 5:00 p.m. of that day.

Authority G.S. 55D-5; 55D-10; 55D-15; 66-354(a).

18 NCAC 13 .0205 REJECTION OF INCOMPLETE FILING

The Department shall reject any filing which is incomplete because the filing:

- ~~(1) Contains any illegible information; or~~
- ~~(2)(1) Lacks any required information; or~~
- ~~(3) Contains any blank, unfilled, or unanswered questions or data entry areas; or~~
- ~~(4)(2) Is not signed as required by the Act; or~~
- ~~(5)(3) Is not submitted together with any required fee; or~~
- ~~(6)(4) Does not comply with the requirements of G.S. 55D-10.~~

Authority G.S. 55D-5; 55D-10; 55D-15; 66-354(a).

18 NCAC 13 .0206 DEPARTMENTAL REFUSAL TO FILE

The Department shall refuse to file a filing which is subject to rejection for any of the reasons stated in this Chapter or in Article 2 of Chapter 55D of the General Statutes.

Authority G.S. 55D-5; 55D-10(b)(7); 66-354(a).

18 NCAC 13 .0207 EXPEDITED REVIEW OF FILING

A filer may request expedited review of a filing pursuant to G.S. 55D-11 upon payment of the applicable expedited review fee.

Authority G.S. 55D-5; 55D-10; 55D-11; 55D-15; 66-354(a).

18 NCAC 13 .0208 EFFECTIVE DATE OF FILING

When the Department accepts and files a filing pursuant to G.S. 55D-15, the document shall be deemed filed on the date on which it was received by the Department.

Authority G.S. 55D-5; 55D-10; 55D-13; 55D-15; 66-354(a).

18 NCAC 13 .0209 DEPARTMENT'S DELIVERY OF COPY TO FILER

At the time of submission of a filing, a filer may request that the Department make the copy delivery required by G.S. 55D-15 by a delivery service authorized pursuant to G.S. 1A-1, Rule 4 if the filer has:

- (1) Made provision for the delivery service to visit the Department and pick up the copy; or
- (2) Provided a completed delivery envelope and made arrangements with the delivery service for payment of costs associated with the pickup and delivery of the copy.

Authority G.S. 1A-1, Rule 4; 55D-5; 55D-10; 55D-15; 66-354(a); 26 U.S.C. 7502(f)(2).

SECTION .0300 – FEES

18 NCAC 13 .0301 GENERAL REQUIREMENTS

- (a) A required fee shall be submitted together with the filing to which the fee applies.
- (b) A fee must be paid by cash, warrant, uncertified check, certified check, money order, or another instrument freely negotiable at par through the Federal Reserve System. Checks, money orders, or other instruments shall be drawn on U.S. financial institutions in U.S. ~~dollars and cents~~ currency.
- (c) A filing is void if a financial instrument listed in Paragraph (b) of this Rule and tendered for a required fee is returned by the institution upon which it was issued as "insufficient funds" or for other similar reason.

Authority G.S. 55D-5; 55D-10(b)(7); 66-354(a).

SECTION .0400 – MAPS AND DESCRIPTIONS OF SERVICE AREAS

18 NCAC 13 .0401 PURPOSE

- ~~(a) Maps of service area boundaries submitted to the Department shall delineate the service area as one or more polygons. The polygonal service area and subareas shall be closed on all sides.~~
- ~~(b) Both the paper and electronic copy of a map of service area boundaries shall be sufficiently detailed so that one can determine whether a location is in the service area. Both the paper and electronic copy of a map shall identify each county or city included in the service area in whole or in part.~~
- ~~(c) A map of service area boundaries which meets the standards set forth in this Paragraph is sufficient to comply with the Act and this Chapter:~~

- ~~(1) A map which is obtained either from a certified property mapper or a county mapping office for the county in which the service area is located and which meets minimum State standards for indexing land records established by G.S. 147-54.3 and in 18 NCAC 08 .1100, including any subsequent amendments to those Rules. Copies of those Rules and the standards incorporated therein may be viewed online using the Department's Internet site at~~

the ~~following~~ address:
<http://www.secretary.state.nc.us/land/> or may
 be obtained by contacting the Land Records
 Management Section, NC Department of the
 Secretary of State, PO Box 29626, Raleigh,
 North Carolina 27626-0626, telephone number
 919-807-2206, facsimile number 919-807-
 2210. The cost for receiving a paper copy of
 these materials is twenty cents (\$.20) per page;
 or

- (2) ~~A map which is obtained from the website
 established by the NC Geographic Information
 Coordinating Council at:
www.neonemap.com at no cost to the user and
 which contains at least the following geo-
 referenced representation of the service area
 boundaries:~~
 - (A) ~~County boundaries;~~
 - (B) ~~City boundaries;~~
 - (C) ~~Township boundaries;~~
 - (D) ~~Roads and streets; or~~
- (3) ~~A map which meets the requirements of the
 Utilities Commission as set forth in 04 NCAC
 11 R09-04, including any subsequent
 amendments to those Rules. Copies of those
 Rules and the standards incorporated therein
 may be viewed online at:
<http://reports.oah.state.nc.us/ncac.asp> or may
 be obtained by contacting the Corporations
 Division, NC Department of the Secretary of
 State; PO Box 29626, Raleigh, North Carolina
 27626-0626, telephone number 919-807-2225;
 or~~
- (4) ~~A map which uses for the service area
 boundaries of a service area consisting of one
 or more entire counties, the official State
 delineated boundaries of the county or
 counties in the service area;~~
- (5) ~~A map which uses for the service area
 boundaries of a service area consisting of one
 or more entire cities or townships, the official
 boundaries of the cities or townships in the
 service areas, exclusive of extra-territorial
 jurisdictional boundaries;~~
- (6) ~~A map which uses for the service area
 boundaries of a service area consisting of
 portions of cities or counties, public road and
 street boundaries; or~~
- (7) ~~A map of the entire State for a service area
 which encompasses the entire State.~~

(d) ~~A map may contain additional geo-referenced information
 which will be useful to the customers of the franchise holder, the
 North Carolina Department of Revenue, local governments and
 others. For example, a service area map may include such
 geographical features as waterways.~~

The rules in this Section establish basic standards for map and
 description filings so that they will contain information useful to
 the public and necessary for performing the Department's
 essential duties established by the Act.

Authority G.S. 55D-5; 55D-10; 55D-15; 66-352; 66-354(a).

18 NCAC 13 .0402 CONTENT SUFFICIENCY REQUIREMENT FOR SUBMITTED MAPS

A submitted map shall contain such content that the information
 presented is sufficient to permit a person to identify whether a
 particular location or land parcel falls within a service area.

Authority G.S. 55D-5; 55D-10; 55D-15; 66-352; 66-354(a).

18 NCAC 13 .0403 DESCRIPTIONS OF SERVICE AREAS

(a) Service areas shall be described in a manner sufficient to
 enable a person to determine whether or not a particular location
 falls within the service area. NOTE: For example, any of the
 following descriptions would enable a person to determine
 whether a location fell within the described service area: the
 entirety of the State of North Carolina; the entirety of X county;
 all of X county north of Y highway; the city of Z; the A, B and C
 subdivisions of Q city; or, those portions of X county between
 river S and highway Y.

(b) If both a map and a description of a service area are
 required, then the description of the service area shall
 correspond to the map.

(c) A description shall not be sufficient if it merely refers to a
 map.

Authority G.S. 55D-5; 55D-10; 66-354(a).

18 NCAC 13 .0404 MAPS TO IDENTIFY COUNTIES OR MUNICIPALITIES WITHIN SERVICE AREA

A submitted map shall identify each county or municipality
 included, in whole or in part, in any service area depicted.

Authority G.S. 55D-5; 55D-10; 55D-15; 66-352; 66-354(a).

18 NCAC 13 .0405 REQUIRED MAP COMPONENTS

A map shall have three basic components combined and
 submitted as a single final map document or image. These basic
 components are:

- (1) The map depicting recognizable geographic
 territory,
- (2) The service area depicting the filer's franchise
 service area, and
- (3) Boundary clarity and detail sufficient to
 comply with the requirements of Rule .0408,
 .0409, .0410, or .0411 of this Section.

Authority G.S. 55D-5; 55D-10; 55D-15; 66-352; 66-354(a).

18 NCAC 13 .0406 GENERAL REQUIREMENTS FOR MAP

The map shall include:

- (1) The geographic map image;
- (2) A scale indicator;
- (3) A graphic indicating the direction North;
- (4) A title indicating the map's purpose;

- (5) A reference statement linking the map to the filing for which the map is submitted;
- (6) A statement indicating who prepared the map;
- (7) The date the map was printed; and
- (8) A legend or key to the symbols on the geographic map image.

Authority G.S. 55D-5; 55D-10; 55D-15; 66-352; 66-354(a).

18 NCAC 13 .0407 GENERAL REQUIREMENTS FOR SERVICE AREA

The service area for a submitted map shall:

- (1) Delineate the service area as one or more polygons. The polygon(s) shall be closed on all sides;
- (2) Identify area included in the service area polygon(s) through use of color fill, hash marks, hatching, or similar graphic depiction; and
- (3) Contain a legend or key to any symbols used to depict the service area. NOTE: For example, if hash marks are used to identify included areas of the service area, the legend or key would include that information.

Authority G.S. 55D-5; 55D-10; 55D-15; 66-352; 66-354(a).

18 NCAC 13 .0408 MAP BOUNDARY DETAIL REQUIREMENTS FOR SERVICE AREAS COVERING THE ENTIRE AREA OF ONE OR MORE MUNICIPALITIES OR COUNTIES

- (a) A map depicting a service area that covers the entire area of one or more municipalities provides sufficient boundary detail if the map depicts the official boundaries of the covered municipality or municipalities.
- (b) A map depicting a service area that covers the entire area of one or more counties provides sufficient boundary detail if the map depicts the official boundaries of the covered county or counties.
- (c) For the purposes of this rule, the Department interprets "official boundaries" to be those boundaries set or recognized by the municipalities or counties depicted on the submitted map.

Authority G.S. 55D-5; 55D-10; 55D-15; 66-352; 66-354(a).

18 NCAC 13 .0409 MAP BOUNDARY DETAIL REQUIREMENTS FOR SERVICE AREAS COVERING THE ENTIRE AREA OF THE STATE

A map depicting a service area that covers the entire area of the State provides sufficient boundary detail if the map depicts the official boundaries of the State.

Authority G.S. 55D-5; 55D-10; 55D-15; 66-352; 66-354(a).

18 NCAC 13 .0410 INCREASED MAP BOUNDARY DETAIL REQUIREMENTS FOR SERVICE AREAS COVERING LESS THAN THE ENTIRE AREA OF A MUNICIPALITY OR COUNTY

A map depicting any service area that covers less than the entire area of a municipality or a county shall provide boundary detail as is necessary to comply with the requirements of Rule .0402 of this Section.

Authority G.S. 55D-5; 55D-10; 55D-15; 66-352; 66-354(a).

18 NCAC 13 .0411 BOUNDARY DETAIL "SAFE HARBOR" MAP SOURCES

Maps obtained from the following sources satisfy all boundary detail requirements in this Section:

- (1) A map which is obtained either from a property mapper certified by the Department's Land Records Management Section or a county mapping office for the county in which the service area is located and which meets minimum State standards for creating base or cadastral maps established by G.S. 102-17 and G.S. 147-54.3, including any subsequent amendments to those standards. Copies of the standards may be viewed online using the Department's Internet site at the following address: <http://www.secretary.state.nc.us/land/> or may be obtained by contacting the Land Records Management Section, NC Department of the Secretary of State, PO Box 29626, Raleigh, North Carolina 27626-0626, telephone number 919-807-2206, facsimile number 919-807-2210. The cost for receiving a paper copy of these materials is twenty cents (\$.20) per page; or
- (2) A map which is obtained from the website established by the NC Geographic Information Coordinating Council at: www.nconemap.com at no cost to the user and which contains at least the following geo-referenced representation of the service area boundaries:
 - (a) County boundaries;
 - (b) City boundaries;
 - (c) Township boundaries;
 - (d) Roads and streets; or
- (3) A map which meets the requirements of the Utilities Commission as set forth in 04 NCAC 11 R09-04 , including any subsequent amendments to those Rules. Copies of those Rules and the standards incorporated therein may be viewed online at: <http://reports.oah.state.nc.us/ncac.asp> or may be obtained by contacting the Corporations Division, NC Department of the Secretary of State; PO Box 29626, Raleigh, North Carolina 27626-0626, telephone number 919-807-2225; or
- (4) For maps concerning municipalities, a map which is obtained from the office of the clerk for the municipality depicted in the map.

Authority G.S. 55D-5; 55D-10; 55D-15; 66-352; 66-354(a).

**18 NCAC 13 .0412 DATE LAST UPDATED
REQUIRED FOR CERTAIN MAPS**

A map obtained from a certified property mapper, county mapping office, or municipal clerk shall include the year in which the map was last updated.

Authority G.S. 55D-5; 55D-10; 55D-15; 66-352; 66-354(a).

**18 NCAC 13 .0413 ADDITIONAL MAP
INFORMATION PERMITTED**

A map may contain additional information which will be useful to the customers of the franchise holder, the North Carolina Department of Revenue, local governments and others. Note: For example, a map may include geographical features such as waterways.

Authority G.S. 55D-5; 55D-10; 55D-15; 66-352; 66-354(a).

18 NCAC 13 .0414 FILING OF MAPS

(a) A paper copy of a map shall be submitted with each filing for which a map is required.

(b) Notice of franchise and annual service report filings shall include an electronic copy of any submitted paper map.

Authority G.S. 55D-5; 55D-10; 55D-15; 66-352; 66-353; 66-354(a).

**18 NCAC 13 .0415 ELECTRONIC MAP FORMAT
REQUIREMENTS**

Any electronic copy or version of a map submitted under this Section shall be submitted either in Portable Document Format (PDF) or in a GIS "shapefile".

Authority G.S. 55D-5; 55D-10; 55D-15; 66-352; 66-354(a).

**18 NCAC 13 .0416 ELECTRONIC MAP MEDIA
REQUIREMENTS**

(a) Any electronic copy or version of a map submitted under this Section may be submitted using any of the following media:

- (1) A floppy disk;
- (2) A CD-Rom Disc, or
- (3) A DVD-Rom Disc.

(b) The medium containing the electronic map shall be labeled in a manner that identifies the filer, the filing type, and the date of submission.

Authority G.S. 55D-5; 55D-10; 55D-15; 66-352; 66-354(a).

**18 NCAC 13 .0417 AMENDMENTS TO SERVICE
AREAS PROHIBITED**

(a) A franchise holder shall not file an amendment to a map or service area description which changes the service area boundaries.

(b) A new notice of franchise shall be filed if a filer seeks to change a franchise service area.

Authority G.S. 55D-5; 55D-10; 55D-15; 66-352; 66-354(a).

**18 NCAC 13 .0418 PERMITTED MAP AND
DESCRIPTION AMENDMENTS**

(a) A filer may amend a map or service area description for reasons other than changes to the service area boundaries. NOTE: For example, a filer may amend a map or service area description to further identify landmarks within the described service area such as street names.

(b) An amended map or service area description shall:

- (1) Be titled "Amended"; and
- (2) Comply with Rule .0202 of this Chapter.

(c) If a map is amended pursuant to this Rule, an electronic copy shall be provided consistent with the requirements of this Section.

Authority G.S. 55D-5; 55D-10; 55D-15; 66-352; 66-354(a).

**18 NCAC 13 .0419 ANNUAL SERVICE REPORT
MAP SUBMISSION**

For the purpose of complying with the map filing requirements for annual service reports under G.S. 66-353, a filer submitting an annual service report shall either:

- (1) Combine and submit the information required by G.S. 66-353(2) and G.S. 66-353(4) on a single map image, so long as the resulting single map image provides the visual depiction and information required by each provision of law; or
- (2) Submit two separate map images: one map image to depict the service area and one map image to depict households passed.

Authority G.S. 55D-5; 55D-10; 55D-15; 66-352; 66-353; 66-354(a).

SECTION .0500 – NOTICE OF FRANCHISE

18 NCAC 13 .0501 SCHEDULES

(a) A schedule shall set forth the proposed sequence and timing of the provision of service to the service area. Deviations from the proposed schedule shall be noted and explained in the annual service report as required in G.S. 66-353(8).

(b) If a franchise service area contains noncontiguous geographic areas, then the schedule in the notice of franchise shall specifically address each ~~area~~ of the noncontiguous areas.

Authority G.S. 55D-5; 55D-10; 66-352; 66-354(a).

**SECTION .0600 – NOTICE OF COMMENCEMENT OF
SERVICE**

**18 NCAC 13 .0601 NOTICE OF COMMENCEMENT
OF SERVICE**

A notice of commencement of service shall include:

- (1) The effective date of the notice of franchise for that service area as determined pursuant to Rule .0208 of this Chapter and noted on copy of the notice of franchise returned by the Department to the filer and available on the Department's website;

- (2) The franchise number assigned by the Department;
- (3) Either verification that there have been no changes in the information on the notice of franchise with regard to the identity, address and contact information of the filer or amendment of that information;
- (4) A map of the service area which complies with Section .0400 of this Chapter;
- (5) A description of the service area which complies with Section .0400 of this Chapter;
- (6) A statement confirming that cable service has begun in the service area; and
- (7) The date on which cable service began.

Authority G.S. 55D-5; 55D-10; 66-352(b); 66-354(a).

SECTION .0700 – NOTICE OF WITHDRAWAL

18 NCAC 13 .0701 MINIMUM REQUIREMENTS

A notice of withdrawal must include:

- (1) The name of the franchisee as stated on the notice of franchise;
- (2) The date of the notice of franchise;
- (3) The cities and counties identified in the original notice of franchise; ~~and~~
- (4) The date upon which the franchisee will cease providing ~~service.~~ service; and
- (5) The franchise number assigned by the Department.

Authority G.S. 55D-5; 55D-10; 66-354(a).

18 NCAC 13 .0702 WITHDRAWAL NOTICE COVERS ENTIRE SERVICE AREA

A withdrawal of a notice of franchise applies to the entire franchise service area.

Authority G.S. 55D-5; 55D-10; 66-354(a).

SECTION .0800 – ANNUAL SERVICE REPORT

18 NCAC 13 .0801 ONE ANNUAL SERVICE REPORT PER FRANCHISE

A separate annual service report shall be filed for each franchise.

Authority G.S. 55D-5; 55D-10(b)(7); 66-354(a).

18 NCAC 13 .0802 ANNUAL SERVICE REPORT DESCRIPTION AND MAP INFORMATION

Description and map information filed in an annual service report must ~~match or be congruent~~ correspond with description and map information in the notice of franchise to which the annual service report applies.

Authority G.S. 55D-5; 55D-10(b)(7); 66-354(a).

18 NCAC 13 .0803 ANNUAL SERVICE REPORT SCHEDULE

The explanation included in an annual service report for a new schedule and the accompanying new schedule shall be linked to the description and map of the franchise service area in a manner which permits a person reading the explanation to determine whether or not the new schedule affects an area. Note: For example, an explanation and new schedule would be linked to the service area description if it stated: Households in the northern quadrant of the service area were scheduled to be passed in 2007. That schedule has now changed because flooding due to Hurricane XYZ prevented passing those households. Those households are now scheduled to be passed in 2008.

Authority G.S. 55D-5; 55D-10(b)(7); 66-354(a).

18 NCAC 13 .0804 REQUIRED CUSTOMER SERVICE INFORMATION

An annual service report shall specify the extent to which the following requirements contained in 47 C.F.R. Part 76 have been met:

- (1) 47 C.F.R. 76.309 Customer service obligations;
- (2) 47 C.F.R. 76.1602 Customer service--general information;
- (3) 47 C.F.R. 76.1603 Customer service--rate and service changes; and
- (4) 47 C.F.R. 76.1604 Charges for customer service changes.

A cable service franchise holder may include additional information regarding compliance with customer service requirements in Part 76 of Title 47 of the Code of Federal Regulations in the annual report.

Authority G.S. 55D-5; 55D-10(b)(7); 66-354(a); 66-356(b); 47 C.F.R. Part 76.

18 NCAC 13 .0805 ANNUAL SERVICE REPORT PERCENTAGE OF HOUSEHOLDS PASSED

When listing the percentage of households passed in the service area as of July 1 of any preceding year for which a report was required, a filer shall list the percentage that was set forth on the annual service report for the immediately preceding year. A filer is not required to list percentages for other prior years in which another annual service report was filed.

Authority G.S. 55D-5; 55D-10(b)(7); 66-354(a).

SECTION .0900 – RECORDS

18 NCAC 13 .0901 ACCESSING PUBLIC RECORDS

Records may be physically viewed at the Department by the public on weekdays ~~between the hours of 8:30 a.m. and 4:30 p.m.~~ during normal operating hours, except on State holidays. A list of State holidays may be viewed at: <http://www.osp.state.nc.us/holsched.htm>.

Authority G.S. 55D-5; 55D-10(b)(7); 66-354(a).

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday June 28, 2007 & July 26, 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

June 28, 2007	July 26, 2007
August 23, 2007	September 20, 2007

RULES REVIEW COMMISSION

June 28, 2007

MINUTES

The Rules Review Commission met on Thursday, June 28, 2007, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Jeff Gray, Jennie Hayman, Thomas Hilliard, Robert Saunders, Mary Shuping, John Tart, David Twiddy, and Judson Welborn.

Staff members present were: Joseph DeLuca and Bobby Bryan, Commission Counsel; and Lisa Johnson and Barbara Townsend, Administrative Assistants.

The following people attended the meeting:

Erin Gould	Department of Labor
Liz McCurry	Department of Labor
Susan Ryan	DHHS/Division of Medical Assistance
Andy Wilson	DHHS/Division of Medical Assistance
Julie Edwards	Office of Administrative Hearings
Dana Vojtko	Office of Administrative Hearings
Felicia Williams	Office of Administrative Hearings
Molly Masich	Office of Administrative Hearings
Belinda Smith	Department of Justice
Teresa Smith	DHHS/Division of Medical Assistance
Brenda Eaddy	Department of Justice
Nancy Pate	Department of Environment and Natural Resources
Bill Wilson	AARP
Jean H. Stanley	NC Board of Nursing
Joyce Roth	NC Board of Nursing
Gretchen Aycock	NC Department of Administration
Angela Floyd	DHHS/Division of Medical Assistance
Jack Nichols	Allen & Pinnix-NC Board of Nursing
Cathy Franklin-Griffin	Surry Community College
Sheila Nehls	Forensic Test for Alcohol
Barry Gup-ton	NCDOI-Building Code Council
Jonathan Womer	Office of State Budget and Management

Carol Boles	Surry Community College
Kathy Weeks	Wake Technical Community College
Nancy Evans	DHHS/Division of Aging and Adult Services
Carlotta Dixon	DHHS/Division of Social Services
Floyd Boyer	NC Respiratory Care Board
Curtis Venable	Pisgah Legal Services
Julia George	NC Board of Nursing
Julian Mann	Office of Administrative Hearings

APPROVAL OF MINUTES

The meeting was called to order at 10:06 a.m. with Ms. Hayman presiding. She reminded the Commission that all members have a duty to avoid conflicts of interest and the appearances of conflicts as required by NCGS 138A-15(e). Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the May 17, 2007 meeting. There were none and the minutes were approved as distributed.

FOLLOW-UP MATTERS

1 NCAC 43A .0102, .0301, .0304, .0306, .0309: Department of Administration – The Commission approved the rewritten rules submitted by the agency.

10A NCAC 21B .0314: DHHS/Medical Assistance (Temporary Rule) – Commissioner Gray, as one of the persons voting to object to putting the permanent rule into place using G.S. 150B-21.3(b2), moved to reconsider the Commission's action taken at the April meeting. Commissioner Twiddy seconded the motion to put it before the Commission. After some discussion the motion to reconsider passed with Commissioners Gray, Shuping, Tart, Twiddy, and Welborn voting in favor and Commissioners Hayman, Hilliard, and Saunders opposing it.

The Commission then discussed the substance of the rule. The Commission invited members of the public to address the Commission. Curtis Venable spoke in opposition and agency representatives Belinda Smith, Andy Wilson, and Teresa Smith spoke in favor of it and answered questions from the Commissioners.

Commissioner Gray moved to approve the rule and this was seconded by Commissioner Shuping. The rule was not approved with Commissioners Gray and Shuping voting in favor of the motion and Commissioners Hilliard, Saunders, Tart, Twiddy, and Welborn voting in opposition to the motion.

The rule was then returned to the agency pursuant to G.S. 150B-21.1(b1) because the supplemented statement of findings of need did not meet the criteria listed in G.S. 150B-21.1(a).

12 NCAC 11 .0105: Alarm Systems Licensing Board – The Commission approved the rewritten rule submitted by the agency.

21 NCAC 28 .0304: Landscape Contractor Registration Board – The Commission approved the rewritten rule submitted by the agency.

21 NCAC 61 .0401: Respiratory Care Board - The Commission approved the rewritten rule submitted by the agency.

23 NCAC 2E .0204: Board of Community Colleges - The Commission originally approved this rule in April. However the technical changes that staff had requested were not received. The agency wanted to examine the changes more closely and verify that they would not cause any conflicts or problems with their existing rules. The changes were subsequently submitted prior to the June meeting and the rule was approved.

23 NCAC 3A .0113: Board of Community Colleges - The Commission approved the rewritten rule submitted by the agency.

903.2.1.2: Building Code Council – No action was taken. The objection is under discussion by a committee of the Building Code Council. It might be September before they are able to provide a response.

LOG OF FILINGS

Chairman Hayman presided over the review of the log of permanent rules. All rules were approved unanimously with the following exceptions:

15A NCAC 02D .0540: Environmental Management Commission – The Commission objected to this rule due to ambiguity. In (a)(2), it is not clear what standards the Division is to use in determining what physical evidence is acceptable. In (e)(1), it is not clear what standards the Division will use in determining that modeling is acceptable. This objection applies to existing language in the rule.

15A NCAC 02D .1211: Environmental Management Commission – The Commission objected to this rule due to ambiguity. Subparagraph (e)(2) requires the owner or operator of an OSWI to meet emission standards by July 1, 2010 or “completed.” It is not clear what is meant by “completed.”

21 NCAC 36 .0303 and .0318: Nursing Board – Prior to the review of the rules from the Board of Nursing Commissioner Shuping recused herself and did not participate in any discussion or vote concerning these rules because she is co-counsel to the NC Board of Nursing. Commissioner Shuping left the meeting during the discussion and voting for these rules. This written explanation is part of the record of the meeting. Ms. Shuping had previously expressed her recusal and has not received any communication from commission counsel concerning these rules.

Cathy Franklin-Griffin and Carol Boles spoke in opposition to the rules. Attorney Jack Nichols and Julia George spoke in favor of the rules.

The rules were approved by the Commission with Commissioner Tart voting in opposition to the rules. The Commissioners conditioned their approval of rule .0318 on receiving a technical change to paragraph (h) making it clear that the rules currently do not treat clinical preceptors as nursing program faculty and will not require them to be treated as faculty in the future or comply with faculty qualification requirements.

The Commission has received 10 letters of objection to the rules and the rules are submitted to legislative review.

25 NCAC 01O .0101: State Personnel Commission - The Commission objected to this rule due to ambiguity and lack of statutory authority. It is unclear what standards the State Personnel Commission will use to approve the performance management system established in lines 23 and 24. Likewise it is unclear what standards the State Personnel Director will use to approve substantive changes or variations in the system as set out in (2), lines 27 and 28. To the extent that either of these are set outside of rulemaking, there is no authority to do that. The Office of State Personnel has requested that the Commission withhold the entire set of rules from filing in the NC Administrative Code pending the resolution of the Commission’s objections.

25 NCAC 01O .0106: State Personnel Commission - The Commission objected to this rule due to ambiguity. It is unclear in (2) line 10 what constitutes evaluating the performance management system “periodically.” Since there is also the requirement that this periodic evaluation be reported to the State Personnel Director one could presume that the Director could demand the report. But in this rule it is unclear when the SPD could demand the report since there is no actual timetable for making the evaluation.

TEMPORARY RULES

Chairman Hayman presided over the review of the log of temporary rules. The rule was approved unanimously.

COMMISSION PROCEDURES AND OTHER BUSINESS

Judge Mann spoke to the Commission explaining his desire for the Office of Administrative Hearings including the Rules Review Commission to find new ways to better serve the public.

Commissioner Saunders asked that the committee meet to review the proposed RRC Rules and report back to the Commission.

The meeting was adjourned at 12:35 p.m.

The next scheduled meeting of the Commission is Thursday, July 26, 2007 at 10:00 a.m.

Respectfully,
Barbara Townsend

LIST OF APPROVED PERMANENT RULES **June 28, 2007 Meeting**

ADMINISTRATION, DEPARTMENT OF

<u>Definitions</u>	01 NCAC 43A .0102
<u>Transfer of Sale</u>	01 NCAC 43A .0301
<u>Order of Priority in Disposition</u>	01 NCAC 43A .0304
<u>Bidding and Purchases Prohibited by Employees and Immedia...</u>	01 NCAC 43A .0306
<u>Rejection of Bids</u>	01 NCAC 43A .0309

SOCIAL SERVICES COMMISSION

<u>Definitions</u>	10A NCAC 06W .0101
<u>Methods of Service</u>	10A NCAC 06W .0102
<u>Service Delivery</u>	10A NCAC 06W .0103
<u>Nature and Purpose</u>	10A NCAC 06W .0104
<u>Definitions</u>	10A NCAC 06W .0105
<u>Service Populations</u>	10A NCAC 06W .0106
<u>Application for Services</u>	10A NCAC 06W .0107
<u>Service provider Responsibilities</u>	10A NCAC 06W .0108
<u>Prohibited Activities</u>	10A NCAC 06W .0109
<u>Request for Waiver</u>	10A NCAC 06W .0110

HEALTH AND HUMAN SERVICES, DEPARTMENT OF

<u>Approved Alcohol Screening Test Devices; Calibration</u>	10A NCAC 41B .0503
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SOCIAL SERVICES COMMISSION

<u>Housing and Home Improvement Service</u>	10A NCAC 71R .0909
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ALARM SYSTEMS LICENSING BOARD

<u>Prohibited Acts</u>	12 NCAC 11 .0105
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LABOR, DEPARTMENT OF

<u>Certificates of Operation</u>	13 NCAC 15 .0306
<u>Elevator Certificate of Operation Reinstatement Fee</u>	13 NCAC 15 .0706

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Sulfur Dioxide Emissions From Combustion Sources</u>	15A NCAC 02D .0516
<u>Control of Nitrogen Dioxide and Nitrogen Oxides</u>	15A NCAC 02D .0519
<u>Control of Visible Emissions</u>	15A NCAC 02D .0521
<u>New Source Performance Standards</u>	15A NCAC 02D .0524
<u>Applicability</u>	15A NCAC 02D .0902
<u>Compliance Schedules for Sources In Noncompliant Areas</u>	15A NCAC 02D .0909
<u>Certification of Leak Tightness</u>	15A NCAC 02D .0960
<u>Tailpipe Emission Standards for CO and HC</u>	15A NCAC 02D .1004
<u>Purpose and Scope</u>	15A NCAC 02D .1201
<u>Definitions</u>	15A NCAC 02D .1202
<u>Other Incinerators</u>	15A NCAC 02D .1208
<u>Applicability</u>	15A NCAC 02D .1402
<u>Compliance Schedules</u>	15A NCAC 02D .1403

<u>Open Burning Purpose Scope</u>	15A NCAC 02D .1901
<u>Definitions</u>	15A NCAC 02D .1902
<u>Open Burning Without an Air Quality Permit</u>	15A NCAC 02D .1903
<u>Air Curtain Burners</u>	15A NCAC 02D .1904
<u>Multiple Violations Arising from a Single Episode</u>	15A NCAC 02D .1907
<u>Applicability and Eligibility</u>	15A NCAC 02D .2303
<u>Activities Exempted from Permit Requirements</u>	15A NCAC 02Q .0102
<u>Annual Emissions Reporting</u>	15A NCAC 02Q .0207
<u>Initial Permit Application Submittal</u>	15A NCAC 02Q .0506

LANDSCAPE CONTRACTORS REGISTRATION BOARD

<u>Reinstatement After Revocation</u>	21 NCAC 28 .0304
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MEDICAL BOARD

<u>Examination Fee</u>	21 NCAC 32B .0209
<u>Graduate Medical Education and Training</u>	21 NCAC 32B .0213
<u>Fee</u>	21 NCAC 32B .0308
<u>Fee</u>	21 NCAC 32B .0506
<u>ECFMG Certification</u>	21 NCAC 32B .0507
<u>Approved Categories of CME</u>	21 NCAC 32R .0102

NURSING, BOARD OF

<u>Existing Nursing Program</u>	21 NCAC 36 .0303
<u>Faculty</u>	21 NCAC 36 .0318

RESPIRATORY CARE BOARD

<u>Continuing Education Requirements</u>	21 NCAC 61 .0401
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COMMUNITY COLLEGES, BOARD OF

<u>Courses and Standards for Curriculum Programs</u>	23 NCAC 02E .0204
<u>Student Refund</u>	23 NCAC 03A .0113

STATE PERSONNEL COMMISSION

<u>Purpose</u>	25 NCAC 01O .0102
<u>Components of a Performance Management System</u>	25 NCAC 01O .0103
<u>Rating Scale</u>	25 NCAC 01O .0104
<u>Dispute Resolution</u>	25 NCAC 01O .0105
<u>Performance Management Process</u>	25 NCAC 01O .0201
<u>Components of an Operative System</u>	25 NCAC 01O .0202
<u>Relationship/Performance Management and Other Human Resou...</u>	25 NCAC 01O .0203
<u>Responsibilities of the State Personnel Commission</u>	25 NCAC 01O .0204
<u>Responsibilities of the Office of State Personnel</u>	25 NCAC 01O .0205
<u>Responsibilities of Agencies</u>	25 NCAC 01O .0206

RULES REVIEW COMMISSION

LIST OF APPROVED TEMPORARY RULES
June 28, 2007 Meeting

BUILDING CODE COUNCIL

NC Residential Code: Exception 2, Exterior Wall Projections

R302.1

AGENDA
RULES REVIEW COMMISSION
Thursday, July 26, 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. Environmental Management Commission - 15A NCAC 02D .0540 and .1211 (Bryan)
 - B. State Personnel Commission - 25 NCAC 01O .0101 and .0106 (DeLuca)
 - C. Building Code Council - 903.2.1.2 (DeLuca)
 - IV. Review of Log of Permanent Rule filings for RRC review filed between May 22 and June 20, 2007 (attached)
 - V. Review of Temporary Rules
 - VI. Commission Business
 - Findings from committee to review proposed RRC Rules
 - Next meeting: August 23, 2007
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Commission Review
Log of Permanent Rule Filings
May 22, 2007 through June 20, 2007

PUBLIC HEALTH, COMMISSION FOR

The rules in Chapter 46 are adopted by the Commission for Public Health and concern local standards including general provisions (.0100); standards for local health departments (.0200) and local health department staff (.0300); and sanitation inspections (.0400).

Food, Lodging/Inst Sanitation/Public Swimming Pools/Spas
Amend/*

10A NCAC 46 .0213

INSURANCE, DEPARTMENT OF

The rules in Chapter 11 are from the Financial Evaluation Division.

The rules in Subchapter 11B concern special programs including securities (.0100); insurance holding company systems (.0200); variable annuities (.0300); workmen's compensation fund (.0400); promoting and holding companies (.0500); and workers' compensation self-insurance (.0600).

Transactions Subject to Prior Notice-Notice Filing
Amend/*

11 NCAC 11B .0222

COASTAL RESOURCES COMMISSION

The rules in Chapter 7 pertain to coastal management and are promulgated by the Division of Coastal Management or the Coastal Resources Commission.

The rules in Subchapter 7H are the state guidelines for areas of environmental concern including introduction and general comments (.0100); the estuarine system (.0200); ocean hazard areas (.0300); public water supplies (.0400); natural and cultural resource areas (.0500); development standards (.0600); general permits for construction or maintenance of bulkheads and the placement of riprap for shoreline protection in estuarine and public trust waters (.1100); piers, docks and boat houses in estuarine and public trust waters (.1200); boat ramps along estuarine shorelines and into estuarine and public trust waters (.1300); wooden groins in estuarine and public trust waters (.1400); excavation within or connecting to existing canals, channels, basins, or ditches in estuarine waters, public trust waters, and estuarine shoreline AECs (.1500); aerial and subaqueous utility lines with attendant structures in coastal wetlands, estuarine waters, public trust waters and estuarine shorelines (.1600); emergency work requiring a CAMA or a dredge and fill permit (.1700); beach bulldozing landward of the mean high-water mark in the ocean hazard AEC (.1800); temporary structures within the estuarine and ocean hazard AECs (.1900); general permit for authorizing minor modifications and repair to existing pier/mooring facilities in estuarine and public trust waters and ocean hazard areas (.2000); marsh enhancement breakwaters for shoreline protection in estuarine and public trust waters (.2100); general permits for construction of freestanding moorings in established waters and public trust areas (.2200); general permits for replacement of existing bridges and culverts in estuarine waters, estuarine shorelines, public trust areas and coastal wetlands (.2300); general permit for placement of riprap for wetland protection in estuarine and public trust waters (.2400); emergency general permit, to be initiated at the discretion of the secretary of the Department of Environment and Natural Resources for replacement of structures, the reconstruction of primary or frontal dune systems, and the maintenance excavation of existing canals, basins, channels, or ditches, damaged, destroyed, or filled in by hurricanes or tropical storms, provided all replacement, reconstruction and maintenance excavation activities conform to all current standards (.2500); general permit for construction of wetland, stream and buffer mitigation sites by the North Carolina Ecosystem Enhancement Program or the North Carolina Wetlands Restoration Program (.2600); and general permit for the construction of riprap sills for wetland enhancement in estuarine and public trust waters (.2700).

<u>Approval Procedures</u>	15A	NCAC	07H	.1102
Amend/*				
<u>Approval Procedures</u>	15A	NCAC	07H	.1202
Amend/*				
<u>Approval Procedures</u>	15A	NCAC	07H	.1302
Amend/*				
<u>Approval Procedures</u>	15A	NCAC	07H	.1402
Amend/*				
<u>Approval Procedures</u>	15A	NCAC	07H	.2002
Amend/*				
<u>Approval Procedures</u>	15A	NCAC	07H	.2102
Amend/*				
<u>Approval Procedures</u>	15A	NCAC	07H	.2202
Amend/*				
<u>Approval Procedures</u>	15A	NCAC	07H	.2402
Amend/*				
<u>Approval Procedures</u>	15A	NCAC	07H	.2702
Amend/*				

The rules in Subchapter 7J concern procedures for handling major development permits, variance requests, appeals from minor development permit decisions and declaratory rulings. They include definitions (.0100); permit application and procedures (.0200); hearing procedures (.0300); final approval and enforcement (.0400); general permits (.0500); declaratory rulings and petitions for rulemaking (.0600); procedures for considering variance petitions (.0700); and general permit procedure (.1100).

<u>Replacement of Existing Structures</u>	15A	NCAC	07J	.0210
Amend/*				

The rules in Subchapter 7K set out activities in areas of environmental concern (AECs) which do not require a Coastal Area Management Act (CAMA) permit. These include activities that are not considered development (.0100); exempt minor

maintenance and improvement (.0200); and exempt federal agency activities (.0400).

Exemption/Accessory Uses/Maintenance Repair/Replacement
Amend/*

15A NCAC 07K .0209

The rules in Subchapter 7M concern general policy guidelines for the coastal area including purpose and authority (.0100); shoreline erosion response policies (.0200); shorefront access policies (.0300); coastal energy policies (.0400); post-disaster policies (.0500); floating structure policies (.0600); mitigation policy (.0700); coastal water quality policies (.0800); policies on use of coastal airspace (.0900); policies on water and wetland based target areas for military training activities (.1000); policies on beneficial use and availability of materials resulting from the excavation or maintenance of navigational channels (.1100); and policies on ocean mining (.1200).

Guidelines for Public Access
Amend/*

15A NCAC 07M .0303

Local Government and State Involvement in Access
Amend/*

15A NCAC 07M .0306

Eligible Applicants/Grant Selection Criteria
Amend/*

15A NCAC 07M .0307

ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF

The rules in Chapter 11 are from the Division of Radiation Protection and cover a broad and diverse range of applications including general provisions (.0100); registration of radiation machines, facilities and services (.0200); licensing of radioactive material (.0300); safety requirements for industrial radiography operations (.0500); use of x-rays in the healing arts (.0600 - .0700); requirements for analytical x-ray (x-ray diffraction or florescence analysis) equipment (.0800); requirements for particle accelerators (.0900); requirements for notices, instructions, reports, and inspections (.1000); fees (.1100); land disposal of radioactive waste (.1200); tanning facilities and equipment (.1400); requirements for obtaining licenses authorizing access to low-level radioactive waste disposal facilities (.1500); and standards for protection against radiation resulting from activities regulated by this Chapter (.1600).

Payment Due
Amend/*

15A NCAC 11 .1102

Delinquent and Uncollectible Fees
Amend/*

15A NCAC 11 .1104

X-Ray Fee Amounts
Amend/*

15A NCAC 11 .1105

Radioactive Materials and Accelerator Fee Amounts
Adopt/*

15A NCAC 11 .1106

Fees and Payment
Amend/*

15A NCAC 11 .1423

PUBLIC HEALTH, COMMISSION FOR

The rules in Chapter 18 are from the Commission for Public Health 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>Modifications to Septic Tank Systems</u>	15A	NCAC	18A	.1956
Amend/*				
<u>Definitions</u>	15A	NCAC	18A	.2601
Amend/*				
<u>Inspections and Reinspections</u>	15A	NCAC	18A	.2604
Amend/*				

REVENUE, DEPARTMENT OF

The rules in Chapter 10 are from the Ad Valorem Tax Division and concern organization of the division (.0100); general provisions (.0200); exclusion for property used for pollution abatement (.0300); exclusion for personal property used for cotton dust prevention or reduction (.0400); and training/certification of county assessors and ad valorem tax appraisals (.0500).

<u>Continuing Education Requirements for County Assessors</u>	17	NCAC	10	.0505
Amend/*				
<u>Continuing Education Requirements for County Appraisers</u>	17	NCAC	10	.0507
Amend/*				

ACUPUNCTURE LICENSING BOARD

The rules in Chapter 1 are from the North Carolina Acupuncture Licensing Board including licensure (.0100); renewal of licensure (.0200); continuing education (.0300); practice parameters and procedures (.0400); schools and colleges of acupuncture (.0500); and administrative procedures (.0700).

<u>Application and Practice Requirements for Licensure</u>	21	NCAC	01	.0101
Amend/*				
<u>Fees</u>	21	NCAC	01	.0103
Amend/*				
<u>Board Mailing Address</u>	21	NCAC	01	.0104
Adopt/*				
<u>Change of Name or Address</u>	21	NCAC	01	.0106
Adopt/*				
<u>Renewal of Licensure</u>	21	NCAC	01	.0201
Amend/*				
<u>Process to Obtain Inactive License; Activate License</u>	21	NCAC	01	.0202
Adopt/*				
<u>Standards for Continuing Education</u>	21	NCAC	01	.0301
Amend/*				

INTERPRETER AND TRANSLITERATOR LICENSING BOARD

The rules in Chapter 25 are from the Interpreter and Transliterator Board including general provisions (.0100); licensing (.0200); moral fitness for licensure (.0300); reporting and disclosure requirements (.0400); continuing education (.0500); administrative procedures (.0600); and sanctions (.0700).

<u>Renewal of a Provisional License</u>	21	NCAC	25	.0205
Amend/*				
<u>Persons Who Are Ineligible to Apply for a License</u>	21	NCAC	25	.0209
Amend/*				
<u>Time-Limited, Nonresident Exemption</u>	21	NCAC	25	.0210
Adopt/*				

<u>Continuing Education Requirements</u> Amend/*	21	NCAC	25	.0501
<u>Proration of Continuing Education Requirements</u> Adopt/*	21	NCAC	25	.0502
<u>Failure to Meet Continuing Education Requirements</u> Adopt/*	21	NCAC	25	.0503
<u>CEU Credit for College Courses</u> Adopt/*	21	NCAC	25	.0504
<u>CEU Credit for Workshops, Conferences, and Independent St...</u> Adopt/*	21	NCAC	25	.0505
<u>CEU Credit For Workshops, Conferences, and Independent St...</u> Adopt/*	21	NCAC	25	.0506
<u>Schedule of Penalties</u> Adopt/*	21	NCAC	25	.0701
<u>Evaluation of Mitigating and Aggravating Factors</u> Adopt/*	21	NCAC	25	.0702
<u>Identification of Separate Offenses</u> Adopt/*	21	NCAC	25	.0703

LANDSCAPE ARCHITECTS, BOARD OF

The rules in Chapter 26 are from the N. C. Board of Landscape Architects and include statutory and administrative provisions (.0100); practice rules for registered landscape architects (.0200); examination and licensing procedures (.0300); rules, petitions and hearings (.0400); and board disciplinary procedures (.0500).

<u>Application of Professional Seal</u> Amend/*	21	NCAC	26	.0207
<u>Examination</u> Amend/*	21	NCAC	26	.0301
<u>Certificate of Reciprocity</u> Amend/*	21	NCAC	26	.0303

CONTESTED CASE DECISIONS

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

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Sammie Chess Jr.
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>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
ABC Commission v. La Fiesta Mexicana II, Inc., T/A La Fiesta Mexicana	07 ABC 0149	Gray	04/19/07	
ABC Commission v. NK Group, Inc., T/A NK Food Mart,	07 ABC 0163	Overby	04/18/07	
A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions .				
<u>CRIME VICTIMS COMPENSATION</u>				
Pricilla McAllister v. Crime Victims Compensation Commission	06 CPS 1166	Webster	06/14/07	
Darrin L. Smith v. Crime Victims Compensation Commission	06 CPS 0780	Webster	07/03/07	
<u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u>				
Hanson Hill Rest Home and Faiger Blackwell v. DHHS, DFS, Adult Care Licensure Section	03 DHR 0945	Overby	04/16/07	
Kristen Valerie Kennedy v. Div. of Mental Health/Development Disabilities/Substance Abuse Services at Dix	06 DHR 0984	Mann	05/08/07	
Eyvette Abbott, Robbie Wilson Community Services, Inc., v. DHHS (DMH/DD/SAS)	06 DHR 1139	Webster	06/06/07	
Amran Hussein, Trading as Laurinburg Food Mart v. DHHS, Div. of Public Health	06 DHR 1569	Webster	04/17/07	
James Hampton for South Haven Assisted Living v. DHHS, DFS, Mental Health Licensure and Certification Section	06 DHR 1783	Gray	04/23/07	
Burnell Yancey, Jr. v. DHHS, Div. of Medical Assistance	06 DHR 1817	Elkins	05/29/07	22:01 NCR 82
Nidal Dahir, DHHS, Division of Public Health	06 DHR 1916	Lassiter	05/14/07	
Mary K. Short for Kathryn M. Short v. DHHS, Division of Mental Health, Developmental Disabilities and Substance Abuse	06 DHR 2282	Gray	05/18/07	
Ebony Shanaye Williams v. Health Care Personnel Registry Investigations	06 DHR 2305	Gray	06/29/07	
Egusta Ford v. DMA, Third Party Recovery	06 DHR 2364	Gray	05/14/07	
Maelene R. Dobson (Restoration Ministries Christian Center, Inc.) v. DHHS, Division of Public Health	06 DHR 2423	Overby	07/03/07	
Annette L. Gwynn v. DHHS, Division of Medical Assistance	07 DHR 0030	Webster	06/08/07	
John A. Millan and Cornelia D. Millan v. DHHS	07 DHR 0031	Gray	05/23/07	
Doris Durden/MID #945-63-2642K v. DHHS	07 DHR 0055	Overby	06/04/07	
Rita Amirahmadi v. DHHS, Division of Medical Assistance	07 DHR 0250	Elkins	06/05/07	
Linda S. Little, Littles Day Care	07 DHR 0266	Overby	05/23/07	
Kareem S. Scott v. DHHS, DFS	07 DHR 0300	Webster	05/11/07	
Penny Mae Little v. DHHS, DFS	07 DHR 0320	Overby	06/22/07	

CONTESTED CASE DECISIONS

Peter Emeka Nwankwo v. DHHS	07 DHR 0355	Overby	05/04/07
Geraldine Fenner v. DHHS	07 DHR 0367	Overby	05/23/07
Annette L. Gwyn v. DHHS/Division of Medical Assistance	07 DHR 0382	Lassiter	04/16/07
Klos Johnson v. Davidson County Social Services Food Stamp	07 DHR 0422	Gray	06/29/07
Jessie Duncan v. DHHS	07 DHR 0424	Elkins	06/08/07
Leonard Atkins Jr. v. Rowan County DSS (Ms. Tate)	07 DHR 0464	Gray	06/07/07
Visitacion T Uy v. DHHS/Division of Medical Assistance	07 DHR 0489	Overby	05/10/07
Dorothy Sue Johnson v. DHHS, DFS	07 DHR 0502	Webster	06/15/07
Robin E. Peacock, Bridging to Success, Inc v. DHHS, DFS, Mental Health Licensure Section	07 DHR 0510	Gray	05/30/07
Samantha A. Amerson v. DHHS	07 DHR 0578	Overby	06/15/07
Anna Trask v. DHHS, Health Care Personnel Registry	07 DHR 0661	Overby	06/15/07

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Travis Dan Williams v. Criminal Justice Education and Training Standards Commission	06 DOJ 1198	Webster	04/26/07
Robert Anthony Wilson v. DOJ, Company Police Program	06 DOJ 1508	Gray	02/16/07
Jeremy Shayne Pearce v. DOJ, Campus Police Program	06 DOJ 2424	Overby	04/16/07
Andre Cornelius Patterson v. Private Protective Services Board	07 DOJ 0003	Gray	05/18/07
David Keith Shelton v. Private Protective Services Board	07 DOJ 0011	Morrison	03/29/07
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Patricia Ann Davis v. Criminal Justice Education and Training Standards Commission	07 DOJ 0045	Gray	04/03/07
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Citizens for the Preservation of Willis Landing, Kenneth M. Seigler v. DOT	07 DOT 0175	Gray	03/27/07
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DEPARTMENT OF STATE TREASURER

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Charles R. Franklin, Jr. v. DST, Retirement Systems Division	06 DST 1672	Overby	05/14/07

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Daniel R. Wroblewski v. DENR and Coastal Management	07 EHR 0217	Overby	05/08/07
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Larry Miller v. Teachers' and State Employees' Comprehensive Major Medical Plan	06 INS 1236	Overby	04/11/07

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Deona R. Hooper v. NCCU	06 OSP 1071	Lassiter	04/25/07
Patrice Bernard v. NC A&T State University	06 OSP 1550	Elkins	06/05/07
Angelia Davis v. UNC-Charlotte	06 OSP 1908	Gray	03/08/07
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Larry L. Deyton v. Mitchell County Commission Board	06 OSP 2415	Gray	04/19/07
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Dorothy H. Williams v. John Umstead Hospital	07 OSP 0265	Lassiter	04/24/07
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Patricia G. Flanigan v. Fayetteville State University	07 OSP 0503	Overby	05/10/07
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Crystal B. Totten v. DHHS	07 OSP 0923	Gray	07/06/07

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Kenneth Trivette v. UNC Hospitals	06 UNC 2014	Elkins	04/02/07
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