

NORTH CAROLINA REGISTER

VOLUME 22 • ISSUE 09 • Pages 759 - 895

November 1, 2007

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Contact List for Rulemaking Questions or Concerns

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

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

Office of Administrative Hearings
Rules Division
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424 North Blount Street
Raleigh, North Carolina 27601-2817
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(919) 733-3462 FAX

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Rule Review and Legal Issues

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

contact: Joe DeLuca Jr., Commission Counsel joe.deluca@ncmail.net (919) 715-8655
Bobby Bryan, Commission Counsel bobby.bryan@ncmail.net (919) 733-0928

Fiscal Notes & Economic Analysis

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

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

Governor's Review

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

Legislative Process Concerning Rule-making

Joint Legislative Administrative Procedure Oversight Committee
545 Legislative Office Building
300 North Salisbury Street
Raleigh, North Carolina 27611
(919) 733-2578
(919) 715-5460 FAX

contact: Karen Cochrane-Brown, Staff Attorney karenc@ncleg.net
Jeff Hudson, Staff Attorney jeffreyh@ncleg.net

County and Municipality Government Questions or Notification

NC Association of County Commissioners
215 North Dawson Street
Raleigh, North Carolina 27603
(919) 715-2893

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

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

contact: Anita Watkins awatkins@ncmlm.org

NORTH CAROLINA REGISTER
Publication Schedule for January 2007 – December 2007

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule (first legislative day of the next regular session)	270 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 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

September 11, 2007

Mr. John Tanner
Chief, Voting Section
Civil Rights Division
Room 7254-NWB
U.S. Department of Justice
950 Pennsylvania Ave., N.W.,
Washington, D.C. 20530

Re: North Carolina's Response to "What Constitutes a Vote" Request

Dear Section Chief Tanner:

In response to your April 27, 2007 letter (enclosed) concerning North Carolina's compliance with Section 301(a)(6) of HAVA, 42 U.S.C. § 15481 (a)(6), enclosed you will find the document, "Standards for Determining What Constitutes a Vote and What Will be Counted as a Vote". It is our position that this fulfills the mandate above.

This document was prepared as per North Carolina General Statute §163-182.1(b) with the procedures and standards contained within the document posted for over 15 days on the North Carolina State Board of Elections website as a document seeking public comment and input. A copy of that statute is enclosed for your convenience. On August 30, 2007, the North Carolina State Board of Elections met publicly at the UNC-CH Friday Center at Chapel Hill and discussed the attached document.

Subsequently, the document was approved by a 5-0 vote of the State Board of Election. State Board Member Robert Cordle discussed the policies and procedures contained in the document a few minutes later before over 400 assembled county board of elections members, staff and members of the public at the educational conference being held on the same premises. You will recall that you were personally present in that meeting at that time.

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

As an action affecting voting, the document is being submitted by separate mailing for preclearance to Assistant Attorney General Yvette Rivera.

Please contact me as to any questions as to this matter.

Sincerely,



Gary O. Bartlett
Executive Director

Cc: USDOJ Assistant Attorney General Chris Herron (via e-mail)

Cc: USDOJ Assistant Attorney General Yvette Rivera (via later Section 5 Submission)

State of North Carolina

**State Board of Elections
506 N. Harrington Street
Raleigh, NC 27603
(919) 733-7173
www.sboe.state.nc.us**

**Gary O. Bartlett
Executive Director**


**Standards for Determining What Constitutes a Vote
And What Will Be Counted As a Vote
Pursuant to 42 U.S.C. § 15481(a)(6) & N.C.G.S. § 163-182.1(b)**

Introduction

Pursuant to Section 301 (a)(6) of the Help America Vote Act of 2002, codified as 42 U.S.C. § 15481(a)(6), and N.C.G.S. § 163-182.1(b), the State Board of Elections has developed these standards and procedures to define what is a vote and when that vote should be counted in circumstances in which voting systems are unable to determine the voter's intent with respect to a marked ballot. This could occur if a voter uses an improper marking instrument, marks in an inappropriate manner, places marks in the wrong location on the ballot, or otherwise acts in a manner that causes the voter's ballot to be unreadable by the voting system for which the ballot was designed.

North Carolina has certified the following voting systems for use in all elections conducted in the State:

Optical Scan	Direct Record Electronic	Other Devices
M100	iVotronic	AutoMark
M650	ADA iVotronic	

Ballot marking instructions are provided for each ballot (GS 163-165.5(6)). Optical scan ballots should be marked according to the instructions provided for the ballot using a black ball point pen or marking device provided at the polling place to fill in the oval () next to the candidate for whom the voter wishes to vote. Direct record electronic (DRE) voting systems do not allow irregularly marked ballots. The voter should follow instructions on the voting equipment to ensure the vote is cast and receive the confirmation "Your ballot has been cast. Thank you for voting." However, when a voter's choice cannot be tabulated by the voting equipment, the principles and rules for counting official ballots as contained in GS 163-182.1, -182.2 and 8 NCAC 6B.0105 shall apply.

These standards for determining what constitutes a vote are not intended to replace or supercede federal or state statutes or the North Carolina Administrative Code but are to clarify and refine the process to be used by county boards of elections in exercising their quasi-judicial authority to determine a voter's intent in casting a vote. These standards are to be construed and applied consistently with State and Federal law.

Definitions

The following are definitions intended to be construed consistently with state and federal law.

Absentee Ballot	A ballot issued to a voter qualified to vote in the election at a time other than Election Day.
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Ballot	As defined in N.C.G.S. § 163-165(1), “ ‘[b]allot’ means an instrument on which a voter indicates a choice so that it may be recorded as a vote for a certain candidate or for or against a referendum proposal. The term ‘ballot’ may include a paper ballot to be counted by hand, a paper ballot to be counted on an electronic scanner, . . . the image on a direct record electronic unit, or a ballot used on any other system.”
Blank Ballot	A ballot containing no marks in any voting position target area readable by the ballot scanner, or one that has been marked with an unreadable marker, or one that has been consistently marked so that it is unreadable by the ballot scanner.
Candidate	A person seeking nomination or election to a specified office that has met the legal requirements for the person’s name to be printed on the ballot or counted as a write-in candidate.
Hand Count	To visually examine the ballot to determine the choices by the voter and to manually tally the choices by contest or referendum.
Overvote	A voter marks more choices than the number of positions allowed in the contest. Note: Direct Record Electronic (DRE) voting systems do not allow an overvote.
Paper Trail	The paper record generated by the voting system of each individual vote cast.
Rejected ballot	A ballot that has been damaged in a way that prohibits the scanner from reading the choices marked by the voter.
Traditional Paper ballot	A paper ballot to be counted by hand that is not readable by a voting system tabulator.
Undervote	A voter marks fewer choices than the number of positions allowed in the contest.
Vote	A choice for a candidate or a referendum proposal.
Voter Intent	A scanner or other counting machine is unable to determine the voter’s choice on an official ballot, but human counters can clearly determine the voter’s choice and hand count the official ballot.

General Standards

Only official ballots shall be counted according to the principles and rules contained in GS163-182.1. These principles include, but are not limited to, determining the voter's intent, counting all ballot items in which the voter's intent can be determined, and not rejecting an official ballot because of technical errors in the marking unless it is impossible to clearly determine the voter's intent. If a voter's intent can be determined, it shall be considered to be a valid vote.

If a voter has done anything other than to mark the ballot properly according to ballot marking instructions provided, the ballot shall be counted unless it is impossible to determine the voter's intent. If the voter has shown consistency in marking choices on the ballot, then those choices of the voter shall be counted, but shall not be counted if it results in an overvote. (GS 163-182.1 and 8 NCAC 6B.0105)

Write-In Votes

Write-in votes shall be counted pursuant to the provisions of GS 163-182.1(6) and GS 163-123 (f). A reasonable spelling of a qualified write-in candidate's name shall be counted.

Provisional Ballots

Provisional ballots shall be counted pursuant to the provisions of GS 163-166 and 8 NCAC 6B.0105(e).

Absentee Ballots

Absentee ballots shall be counted pursuant to the principles and rules contained in GS 163-182.1. Before counting an absentee ballot it shall be determined that the absentee ballot application and container return envelope were timely received, properly executed and contain requisite signatures. County boards of elections will determine the validity of an absentee ballot received in an unsealed container-return envelope.

If it is determined there are insufficient signatures on the absentee application or container return envelope, the county board of elections shall make a good faith attempt to contact the absentee voter applicant to notify the absentee voter of the insufficiency and provide opportunity for remedy the absentee voter before the absentee voting period closes and shall post a list of the defective absentee applications or container return envelopes which the political parties, candidates and public may view. If the absentee voter fails to remedy the imperfection by 5:00 p.m. on the day before election day the voter may appear at the polling place on election day and, if otherwise qualified, shall be allowed to vote using the voting equipment.

Abandoned Ballot

If a voter leaves the voting enclosure without finalizing the act of voting as required by the voting system, the precinct officials shall follow the procedure contained in 8 NCAC 10B.0104 (f).

Standards for Determining a Vote that Shall be Counted

The following standards should be applied for manual hand to eye counts or recounts:

Only official ballots shall be counted following the principles and rules contained in GS163-182.1.

If a voter has done anything other than mark the ballot properly according to ballot marking instructions provided, the ballot shall be counted according to the voter's indicated intent unless it is impossible to determine the voter's intent. If the voter has shown consistency in marking choices on the ballot, then those choices of the voter shall be counted, but it shall not be counted if it results in an overvote. (GS 163-182.1 and 8 NCAC 6B.0105). Marks indicating voter intent shall include, but not be limited to, circling the candidate's name or voting target area, strike-outs or corrections of choices, or writing in the candidate's name but failing to mark the voting target area.

Standards for Determining an Invalid Vote

If a voter uses random markings without a distinctive or consistent voting pattern so that the voter's choice cannot be determined, the vote will be considered invalid.

If the voter writes in a name that is unrecognizable, illegible, or not a real person, the vote will be considered invalid.

Note: Direct Record Electronic (DRE) voting systems do not allow an invalid vote except in write-in races.



U.S. Department of Justice

Civil Rights Division

JKT:MSR:SMC:maf
DJ 166-012-3
2007-3572

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

August 16, 2007

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

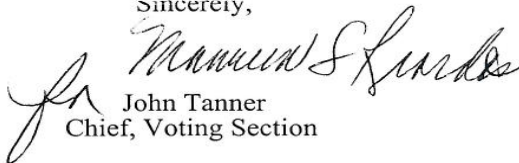
AUG 20

Dear Mr. Bartlett:

This refers to Session Law 2007-253 (H.B. 91), which creates a process to allow any person who is qualified to vote, to register in person, and vote at a one-stop site after the general close of voter registration, for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on July 20, 2007.

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

Sincerely,


John Tanner
Chief, Voting Section



NC DEPT. OF JUSTICE

Fax: 919-716-6755

Oct 1 2007 05:58pm, P003/003

U.S. Department of Justice

Civil Rights Division

JKT:MSR:SMC:jdh
DJ 166-012-3
2007-4106

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

October 1, 2007

Ms. Susan K. Nichols
Special Deputy Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, North Carolina 27609

James C. Wrenn, Jr., Esq.
Hopper, Hicks & Wrenn
P.O. Box 247
Oxford, North Carolina 27565

Dear Ms. Nichols and Mr. Wrenn:

This refers to the Session Law 2007-269 (H.B. 986), which provides for the incorporation of the Town of Butner, council-manager form of government, at-large method of election, number of elected officials and terms and powers of their offices, compensation for mayor and council, concurrent terms, plurality vote requirement, nonpartisan election procedures, implementation schedule, county conduct of all elections, and annexation procedures, for the Town of Granville County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on August 24, 2007; supplemental information was received on September 10 and 19, 2007.

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

Sincerely,


John Tanner
Chief, Voting Section

OCT 01 2007 17:13

919 716 6755

TOTAL 0 07
PAGE 03



U.S. Department of Justice
Civil Rights Division

JKT:RPL:PL:par
DJ 166-012-3
2007-3843

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

October 1, 2007

Mr. Don Wright
General Counsel
State Board of Elections
P.O. Box 27255
Raleigh, North Carolina 27611-7255

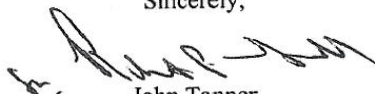
Dear Mr. Wright:

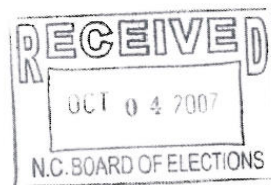
This refers to Session Law 2007-323 (H.B. 1473) (2007), which authorizes counties to conduct special referenda on imposing an additional sales tax or a land transfer tax, and specifies the ballot formats, for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on August 8, 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. Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41).

Session Law 2007-323 (H.B. 1473) (2007) includes provisions that are enabling in nature. Therefore, local jurisdictions are not relieved of their responsibility to seek Section 5 review of any changes affecting voting that are adopted pursuant to this legislation (e.g., procedures for conducting special tax elections). See 28 C.F.R. 51.15.

Sincerely,


John Tanner
Chief, Voting Section





U.S. Department of Justice

Civil Rights Division

JKT:RPL:DJ:maf
DJ 166-012-3
2007-3947

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

September 17, 2007

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

Dear Mr. Bartlett:

This refers to Session Law 2007-349 (H.B. 1737) (2007), which regulates legal expense funds of elected officers to provide for disclosure of contributions and expenditures, and to limit certain contributions, for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on August 14, 2007.

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

Sincerely,

A handwritten signature in dark ink, appearing to read "John Tanner", written over a horizontal line.

John Tanner
Chief, Voting Section



NOTICE OF RULE MAKING PROCEEDINGS AND PUBLIC HEARING

NORTH CAROLINA BUILDING CODE COUNCIL

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

Citation to Existing Rule Affected by this Rule-Making: *North Carolina Building, Electrical, Energy Conservation, Fire, Fuel Gas, Mechanical, Plumbing and Residential Codes.*

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

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

Public Hearing: *December 10, 2007, 1:00PM, NC Legislative Building, Third Floor Auditorium, 16 West Jones Street, Raleigh, NC 27603*

Comment Procedures: *Written comments may be sent to Chris Noles, Secretary, NC Building Code Council, NC Department of Insurance, 322 Chapanoke Road, Suite 200, Raleigh, NC 27603. Comment period expires on December 31, 2007.*

Statement of Subject Matter:

1. Request by David Smith, Chairman of the Residential Standing Committee, to amend the 2006 NC Residential Code for One and Two Family Dwellings, Section R311.5.6.3. The proposed amendment is as follows:

R311.5.6.3 Handrail grip size. All required handrails shall be of one of the following types or provide equivalent graspability.

1. Type I. Handrails with a circular cross section shall have an outside diameter of at least $1\frac{1}{4}$ inches (32 mm) and not greater than 2 inches (51 mm). If the handrail is not circular it shall have a perimeter dimension of at least 4 inches (102 mm) and not greater than $6\frac{1}{4}$ inches (160 mm) with a maximum cross section of dimension of $2\frac{1}{4}$ inches (57 mm).

2. Type II. Handrails with a perimeter greater than $6\frac{1}{4}$ inches (160 mm) shall provide a graspable finger recess area on both sides of the profile. The finger recess shall begin within a distance of $\frac{3}{4}$ inch (19 mm) measured vertically from the tallest portion of the profile and achieve a depth of at least $\frac{5}{16}$ inch (8 mm) within $\frac{7}{8}$ inch (22 mm) below the widest portion of the profile. This required depth shall continue for at least $\frac{3}{8}$ inch (10 mm) to a level that is not less than $1\frac{3}{4}$ inches (45 mm) below the tallest portion of the profile. The minimum width of the handrail above the recess shall be $1\frac{1}{4}$ inches (32 mm) to a maximum of $2\frac{3}{4}$ inches (70 mm). Edges shall have a minimum radius of 0.01 inch (0.25 mm).

Exception: Exterior handrails (garages and areas exposed to the weather) shall not be more than 3-1/2 inches in cross-section dimension.

2. Request by David Smith, Chairman of the Residential Standing Committee, to amend the 2006 NC Residential Code for One and Two Family Dwellings, Section R302.1. The proposed amendment is as follows:

R302.1 Exterior walls. Exterior walls with a fire separation distance less than 3 feet (914 mm) shall have not less than a one-hour fire-resistive rating with exposure from both sides. Projections shall not extend to a point closer than 2 feet (610 mm) from the line used to determine the fire separation distance.

Exception: Detached garages accessory to a dwelling located within 2 feet of a lot line shall be permitted to have roof eave projections not exceeding 4 inches.

Projections extending into the fire separation distance shall have not less than one-hour fire-resistive construction on the underside. The above provisions shall not apply to walls which are perpendicular to the line used to determine the fire separation distance.

Exceptions:

1. Tool and storage sheds, playhouses and similar structures exempted from permits by Chapter 1 are not required to provide wall protection based on location on the lot. Projections beyond the exterior wall shall not extend over the lot line.

2. In Townhouse construction (with 3 or more attached dwellings) the soffit material shall be securely attached to framing members and shall be constructed using either non-combustible soffit material; fire retardant treated soffit material; vinyl soffit installed over $\frac{3}{4}$ inch wood sheathing or 5/8 inch gypsum board; or aluminum soffit installed over $\frac{3}{4}$ inch wood sheathing or 5/8 inch gypsum board. Venting requirements shall be provided in both soffit and underlayments. Vents shall be either nominal 2-inch continuous or

equivalent intermittent and shall not exceed the minimum net free air requirements established in section R806.2 by more than 50%.
Vents in soffit are not allowed within four feet of fire walls or property lines.

3. Request by the Staff of the NC Department of Insurance to adopt the following codes with the NC Amendments:

- A. 2006 International Building Code, with 2009 NC Amendments
- B. 2006 International Energy Conservation Code, with 2009 NC Amendments
- C. 2006 International Fire Code, with 2009 NC Amendments
- D. 2006 International Fuel Gas Code, with 2009 NC Amendments
- E. 2006 International Mechanical Code, with 2009 NC Amendments
- F. 2006 International Plumbing Code, with 2009 NC Amendments
- G. 2006 International Residential Code, with 2009 NC Amendments
- H. 2008 National Electrical Code, with 2008 NC Amendments

Proposed amendments may be viewed at the following links:

http://www.ncdoi.com/OSFM/Engineering/engineering_home.asp

STATE BUILDING CODES

-BUILDING CODES - 2009 EDITION - PROPOSED AMENDMENTS

OR

<http://www.ncbuildingcodes.com/OSFM/Engineering/BCC/ncbuildingcodes.asp>

-ADOPTED CODE INFORMATION

-NC STATE BUILDING CODES

-BUILDING CODES - 2009 EDITION - PROPOSED AMENDMENTS

2008 NC/NEC 2008 - The Base Document for the 2008 NC Electrical Code is the 2008 NEC.

2009 NC/ICC 2006 – The Base Documents for the 2009 NC State Building Codes are the 2006 I-Codes.

The NC Amendments are proposed replacements to the Sections printed in the Base Documents.

The 2006 I-Codes are available at www.iccsafe.org for purchase.

The 2008 NEC is available at www.nfpa.org for purchase.

Single copies are available by November 1, 2007 for **REVIEW ONLY** at the following locations:

Asheville Inspections	828-259-5846
Davie County Inspections, Mocksville	336-753-6050
NC Department of Insurance, Raleigh	919-661-5880 x 254
Greenville Inspections	252-329-4466

The anticipated adoption date of the 2008 NC Electrical Code and the 2009 NC State Building Codes is March 11, 2008.

The proposed effective date for the 2008 NC Electrical Code is **June 1, 2008**.

The proposed effective date for the 2009 NC State Building Codes is **January 1, 2009**.

4. Request by John Hitch, Chairman of the General Construction Standing Committee, to amend the 2006 International Building Code, Table 1017.1 in conjunction with Item 3A above. The Council granted a petition on 9/11/07 to add the following Footnote "f" to Table 1017.1, to "Occupancy B", unsprinklered. The proposed amendment is as follows:

Table 1017.1 Corridor Fire-Resistance Rating.

f. Exit access corridors are not required to be rated on any single tenant floor or in any single tenant space, when 1-hour rated tenant demising walls are provided between all tenant spaces and 1-hour rated floor/ceiling assemblies are provided in multi-story buildings.

SOCIAL SERVICES COMMISSION
Public Hearing Correction

Notice was published in the NC Register Volume 22 Issue 8 page 517 that a public hearing would be held concerning 10A NCAC 06R .0501-.0503; .0508 on November 19, 2007 at 10:00 a.m. at the Social Services Commission, Conference Room 832, (8th Floor, Albemarle Building), 325 N. Salisbury Street, Raleigh, NC. That hearing information is incorrect; the correct hearing information is as follows:

Date: December 14, 2007

Time: 10:00 a.m.

Location: Social Services Commission, Conference Room 819-E, (8th Floor, Albemarle Building), 325 N. Salisbury Street, Raleigh, NC

Should you have any questions about the meeting, please contact Lisa Johnson with the Division of Social Services at lisa.johnson@ncmail.net or (919) 733-3055.

DEPARTMENT OF INSURANCE

11 NCAC 06A.0408 -- LICENSING OF MOTOR VEHICLE DAMAGE APPRAISER was incorrectly printed in the N.C. Register, Volume 22, Issue 8, October 15, 2007. The Department of Insurance submitted the rule as a proposed repeal.

11 NCAC 06A .0408 LICENSING OF MOTOR VEHICLE DAMAGE APPRAISER

~~(a) The applicant must submit the appropriate forms along with a company check, certified check, cashier's check or money order in the proper amount to the Division. The applicant must meet all other relevant requirements of G.S. 58-33-30 and 58-33-10(e).~~
~~(b) In addition to all required forms and fees, an applicant for a nonresident motor vehicle damage appraiser license shall submit a home state certification stating that the applicant is duly licensed for the same kind of insurance for which he is applying. A letter of certification shall be valid for no more than 60 days from date of issuance.~~

Authority G.S. 58-2-40; 58-33-10(14); 58-33-30.

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 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Agriculture intends to adopt the rules cited as 02 NCAC 52J .0401 - .0420, .0501 - .0502, .0601 - .0610, .0701 - .0705, .0801 - .0803 and amend the rules cited as 02 NCAC 52J .0203, .0210, .0302 with changes from the proposed text notice in the Register, Volume 22, Issue 01, pages 4 – 13.

Proposed Effective Date: March 1, 2008

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

Reason for Proposed Action:

02 NCAC 52J .0203, .0210, .0302 - The proposed changes clarify that: separate housing is not required for the unweaned offspring of an animal in a shelter; that rabies vaccination is not required for animals less than 12 weeks old or that have been in the shelter less than 15 days; ambient temperature requirements are clarified; enclosures must be secured to the vehicle during transit; and other technical and conforming changes.

02 NCAC 52J .0401 - .0420, .0501 - .0502, .0601 - .0610, .0701 - .0705, .0801 - .0803 - S.L. 2005-267, s. 11.5, requires the Board of Agriculture to adopt rules on the euthanasia of animals in the possession of an animal shelter, including those operated by local governments. The rules are required to include standards for equipment, procedures, and training of persons who participate in euthanasia of shelter animals.

Procedure by which a person can object to the agency on a proposed rule: Any person may object to the proposed rules by submitting a written statement of objection(s) to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Comments may be submitted to: David S. McLeod, 1001 Mail Service Center, Raleigh, NC 27699-1001, phone (919) 733-7125 extension 238, fax (919) 716-0090, email david.mcleod@ncmail.net

Comment period ends: December 31, 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 52 - VETERINARY DIVISION

SUBCHAPTER 52J - ANIMAL WELFARE SECTION

SECTION .0200 - FACILITIES AND OPERATING STANDARDS

02 NCAC 52J .0203 OUTDOOR FACILITIES

(a) Primary enclosures and walkways with which an animal comes in contact shall be constructed of sealed concrete or other surfaces impervious to moisture. Gravel may be used if maintained at a minimum depth of six inches and kept in a sanitary manner.

(b) Dogs and cats kept outdoors shall be provided housing to allow them to remain dry and comfortable during inclement weather. Housing shall be constructed of material which is impervious to ~~moisture, moisture~~ and which can be disinfected. One house shall be available for each animal within each ~~enclosure, enclosure~~ except for a mother and its unweaned offspring.

(c) In addition to housing, the enclosure shall provide protection from excessive sun and inclement weather.

(d) Animal owners shall be advised at the time of reservation and admission if the animal will be kept in outside facilities.

(e) A suitable method of drainage shall be provided to rapidly eliminate excess water. The drainage system shall be constructed to prevent cross-contamination among animals.

Authority G.S. 19A-24.

02 NCAC 52J .0210 VETERINARY CARE

(a) A written program of veterinary care to include disease control and prevention, vaccination, euthanasia, and adequate veterinary care shall be established with the assistance of a licensed veterinarian.

(b) If there is a disease problem that persists for more than 30 days at the facility, the facility operator shall obtain and follow a veterinarian's written recommendations for correcting the problem.

(c) Each dog and cat shall be observed daily by the animal caretaker in charge, or by someone under his direct supervision. Sick or diseased, injured, lame, or blind dogs or cats shall be provided with veterinary care or be euthanized, provided that this shall not affect compliance with any state or local law requiring the holding, for a specified period, of animals suspected of being diseased. If euthanasia is performed at a certified facility, a list of personnel approved to perform euthanasia shall be maintained ~~on a Letter of Euthanasia Certification form and kept on file at the facility in a Policy and Procedure Manual as described in 02 NCAC 52J .0800.~~ Diseased or deformed animals shall be sold or adopted only under the policy set forth in the "Program of Veterinary Care." Full written disclosure of the medical condition of the animal shall be provided to the new owner.

(d) All animals in a licensed or registered facility shall be in compliance with the North Carolina rabies law, G.S. 130A, Article 6, Part 6. However, no shelter shall be disapproved following inspection or otherwise cited for failure to inoculate any dog or cat known to be less than 12 weeks old or until such animals have been in the shelter at least 15 days.

Authority G.S. 19A-24.

SECTION .0300 - TRANSPORTATION STANDARDS

02 NCAC 52J .0302 PRIMARY ENCLOSURES USED IN TRANSPORTING DOGS AND CATS

(a) Primary enclosures such as compartments or transport cages, cartons, or crates used to transport cats and dogs shall be constructed, ventilated and designed to protect the health and insure the safety of the animals. Such enclosures shall be constructed or positioned in the vehicle in such a manner that:

- (1) Each animal in the vehicle has sufficient fresh air for normal breathing.
- (2) The openings of such enclosures are easily accessible for emergency removals at all times.
- (3) The animals are adequately protected from the elements.

The ambient temperature shall be maintained between 50 degrees F and 85 degrees F. The shelter shall be deemed as being in compliance if its vehicles' animal containment units are equipped with operable air-conditioning, forced-air cooling and heating or other appropriate temperature control mechanisms.

(b) Animals transported in the same primary enclosure shall be of the same species. Puppies or kittens less than four months of age shall not be transported in the same primary enclosure with adult dogs and cats other than their dams.

(c) Primary enclosures used to transport dogs and cats shall be large enough for each animal to turn about freely, and to easily stand, sit, or lie down in a natural position. Primary enclosures used to transport dogs and cats shall be secured to the vehicle to prevent sliding or tipping of the enclosure during transit.

(d) Animals shall not be placed in primary enclosures over other animals in transit unless such enclosure is constructed so as to prevent animal excreta from entering lower enclosures.

(e) All primary enclosures used to transport dogs and cats shall be sanitized between use for shipments.

Authority G.S. 19A-24.

SECTION .0400 - EUTHANASIA STANDARDS

02 NCAC 52J .0401 ADOPTION BY REFERENCE

Except as provided in the rules of this Section, any method of euthanasia approved by the American Veterinary Medical Association, Humane Society of the United States or the American Humane Association is hereby incorporated by reference. In all circumstances, the euthanasia method should be selected and used with the highest ethical standards.

Authority G.S. 19A-24(5).

02 NCAC 52J .0402 AUTHORIZED PERSONS

Only a Certified Euthanasia Technician, Probationary Euthanasia Technician, or a veterinarian licensed to practice veterinary medicine in North Carolina may euthanize an animal in a certified animal shelter. A Certified Euthanasia Technician shall not euthanize animals using a method for which they are not currently certified except as specified in 02 NCAC 52J .0700.

Authority G.S. 19A-24(5).

02 NCAC 52J .0403 DEFINITIONS

As used in this Subchapter:

- (1) "Certified Euthanasia Technician" means a person employed by a certified facility who has been instructed in the proper methods of humane euthanasia, security and record keeping and possesses other skills as deemed necessary by the Animal Welfare Section.
- (2) "Certified facility" means a certified animal shelter, kennel or pet shop that employs at least one Certified Euthanasia Technician or licensed veterinarian to perform euthanasia on animals at that certified facility.
- (3) "Approved Certified Euthanasia Technician trainer" means a person or organization that received permission from the Animal Welfare Section to provide training to applicants or individuals seeking to be Certified Euthanasia Technicians.
- (4) "Chemical Agent" means any chemical approved by the American Veterinary Medical Association, the Humane Society of the United

States or the American Humane Association which is used to induce death.

- (5) "Applicant" means a person seeking certification as a Euthanasia Technician.
- (6) "Commercially manufactured chamber" means a chamber built with the intention for sale with the purpose of euthanizing animals, and which meets the requirements of 02 NCAC 52J .0600.

Authority G.S. 19A-24(5).

**02 NCAC 52J .0404 CERTIFICATION
REQUIREMENTS FOR EUTHANASIA TECHNICIANS**

(a) Individuals who perform euthanasia must be trained and qualified as a Certified Euthanasia Technician as set forth in this Rule.

(b) Individuals seeking certification as a Euthanasia Technician shall submit a written application documenting their qualifications to the Animal Welfare Section, North Carolina Department of Agriculture and Consumer Services, 1030 Mail Service Center, Raleigh, NC 27699-1030, on the form provided by the Animal Welfare Section.

(c) The Animal Welfare Section shall receive and review all applications for Euthanasia Technician certification and determine whether or not to issue the individual applicant proof of certification in the form of a printed certificate.

Authority G.S. 19A-24(5).

02 NCAC 52J .0405 CERTIFICATION STANDARDS
Applicants for certification as a Certified Euthanasia Technician shall be at least 18 years of age at the date they receive certification. Applicants shall not be eligible for certification if they have been convicted of a felony offense or a crime or infraction involving animal abuse or neglect and shall demonstrate compliance with this Section.

Authority G.S. 19A-24(5).

**02 NCAC 52J .0406 APPLICATION
REQUIREMENTS**

Application requirements:

- (1) a completed and signed application form;
- (2) a document from an approved Certified Euthanasia Technician trainer establishing that the applicant has completed an approved course, passed the course written examination and passed a practical examination in the specific euthanasia techniques for which the applicant is seeking certification;
- (3) the applicant can provide separate documentation of having taken an approved course and passed the written examination and having passed a practical examination given by a different approved Certified Euthanasia Technician trainer;

- (4) each applicant shall specify in the application form the specific euthanasia techniques the applicant is requesting certification.

Authority G.S. 19A-24(5).

**02 NCAC 52J .0407 TRAINING AND
EXAMINATIONS**

(a) Training and examinations for euthanasia certification shall consist of:

- (1) Classroom lecture covering the entire list of subjects in Paragraph (b) of this Rule;
- (2) Earning a score of 80 percent correct on a written test provided by the Animal Welfare Section, demonstrating adequate knowledge of the subjects listed in Paragraph (b) of this Rule;
- (3) Successfully passing a practical examination in each of the euthanasia methods for which the applicant is seeking certification.

(b) The Animal Welfare Section shall develop Certified Euthanasia Technician training programs and materials or accredit training programs and materials to be offered by other individuals, schools, agencies or veterinary practices. Said programs and materials shall conform to the processes set forth by the American Veterinary Medical Association, the Humane Society of the United States or the American Humane Association and shall include, but not be limited to, the following topics:

- (1) The theory and history of euthanasia methods and practice;
- (2) Animal anatomy;
- (3) Proper animal restraint, handling and methods for controlling animal stress;
- (4) Proper chemical agent dosages, record keeping and usage documentation, chemical agent, instrument and equipment storage, handling and disposal in accordance with rules and the Code of Federal Regulations;
- (5) Proper injection techniques;
- (6) Proper euthanasia techniques not utilizing injected chemical agents;
- (7) Proper and accurate verification of animal death;
- (8) Proper record keeping;
- (9) Proper disposal of euthanized animals;
- (10) Stress management for euthanasia personnel;
- (11) Proper methods and techniques of euthanasia under extraordinary circumstances; and
- (12) Proper methods, techniques and chemicals inducing anesthesia and sedation in animals prior to euthanasia;
- (13) Proper methods, techniques and chemicals used in the practical examination section for Certified Euthanasia Technician.

(c) The Animal Welfare Section shall prepare written examinations to be given to applicants. Following the classroom training detailed in 02 NCAC 52J .0407, the applicant shall take a written examination provided by the Animal Welfare Section

that will be used by the approved trainer. Those passing the written examination in accordance with 02 NCAC 52J .0407 will be eligible for the practical examination of the methods of euthanasia for which the applicant seeks certification.

(d) The applicant must pass a practical examination on each method of euthanasia for which they seek certification.

- (1) Prior to certification the applicant shall euthanize one or more animals in the presence of an approved trainer using the techniques the applicant has listed or intends to list in his or her application for certification. Any animals used shall be animals previously scheduled for euthanasia.
- (2) In the alternative, upon prior written approval by the Animal Welfare Section the practical examination may consist of simulation of the euthanasia technique, using an appropriately anesthetized animal or an Animal Welfare Section-approved animal simulator. The Animal Welfare Section shall determine and render in writing beforehand whether equipment and/or harmless substances as shall be deemed adequate for use in determining the applicant's competency.

(e) Applicants for certification in Euthanasia by Injection shall demonstrate the following knowledge and competencies:

- (1) Correctly calculate chemical agent dosage based upon the species, age, weight and condition of the animal;
- (2) Correctly complete all required documentation;
- (3) Correctly draw the properly calculated chemical dosage into a syringe and needle of a type and size appropriate for the animal;
- (4) Correctly administer the chemical agent to the animal or administer a substance to an approved animal simulator as described in this Section;
- (5) Applicants shall be able to properly perform intravenous and intraperitoneal injections on dogs and intravenous or intraperitoneal injections on cats;
- (6) Knowledge of the medical procedures and drugs necessary for an animal to be euthanized by cardiac injection;
- (7) Demonstrate ability to verify death by:
 - (A) lack of respiration;
 - (B) lack of ocular reflexes;
 - (C) lack of a heartbeat;
- (8) Knowledge about the human health risks associated with the use of chemical agents used for euthanasia including signs and symptoms associated with accidental exposure of the Certified Euthanasia Technician;
- (9) Proper first aid for a person accidentally exposed to chemical agents used for euthanasia.

(f) Applicants for certification in Euthanasia by Gas Inhalation shall meet the standards set forth in this Paragraph:

- (1) Demonstrate proper knowledge of the dangers and human health effects of exposure to carbon monoxide gas;
- (2) Demonstrate proper knowledge about which animals Euthanasia by Gas Inhalation is approved and which species, age, medical or physical conditions make it improper to use Euthanasia by Gas Inhalation;
- (3) Demonstrate proper techniques in placing animals into the chamber;
- (4) Demonstrate adequate knowledge about the maintenance, operation and cleaning of the chamber, fittings, gas cylinder, valves, and other parts of the equipment;
- (5) Demonstrate proper operation of the chamber;
- (6) Demonstrate ability to verify death by:
 - (A) lack of respiration;
 - (B) lack of ocular reflexes;
 - (C) lack of a heartbeat;
- (7) Knowledge about the human health risks associated with the use of carbon monoxide when used for euthanasia. Such knowledge shall also include signs and symptoms associated with accidental exposure of the Certified Euthanasia Technician;
- (8) Proper first aid for a person accidentally exposed to carbon monoxide used for euthanasia.

Authority G.S. 19A-24(5).

02 NCAC 52J .0408 TRAINERS

Training will be provided by the Animal Welfare Section or by companies or individuals meeting the following criteria:

- (1) Possess working knowledge of euthanasia conducted according to this Section;
- (2) Have demonstrated a proficiency in euthanasia of animals;
- (3) Have experience training staff in euthanasia;
- (4) Provide references from individuals or organizations previously trained;
- (5) Information taught shall conform to this Section and the guidelines set forth by the American Veterinary Medical Association, the Humane Society of the United States or the American Humane Association;
- (6) Shall disclose to their students and the Animal Welfare Section any potential conflicts of interest;
- (7) Shall agree to allow unannounced audit of their instruction and testing by the Animal Welfare Section;
- (8) Prior to providing euthanasia training leading to certification as a Euthanasia Technician, the person or company shall obtain approval before each class for its training program from the Animal Welfare Section.

Authority G.S. 19A-24(5).

02 NCAC 52J .0409 PROBATIONARY EUTHANASIA TECHNICIANS

An individual who has passed the written exam, but has not taken and successfully passed the practical examination may serve as a Probationary Euthanasia Technician under the direct supervision of:

- (1) a licensed veterinarian; or
- (2) Certified Euthanasia Technician

for up to three consecutive months or until such time as the next practical euthanasia exam is conducted, whichever is longer. Certified animal shelters employing probationary euthanasia technicians must notify the Animal Welfare Section no later than five days prior to the probationary euthanasia technician's first day serving in that capacity.

Authority G.S. 19A-24(5).

02 NCAC 52J .0410 EXAM REQUIRED

An individual who has not passed the written exam may not serve as a Certified Euthanasia Technician or Probationary Euthanasia Technician.

Authority G.S. 19A-24(5).

02 NCAC 52J .0411 NEW APPLICATION

If the individual or applicant fails to pass the practical exam a second time and wishes to apply for certification again, the individual shall submit a new application to the Animal Welfare Section, attend an accredited training program, pass the written exam and take and pass a practical examination on euthanasia. The Animal Welfare Section will cancel the application of any applicant who fails the written examination twice.

Authority G.S. 19A-24(5).

02 NCAC 52J .0412 ISSUANCE OF CERTIFICATION

Upon the receipt of materials specified in this Section the Animal Welfare Section shall issue a Certificate.

Authority G.S. 19A-24(5).

02 NCAC 52J .0413 LENGTH OF CERTIFICATION

A Certificate issued by the Animal Welfare Section shall be valid for five years from the date of issuance unless it is revoked pursuant to this Section or upon termination of employment or volunteer status as described in this Section.

Authority G.S. 19A-24(5).

02 NCAC 52J .0414 TERMINATION OF EMPLOYMENT

Upon termination of employment or volunteer status from a certified facility, a Certified Euthanasia Technician shall not perform animal euthanasia in a certified facility until recertified by the Animal Welfare Section. The Certified Euthanasia Technician's certification shall be cancelled effectively upon termination of employment or volunteer status. No later than 10 days from the date of the termination of a Certified Euthanasia

Technician's employment or volunteer status at that certified facility the Certified Euthanasia Technician shall complete a form notifying the Animal Welfare Section of the termination of employment or volunteer status and shall return the form and the Certificate to the Animal Welfare Section.

Authority G.S. 19A-24(5).

02 NCAC 52J .0415 NOTICE OF TERMINATION

A certified facility shall notify the Animal Welfare Section in writing, no later than 10 days from the date of the termination of a Certified Euthanasia Technician's employment or volunteer status at that certified facility.

Authority G.S. 19A-24(5).

02 NCAC 52J .0416 RECERTIFICATION

(a) If a former Certified Euthanasia Technician is employed or is accepted as a volunteer at a certified facility before the expiration of his certification, the former Certified Euthanasia Technician and/or employer may request reinstatement of his/her certification from the Animal Welfare Section. The reinstated Certification shall be good for five years from the date of its initial issue.

(b) If a former Certified Euthanasia Technician is employed or is accepted as a volunteer at a certified facility after the expiration of his certification, the former Certified Euthanasia Technician may only euthanize animals under the direct supervision of a licensed veterinarian or currently certified euthanasia technician for three months or until he/she passes practical examination whichever is less. The former Certified Euthanasia Technician and the manager of the certified facility will each notify the Animal Welfare Section within 10 days of the date the former Certified Euthanasia Technician is employed or accepted as a volunteer.

Authority G.S. 19A-24(5).

02 NCAC 52J .0417 CERTIFICATION RENEWAL

Certifications may be renewed every five years provided that:

- (1) within the 12 months immediately preceding the application for certification renewal the Certified Euthanasia Technician has taken and passed a practical examination for each method of euthanasia for which they are seeking certification renewal;
- (2) the applicant receives up-to-date information about the method of euthanasia for which the applicant is seeking certification;
- (3) the applicant receives training in stress management for the employee.

The applicant shall submit an application for certification renewal to the Animal Welfare Section. The application shall be on a form created by the Animal Welfare Section and shall include a document from an approved Certified Euthanasia Technician trainer establishing that the applicant has passed a practical examination in the specific euthanasia techniques for which they are seeking certification.

Authority G.S. 19A-24(5).

02 NCAC 52J .0418 DUTIES

The scope of duties of a Certified Euthanasia Technician shall include, but are not limited to:

- (1) Preparing animals for euthanasia;
- (2) Accurately recording the identification number of the animal, its species, sex, breed description and date, dosages for drugs that are administered and amounts for drugs wasted;
- (3) Ordering euthanasia supplies;
- (4) Maintaining the security of all controlled substances and other approved drugs in accordance with applicable state and federal laws and regulations;
- (5) Directly supervising probationary Euthanasia Technicians;
- (6) Reporting to the appropriate government agencies violations or suspicions of a violation of these Rules or any abuse of drugs;
- (7) Humanely euthanizing animals; and
- (8) Proper and lawful disposal of euthanized animals and expired or unwanted chemical agent(s) or the containers, instruments and equipment used in the administration of approved drugs in accordance with all applicable federal, state and local laws and regulations;
- (9) Properly notify the Animal Welfare Section as required in this Section upon leaving employment or volunteer status at a covered facility.

Authority G.S. 19A-24(5)

02 NCAC 52J .0419 GROUNDS FOR DISCIPLINE – CERTIFIED EUTHANASIA TECHNICIANS

The Department may refuse to issue, renew, or reinstate the certification of a Euthanasia Technician, or may deny, revoke, suspend, sanction, or place on probation, impose other forms of discipline, and enter into consent agreements and negotiated settlements with Certified Euthanasia Technician pursuant to the procedures set forth in G.S. 150B, Article 3, for any of the following reasons:

- (1) Failure to Carry Out Duties. Failure to carry out the duties of a Certified Euthanasia Technician;
- (2) Abuse of Chemical Substances. Abuse of any drug or chemical substance by:
 - (a) Selling, diverting or giving away drugs or chemical substances;
 - (b) Stealing drugs or chemical substances;
 - (c) Misusing chemical substances; or
 - (d) Abetting anyone in the foregoing activities;
- (3) Euthanizing animals without proper supervision;

- (4) Allowing uncertified individuals to euthanize animals;
- (5) Allowing probationary Euthanasia Technicians to euthanize animals outside of the Certified Euthanasia Technician's personal presence;
- (6) Fraud, misrepresentation, or deception in obtaining certification;
- (7) Unethical or Unprofessional Conduct. Unethical or unprofessional conduct means to knowingly engage in conduct of a character likely to deceive or defraud the public. Such conduct includes but is not limited to working in conjunction with any agency or person illegally practicing as a Certified Euthanasia Technician; failing to provide sanitary facilities or apply sanitary procedures for the euthanizing of any animal; euthanizing animals in a manner that endangers the health or welfare of the public; gross ignorance, incompetence or inefficiency in the euthanizing of animals as determined by, but not limited to, the practices generally and currently followed and accepted as approved by the American Veterinary Medical Association, the Humane Society of the United States or the American Humane Association; intentionally performing a duty, task or procedure involved in the euthanizing of animals for which the individual is not qualified; and swearing falsely in any testimony or affidavits relating to practicing as a Certified Euthanasia Technician;
- (8) Conviction of any criminal offense as described in this Section;
- (9) Improper Record Keeping. Failure to follow proper record keeping procedures as outlined in these Rules;
- (10) Improper Security and Storage for Approved Chemical Agents. Failure to provide and maintain proper security and storage for approved euthanasia and restraint drugs as established under applicable United States Drug Enforcement Administration and North Carolina Department of Health and Human Services statutes and rules;
- (11) Improper Disposal of Approved Chemical Agents and Equipment. Failure to properly dispose of approved drugs and the containers, instruments and equipment;
- (12) Improper Labeling of Approved Chemical Agents. Failure to properly label approved euthanasia and restraint chemical agents;
- (13) Revocation, Suspension or Limitation. The revocation, suspension, limitation, of a license, certificate or registration or any other disciplinary action by another state or United States jurisdiction or voluntary surrender of a license, certificate or registration by virtue of which one is licensed, certified or registered to

practice as a Certified Euthanasia Technician in that state or jurisdiction on grounds other than nonpayment of the renewal fee;

- (14) Failure of any applicant or certificate holder to cooperate with the North Carolina Department of Agriculture and Consumer Services during any investigation or inspection;
- (15) Any action or omission by the Certified Euthanasia Technician that the Commissioner of the North Carolina Department of Agriculture and Consumer Services believes is contrary to the best interest of the public to continue having the person certified to euthanize animals.

Authority G.S. 19A-24(5).

02 NCAC 52J .0420 CRIMINAL CONVICTIONS

"Conviction of a charge or crime" in this Section means being found guilty, convicted, placed on probation or entering a guilty plea that is accepted by the court, forfeiture of bail, bond or collateral deposited to secure one's own appearance in a criminal proceeding or having received a withheld judgment, prayer for judgment continued or suspended sentence by a court of competent jurisdiction in this state, in a federal court or another state of one or more of the following:

- (1) any felony as defined by federal or state law;
- (2) any criminal act that in any way is related to practicing as a Certified Euthanasia Technician.

Authority G.S. 19A-24(5).

SECTION .0500 - EUTHANASIA BY INJECTION

02 NCAC 52J .0501 AUTHORIZED PERSONS

Only a Certified Euthanasia Technician or person listed as an exception to the Certified Euthanasia Technician requirement shall administer euthanasia by injection.

Authority G.S. 19A-24(5).

02 NCAC 52J .0502 INTRACARDIAC INJECTION

Intracardiac injection shall only be used on animals that have been properly anesthetized or heavily sedated.

Authority G.S. 19A-24(5).

SECTION .0600 - EUTHANASIA BY CARBON MONOXIDE

02 NCAC 52J .0601 CARBON MONOXIDE SUNSET

Carbon monoxide is a permissible method of euthanasia at a certified facility. However, carbon monoxide shall cease to be permissible under these Rules and applicable law as of January 1, 2012. From that date forward, the use of carbon monoxide as a method of euthanasia in certified shelters is prohibited. This prohibition shall not apply to extraordinary circumstances as provided under the provisions of 02 NCAC 52J .0700.

Authority G.S. 19A-24(5).

02 NCAC 52J .0602 CARBON MONOXIDE EQUIPMENT

If carbon monoxide is used for euthanasia, the following requirements shall be met:

- (1) Only commercially compressed, bottled gas shall be used;
- (2) The gas shall be delivered in a commercially manufactured chamber that allows for the individual separation of animals;
- (3) Animals placed inside of the chamber shall be of the same species;
- (4) The chamber shall rapidly achieve a minimum six percent uniform concentration of carbon monoxide;
- (5) Death shall occur within five minutes of beginning the administration of the gas;
- (6) Animals shall remain in the chamber with carbon monoxide for a minimum of 20 minutes.

Authority G.S. 19A-24(5).

02 NCAC 52J .0603 PROHIBITED USES

Carbon monoxide shall not be used to euthanize the following animals:

- (1) Animals that appear to be less than 16 weeks of age;
- (2) Animals that are pregnant;
- (3) Animals that are moderately to significantly clinically ill;
- (4) Animals that are significantly injured;
- (5) Animals that are near death;
- (6) Animals that are geriatric.

Authority G.S. 19A-24(5).

02 NCAC 52J .0604 DEAD ANIMALS

Live animals shall not be placed into a chamber with dead animals.

Authority G.S. 19A-24(5).

02 NCAC 52J .0605 INDIVIDUAL SEPARATION

Animals shall be individually separated within the euthanasia chamber.

Authority G.S. 19A-24(5).

02 NCAC 52J .0606 CHAMBER REQUIREMENTS

- (a) The chamber shall be located in a well-ventilated place, preferably outdoors.
- (b) The chamber shall be of good working order.
- (c) The chamber shall have strong airtight seals around the doors and viewpoints.
- (d) The chamber shall have at least one port for viewing of the animals during euthanasia.

- (e) The chamber shall be well lit.
- (f) Any chamber electrical wiring or components exposed to carbon monoxide must be warranted by the manufacturer to be explosion proof.
- (g) Any light inside of the chamber shall be shatterproof.
- (h) The chamber shall use exhaust ventilation to evacuate the gas from the chamber before the doors are opened upon completion of the process.
- (i) If the chamber is located outdoors:
 - (1) The exhaust shall be vented well above the operator;
 - (2) The minimum stack velocity shall be at least 3,000 feet per minute;
 - (3) If there is a roof above the chamber, the exhaust shall be vented at least three feet above the highest point of the roof;
 - (4) The exhaust shall not be located near any building air intakes.
- (j) If the chamber is located indoors:
 - (1) The exhaust shall be vented to the outdoors at least three feet above the highest point of the roof;
 - (2) The exhaust shall not be located near any building air intakes;
 - (3) The minimum stack velocity shall be at least 3,000 feet per minute;
 - (4) At least two carbon monoxide detectors shall be placed in the room.

Authority G.S. 19A-24(5).

02 NCAC 52J .0607 INSPECTIONS AND RECORDS

- (a) Chamber seals, exhaust flow, carbon monoxide monitors and other equipment used in the euthanasia process shall be inspected at least monthly and repaired or replaced as necessary.
- (b) Chamber must be inspected at least annually by the manufacturer, an authorized representative or an industrial hygienist knowledgeable about the manufacture and operation of the chamber.
- (c) A record shall be made of each inspection recording the results, the date of the inspection, and the name of the person performing the inspection. The record shall be maintained in the policy and procedure manual for at least two years.

Authority G.S. 19A-24(5).

02 NCAC 52J .0608 CLEANING CHAMBER

The chamber shall be well cleaned between uses.

Authority G.S. 19A-24(5).

02 NCAC 52J .0609 OPERATIONAL GUIDES AND INSTRUCTION MANUALS

Current operational guides and maintenance instruction manuals shall be kept in the room with the chamber at all times.

Authority G.S. 19A-24(5).

02 NCAC 52J .0610 PERSONS REQUIRED TO BE PRESENT

The chamber shall not be operated unless a Certified Euthanasia Technician or a veterinarian licensed in North Carolina and one other adult are present at the time of its use.

Authority G.S. 19A-24(5).

SECTION .0700 - EXTRAORDINARY CIRCUMSTANCES

02 NCAC 52J .0701 METHODS OF EUTHANASIA PERMITTED UNDER EXTRAORDINARY CIRCUMSTANCES AND SITUATIONS

An extraordinary circumstance or situation includes but is not limited to a situation which is offsite from the shelter, in which an animal poses a significant or immediate risk to life, limb or public health and in which no alternative, less extreme measure of euthanasia is feasible. It also includes circumstances or situations in which it would be inhumane to transport an animal to another location to perform euthanasia.

Authority G.S. 19A-24(5).

02 NCAC 52J .0702 GUNSHOT OR OTHER METHODS

Under the most extraordinary circumstances and situations which occurs offsite from the shelter a shelter employee may use gunshot or other extreme method of euthanasia.

Authority G.S. 19A-24(5).

02 NCAC 52J .0703 METHODS AND STANDARDS

Methods of euthanasia used under this Section must be approved by the American Veterinary Medical Association, the Humane Society of the United States or the American Humane Association for use on that species of animal and must conform to standards set forth by that organization.

Authority G.S. 19A-24(5).

02 NCAC 52J .0704 TECHNICIAN NOT REQUIRED

If such an extraordinary circumstance or situation occurs and euthanasia is necessary, the person performing the euthanasia is not required to be a Certified Euthanasia Technician.

Authority G.S. 19A-24(5).

02 NCAC 52J .0705 REPORTS

If euthanasia is performed under extraordinary circumstances or situations, a report shall be made of the circumstances and kept on file for at least two years. The report shall include the date, time, identification of the animal, the name of the person performing the final euthanasia, the method of euthanasia and the reason for euthanasia of the animal as permitted by this Section.

Authority G.S. 19A-24(5).

SECTION .0800 - POLICY AND PROCEDURE MANUAL

02 NCAC 52J .0801 MANUAL REQUIRED

Any animal shelter performing euthanasia shall have a current policy and procedure manual about euthanasia.

Authority G.S. 19A-24(5).

02 NCAC 52J .0802 CONTENTS

The manual shall set forth the shelter's equipment, process, and the individual separation of animals.

Authority G.S. 19A-24(5).

02 NCAC 52J .0803 ADDITIONAL CONTENTS

The manual shall be kept consistent with the publications listed below and reflect the current information for each. The manual shall include but not be limited to:

- (1) A copy of the most current North Carolina Animal Welfare Act including statutes and rules;
- (2) A copy of the 2000 Report of the American Veterinary Medical Association Panel on Euthanasia and any future revisions, replacements, supplements or changes thereto issued by said organization;
- (3) A current copy of the Euthanasia Training Manual of the Humane Society of the United States;
- (4) If printed, a copy of a publication on euthanasia by the American Humane Association;
- (5) A list of methods of euthanasia allowed at the shelter and the policy and procedures for each method;
- (6) A list of Certified Euthanasia Technicians, the methods of euthanasia in which they have received training, the date of training and the date of expiration of their Certification;
- (7) The name, address and contact information for the veterinarian responsible for the Annual Program of Veterinary Care;
- (8) The name, address and contact information for veterinarians responsible for the veterinary medical care of the animals. The contact information will include telephone numbers for working hours, weekends, nights and holidays;
- (9) Euthanasia procedure to use in emergencies, after hours, holidays and weekends;
- (10) Procedures to follow if no Certified Euthanasia Technician is present and euthanasia of an animal is necessary;
- (11) Methods of verifying death of an animal after a euthanasia process is performed;
- (12) The name and contact information of the supplier of euthanasia materials shall be listed. It shall include but not be limited to:

- (a) Bottled gas (if applicable);
- (b) Manufacturer of the chamber used to euthanize animals by inhalant gas (if applicable);
- (c) Injectable euthanasia solution;
- (d) Tranquilizer or anesthetic solution;
- (13) Original of DEA certification permitting the use of controlled substances;
- (14) A material safety data sheet for any chemical or gas used for euthanasia in that shelter;
- (15) A material safety data sheet for any anesthetic or tranquilizer used in that facility;
- (16) Notice of the signs and symptoms associated with human exposure to the agents used for euthanasia at the facility;
- (17) Proper first aid for people accidentally exposed to the agents used for euthanasia at the facility;
- (18) Contact information of the physician or medical facility providing medical treatment to employees of the facility. The information shall include but not be limited to the name of the medical facility, the telephone number for both working and after-hours contact and directions to the medical facility from the certified facility including a map. If the medical facility does not provide service after-hours, on weekends or on holidays, there must be contact information as described above for the nearest medical facility, urgent care clinic or emergency room that does provide care during that time.

Authority G.S. 19A-24(5).

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Health and Human Resources - DMH/DD/SAS intends to adopt the rules cited as 10A NCAC 26C .0402; 27A .0301 - .0304; 27G .0507.

Proposed Effective Date: *March 1, 2008*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): A person may demand a public hearing on the proposed rules by submitting a request in writing to W. Denise Baker, 3018 Mail Service Center, Raleigh, NC 27699-3018.*

Reason for Proposed Action:

10A NCAC 26C .0402 – *The proposed rule satisfies requirements established in Session Law 2006-142 directing DHHS and the Secretary to identify directives and communications previously issued by the Division of*

MH/DD/SAS that require adoption as administrative rules in order to be enforceable and to undertake to adopt those rules.

10A NCAC 27A .0301 - .0304 – *The proposed rules are necessary to promote standardization of forms and processes related to claims submission, payment and denial between provider agencies and LMEs. Session Law 2006-142 directs the Secretary to adopt rules regarding what constitutes a clean claim for purposes of billing.*

10A NCAC 27G .0507 – *The proposed rule is necessary in order to provide guidance to Boards of Directors and CFACs as they carry out one of their primary duties per statute which is to determine that past effectiveness of their chosen Area Director and to provide future guidance to that Area Director based on that historical analysis. General Statute 122C-121(b) requires each Area Board to conduct an annual performance evaluation of the Area Director based on criteria established by the Secretary and the Area Board.*

Procedure by which a person can object to the agency on a proposed rule: *The objection, reasons for the objection and the clearly identified portion of the rule to which the objection pertains, may be submitted in writing to W. Denise Baker, 3018 Mail Service Center, Raleigh, NC 27699-3018.*

Comments may be submitted to: *W. Denise Baker, 3018 Mail Service Center, Raleigh, NC 27699-3018, phone (919) 715-2780, fax (919) 733-1221, email denise.w.baker@ncmail.net*

Comment period ends: *December 31, 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 26 - MENTAL HEALTH: GENERAL

SUBCHAPTER 26C – OTHER GENERAL RULES

SECTION .0400 - MISCELLANEOUS

10A NCAC 26C .0402 STANDARDIZED FORMS AND PROCESSES

(a) Pursuant to G.S. 122C-112.1(32) this Rule sets forth the standardized forms and processes to be used by local management entities (LMEs) and providers in support of LME system management functions. LMEs and providers shall use the standardized forms and processes provided by the Secretary for system management functions including:

- (1) person-centered plan;
- (2) screening/triage/referral interview;
- (3) claims processing;
- (4) contract;
- (5) memorandum of agreement;
- (6) quality improvement plan;
- (7) strategic plan;
- (8) local business plan;
- (9) authorization of state funded services;
- (10) endorsement of a provider of service; and
- (11) letter of support for residential facilities.

(b) All standardized forms and processes shall be implemented on a statewide basis.

(c) No standardized form or process shall require more information than is necessary to comply with state or federal reporting requirements.

(d) A standardized form or process shall not be altered in any way by an LME or provider.

(e) An LME shall not add any additional requirements upon providers that are not included in a standardized process.

Authority G.S. 122C-112.1(a)(32); S.L. 2006-142, Section 2.(b).

CHAPTER 27 – MENTAL HEALTH: COMMUNITY FACILITIES AND SERVICES

SUBCHAPTER 27A – FISCAL RULES

SECTION .0300 – CLEAN CLAIMS

10A NCAC 27A .0301 SCOPE

This Section governs the requirements that constitute a clean claim for purposes of billing. These rules are applicable to local management entities (LMEs) and public and private providers who seek to provide services that are payable from funds administered by an LME.

Authority G.S. 122C-3(30b); 122C-112.1(a)(32).

10A NCAC 27A .0302 DEFINITIONS

"Claim" means an itemized statement with standardized elements that is submitted for payment by a provider to the authorizing LME.

"Clean Claim" means an itemized statement with standardized elements, completed in its entirety in a format as set forth in Rule .0303 of this Section.

Authority G.S. 122C-112.1(a)(32).

10A NCAC 27A .0303 CLEAN CLAIM FORMAT REQUIREMENTS

(a) A provider of a service that is payable from funds administered by an LME shall submit a claim for payment to the authorizing LME. The provider shall submit the claim in one of the formats listed as follows:

- (1) HIPAA compliant 837;
- (2) CMS-1500; or
- (3) the standardized billing format provided by the DMH/DD/SAS.

The provider shall complete each element contained in the selected format.

(b) The billing format provided by the DMH/DD/SAS shall contain standardized elements including:

- (1) date of claim;
- (2) provider information including:
 - (A) name; and
 - (B) number.
- (3) client information including:
 - (A) name;
 - (B) identification number;
 - (C) target population code; and
 - (D) ICD-9 diagnosis code.
- (4) service information including:
 - (A) name;
 - (B) date;
 - (C) units delivered;
 - (D) billing code; and
 - (E) authorization number.

Authority G.S. 122C-112.1(a)(32).

10A NCAC 27A .0304 CLAIMS REVIEW PROCEDURES

(a) The LME shall review the claim to determine if it is clean. The determination shall be based on whether the claim is submitted as follows:

- (1) the claim is submitted in one of the formats as set forth in Rule .0303 of this Section; and
- (2) the information requested in each element of the selected format is complete.

(b) When a claim meets the requirements as set forth in Paragraph (a) of this Rule, it shall be considered a clean claim.

(c) The LME shall deny a claim that does not meet the requirements as set forth in Paragraph (a) of this Rule. The LME shall notify the provider of the denied claim. The notification shall specify the reason for denial and include the steps to be followed for resubmission.

Authority G.S. 122C-112.1(a)(32).

SUBCHAPTER 27G - RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE FACILITIES AND SERVICES

SECTION .0500 - AREA PROGRAM REQUIREMENTS

10A NCAC 27G .0507 AREA BOARD ANNUAL EVALUATION OF AN AREA DIRECTOR

(a) This Rule governs the annual evaluation of Area Directors.

(b) Area Boards shall evaluate, but not be limited to, the Area Director's performance in each of the following areas:

- (1) Relationship with the Board of Directors and CFAC.
- (2) Relationship with the community served and with local and State officials
- (3) Encouraging consumer/family involvement in system management activities including, but not limited to:
 - (A) program development,
 - (B) quality management, and
 - (C) community development.
- (4) Recruiting, monitoring, and maintaining effective relationship with qualified providers of services.
- (5) Management of human resources.
- (6) Management of fiscal resources.
- (7) Demonstration of leadership skills.

(c) Area Boards may use the Area Director evaluation as an opportunity to create an annual plan for the Area Director that includes both policy and programmatic considerations.

Authority G.S. 122C-112.1.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for MH/DD/SAS intends to adopt the rules cited as 10A NCAC 26C .0601 - .0606; 27G .0212.

Proposed Effective Date: March 1, 2008

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): A person may demand a public hearing on the proposed rules by submitting a request in writing to W. Denise Baker, 3018 Mail Service Center, Raleigh, NC 27699-3018.*

Reason for Proposed Action:

10A NCAC 26C .0601 - .0606 - *The proposed rules are necessary to clearly identify the circumstances and process by which the Secretary of DHHS shall remove a function from a Local Management Entity. Session Law 2006-142(HB 2077) requires the Commission for MH/DD/SAS to adopt rules regarding the notice and procedural requirements for removal of one or more LME functions.*

10A NCAC 27G .0212 - *The Commission shall exercise the following powers and duties under G.S. 122C-26(5)(e). The proposed rule addresses this requirement.*

Procedure by which a person can object to the agency on a proposed rule: *The objection, reasons for the objection and the clearly identified portion of the rule to which the objection pertains, may be submitted in writing to W. Denise Baker, 3018 Mail Service Center, Raleigh, NC 27699-3018.*

Comments may be submitted to: *W. Denise Baker, 3018 Mail Service Center, Raleigh, NC 27699-3018, phone (919) 715-2780, fax (919) 733-1221, email denise.w.baker@ncmail.net*

Comment period ends: *December 31, 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 26 - MENTAL HEALTH: GENERAL

SUBCHAPTER 26C – OTHER GENERAL RULES

SECTION .0600 – REMOVAL OF LOCAL MANAGEMENT ENTITY FUNCTIONS

10A NCAC 26C .0601 SCOPE

The requirements of this Section govern the removal of a local management entity (LME) function as set forth in G.S. 122C-115.4(d).

Authority G.S. 122C-115.4(f)(3).

10A NCAC 26C .0602 DEFINITIONS

As used in the rules in this Section, the following terms have the meanings specified:

- (1) "Critical performance indicator" means any of the measures developed and implemented pursuant to G.S.122C-112.1(33).
- (2) "Focused technical assistance" means the process of advising, providing consultation and evaluation related to a specific function, activity or performance indicator designed to improve the quality of performance of the targeted operation.
- (3) "Local management entity (LME)" means the same as defined in G.S. 122C-3(20b).
- (4) "Material breach" means an LME has failed to maintain for a period of two consecutive months the required outcome expectations, as outlined in the DHHS/LME contract, on a critical performance indicator after the LME has received focused technical assistance.

- (5) "Monitor" or "Monitoring" means the same as defined in 10A NCAC 27G .0602(9).

Authority G.S. 122C-115.4(f)(3).

10A NCAC 26C .0603 NOTICE OF DEFICIENT PERFORMANCE

The Director of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SAS) shall issue a notice of deficient performance in writing to an LME when the LME fails to achieve the required outcome for a critical performance indicator established for one the primary functions of LMEs as set forth in G.S. 122C-115.4(b). The written notice shall:

- (1) identify the critical performance indicator outcome the LME failed to achieve including a statement of the findings that support a conclusion of deficient performance;
- (2) identify the LME function related to the critical performance indicator outcome;
- (3) identify the required outcome expectation(s); and
- (4) state the timeframe for meeting the required outcome expectation(s).

Authority G.S. 122C-115.4(f)(3).

10A NCAC 26C .0604 PLAN OF CORRECTION REQUIREMENTS

- (a) The LME shall respond to the notice of deficient performance by submitting to the DMH/DD/SAS a written Plan of Correction (POC) within 15 working days of receipt.
- (b) The DMH/DD/SAS shall review the POC and approve it as written or communicate in writing with the LME regarding required corrections. The LME shall have a period of five additional working days to submit a revised POC.
- (c) Failure to submit or revise POC may result in a suspension of funding for the LME function.

Authority G.S. 122C-115.4(f)(3).

10A NCAC 26C .0605 FOCUSED TECHNICAL ASSISTANCE

Within 15 working days of the approval of the POC, the DMH/DD/SAS shall initiate focused technical assistance and monitoring of the LME. The DMH/DD/SAS shall continue to provide focused technical assistance and monitoring until:

- (1) the LME achieves and maintains the required outcome on the designated performance indicator(s) for a period of two consecutive months; or
- (2) the end of six months, whichever occurs first.

Authority G.S. 122C-115.4(f)(3).

10A NCAC 26C .0606 REMOVAL OF LME FUNCTION

- (a) The LME shall be considered to have a material breach if the LME fails to achieve and maintain for a period of two consecutive months, the required outcome expectations on the

designated performance indicator(s) after the six month period occurs as specified in Rule .0605 of this Section.

(b) Upon identifying the LME as having an uncorrected material breach and within a timeframe not to exceed 30 working days, the Secretary shall arrange for a contract with another LME to implement the function associated with the deficient critical performance indicator as set forth in G.S. 122C-115.4(d)(3). Prior to the removal of the function, the Secretary shall send written notification to the LME stating:

- (1) the LME function that is being removed;
- (2) the date of the removal of the function;
- (3) the entity identified to implement the function being removed;
- (4) the amount of fund reallocation from the deficient LME to the receiving entity; and
- (5) the expectation that the deficient LME shall cooperate with the Secretary and receiving entity as necessary to ensure a smooth, seamless transition of the function.

Authority G.S. 122C-115.4(f)(3).

CHAPTER 27 – MENTAL HEALTH: COMMUNITY FACILITIES AND SERVICES

SUBCHAPTER 27G - RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE FACILITIES AND SERVICES

SECTION .0200 - OPERATION AND MANAGEMENT RULES

10A NCAC 27G .0212 DISCLOSURE OF FINANCIAL INTEREST OF PROVIDERS OF MH/DD/SA SERVICES TO POTENTIAL CLIENTS

(a) When a provider refers a potential client to another provider in which the referring provider holds a financial interest, the referring provider shall disclose the financial interest to the potential client prior to or at the time of referral.

(b) A referring provider shall be considered to have a financial interest when the referring provider is an owner, principal, employee, a potential employee of the provider who is in the hiring process, immediate family member of an owner, principle employee or an affiliate of the provider that the potential client is referred.

(c) For purposes of this Rule, a "referring provider entity" includes:

- (1) an agency;
- (2) an organization;
- (3) a local management entity (LME) as set forth in G.S. 122C-3(20b); or
- (4) an individual employee or contractor of an agency, organization or LME.

(d) For purposes of this Rule, "immediate family member of an employee" means husband or wife; birth or adoptive parent, child, or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; or spouse of a grandparent or grandchild.

Authority G.S. 122C-3(20b); 122C-26(5)(e).

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Soil and Water Conservation Commission intends to adopt the rules cited as 15A NCAC 06I .0107-.0108 and amend the rules cited as 15A NCAC 06E .0102, .0105, .0107-.0108.

Proposed Effective Date: March 1, 2008

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Any person requesting that the Soil and Water Conservation Commission conduct a public hearing on any portion of these proposed rules must submit a written request to Vernon Cox, Division of Soil and Water Conservation, 1614 Mail Service Center, Raleigh, NC 27699-1614. The request must specify which rule the hearing is being requested on.*

Reason for Proposed Action: *The Soil and Water Conservation Commission (SWCC) has responsibility for establishing rules and guidelines for the North Carolina Agriculture Cost Share Program (ACSP) and the Community Conservation Assistance Program (CCAP). The ACSP and CCAP are both voluntary programs established to provide financial and technical assistance to encourage installation of best management practices (BMPs) to reduce nonpoint sources of pollution to waters of the state. Amendments to ACSP rules are proposed to improve the efficiency and effectiveness of the program in protecting water quality. CCAP is a new program established by Session Law 2007-78. Rules of CCAP are being proposed in order to set forth procedures for the Soil and Water Conservation Commission to encourage local governments, individual landowners, and businesses to incorporate stormwater BMPs within their landscape to reduce the input of nonpoint source pollution into the waters of the State.*

Procedure by which a person can object to the agency on a proposed rule: *You are encouraged to submit written comments, data or other relevant information by December 31, 2007. The Soil and Water Conservation Commission is very interested in all comments pertaining to the proposed rules. All persons interested and potentially affected by the proposed rules are strongly encouraged to read this entire notice and make comments. The Soil and Water Conservation Commission may not adopt a rule that differs substantially from the text of the proposed rule published in this notice unless the EMC publishes the text of the proposed different rule and accepts comments on the new text (G.S. 150B 21-2(g)). Written comments may be submitted to Vernon Cox, Division of Soil and Water Conservation, 1614 Mail Service Center, Raleigh, NC 27699-1614, vernon.cox@ncmail.net or fax at (919)715-3559.*

Comments may be submitted to: *Vernon Cox, Division of Soil and Water Conservation, 1614 Mail Service Center, Raleigh, NC 27699-1614, vernon.cox@ncmail.net or fax at (919)715-3559.*

Comment period ends: *December 31, 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 06 - SOIL AND WATER CONSERVATION
COMMISSION**

**SUBCHAPTER 06E - AGRICULTURE COST SHARE
PROGRAM FOR NONPOINT SOURCE POLLUTION
CONTROL**

**SECTION .0100 - AGRICULTURE COST SHARE
PROGRAM**

**15A NCAC 06E .0102 DEFINITIONS FOR
SUBCHAPTER 06E**

In addition to the definitions found in G.S. 143-215.75, the following terms used in this Subchapter have the following meanings:

- (1) Agriculture Nonpoint Source (NPS) Pollution means pollution originating from a diffuse source as a result of agricultural activities related to crop production, ~~animal production units production and management of poultry and livestock, and~~ land application of waste ~~materials, materials, and management of forestland incidental to agricultural production.~~
- (2) Allocation means the annual share of the state's appropriation to participating districts.
- (3) Applicant means a person(s) who applies for best management practice cost sharing monies from the district. An applicant may also be referred to as a cooperator. All entities, with which the applicant is associated, including

those in other counties, shall be considered the same applicant.

- (4) Average Costs means the calculated cost, determined by averaging recent actual costs and current cost estimates necessary for best management practice implementation. Actual costs include labor, supplies, and other direct costs required for physical installation of a practice.
- (5) Best Management Practice (BMP) means a structural or nonstructural management based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters.
- (6) Conservation Plan of Operation (CPO) means a written plan scheduling the applicant's decisions concerning land use, and both cost shared and non-cost shared BMPs to be installed and maintained on the operating unit.
- (7) Cost Share Agreement means an annual or long term agreement between the applicant and the district which defines the BMPs to be cost shared, rate and amount of payment, minimum practice life, and date of BMP installation. The agreement shall state that the recipient shall maintain and repair the practice(s) for the specified minimum life of the practice. The Cost Share Agreement shall have a maximum contract life of three years for BMP installation. The district shall perform an annual status review during the installation period.
- (8) Cost Share Incentive (CSI) means a predetermined fixed payment paid to an applicant for implementing a BMP in lieu of cost share.
- (9) Cost Share Rate means a cost share percentage paid to an applicant for implementing BMPs.
- (10) Detailed Implementation Plan means the plan approved by the commission that specifies the guidelines for the current program year; including, BMPs that will be eligible for cost sharing and the minimum life expectancy of those practices.
- (11) District BMP means a BMP designated by a district to reduce the delivery of agricultural NPS pollution and which is reviewed and approved by the Division to be technically adequate prior to funding.
- (12) Encumbered Funds means monies from a district's allocation which have been committed to an applicant after initial approval of the cost share agreement.
- (13) Full Time Equivalent (FTE) means 2,080 hours per annum which equals one full time technical position.
- (14) In-kind Contribution means a contribution by the applicant towards the implementation of BMPs. In-kind contributions shall be

- approved by the district and can include but not be limited to labor, fuel, machinery use, and supplies and materials necessary for implementing the approved BMPs.
- (15) Landowner means any natural person or other legal entity, including a governmental agency, who holds either an estate of freehold (such as a fee simple absolute or a life estate) or an estate for years or from year to year in land, but does not include an estate at will or by sufferance in land. Furthermore, a governmental or quasi-governmental agency such as a drainage district or a soil and water conservation district, or any such agency, by whatever name called, exercising similar powers for similar purposes, can be a landowner for the purposes of these Rules if the governmental agency holds an easement in land.
- (16) Program Year means the period from July 1 through June 30 for which funds are allocated to districts.
- (17) Proper Maintenance means that a practice(s) is being maintained such that the practice(s) is successfully performing the function for which it was originally implemented.
- (18) Soil Loss Tolerance (t) means the maximum allowable annual soil erosion rate to maintain the soil resource base, depending on soil type.
- (19) Strategy Plan means the annual plan for the N.C. Agriculture Cost Share Program for Nonpoint Source Pollution Control to be developed by each district. The plan identifies pollution treatment needs and the level of cost sharing and technical assistance monies required to address those annual needs in the respective district.
- (20) Technical Representative of the district means a person designated by the district to act on their behalf who participates in the planning, design, implementation and inspection of BMPs. These practices shall be technically reviewed by the Division. The district chairman shall certify that the technical representative has properly planned, designed and inspected the BMPs.
- (21) Unencumbered Funds means the portion of the allocation to each district which has not been committed for cost sharing.

Authority G.S. 139-3; 143-215.74; 143B-294.

15A NCAC 06E .0105 COST SHARE AND INCENTIVE PAYMENTS

- (a) Cost share and incentive payments may be made through Cost Share Agreements between the district and the applicant.
- (b) For all practices except those eligible for CSI, the state shall provide a percentage of the average cost for BMP installation not to exceed the maximum cost share percentages shown in

subdivisions (6), (8), and (9) of G.S. 143-215.74(b), and the applicant shall contribute the remainder of the cost. In-kind contributions by the applicant shall be included in the applicants' cost share contribution. In-kind contributions shall be specified in the agreement for cost sharing and shall be approved by the district.

(c) CSI payments shall be limited to a maximum of three years per farm.

(d) Average installation costs for each comparative area or region of the state and the amount of cost share incentive payments shall be updated and revised at least ~~triannually~~ triennially by the Division for approval by the Commission.

(e) The total annual cost share payments to an applicant shall not exceed the maximum funding authorized in subdivisions (6) and (9) of G.S. 143-215.74(b).

(f) Cost share payments to implement BMPs under this program may be combined with other funding programs, as long as the combined cost share rate does not exceed the amount and percentages set forth in Paragraphs (b) and (e) of this Rule. For special funding programs where the applicant relinquishes all production capability on his or her agricultural land for at least 10 years, combined funding may equal up to 100 percent. Agriculture Cost Share Program funding shall not exceed the maximum cost share percentages shown in subdivisions (6), (8), and (9) of G.S. 143-215.74(b).

(g) Use of cost share payments is restricted to land located within the county approved for funding by the Commission. However, in the situation where an applicant's farm is not located solely within a county, the entire farm, if contiguous, shall be eligible for cost share payments.

(h) Cost share contracts used on or for local, state or federal government land must be approved by the Commission in order to avoid potential conflicts of interest and to ensure that such contracts are consistent with the purposes of this program.

(i) The district Board of Supervisors may approve Cost Share Agreements with cost share percentages or amounts less than the maximum allowable in subdivisions (6), (8), and (9) of G.S. 143-215.74(b) if:

- (1) The Commission allocates insufficient cost share BMP funding to the district to enable it to award funding to all applicants;
- (2) The district establishes other criteria in its annual strategy plan for cost sharing percentages or amounts less than those allowable in subdivisions (6), (8), and (9) of G.S. 143-215.74(b).

(j) For purposes of determining eligible payments under practice-specific caps described in the detailed implementation plan, the district board shall consider all entities with which the applicant is associated, including those in other counties, as the same applicant.

Authority G.S. 139-4; 139-8; 143-215.74; 143B-294.

15A NCAC 06E .0107 COST SHARE AGREEMENT

- (a) The landowner shall be required to sign the agreement for all practices other than ~~conservation tillage~~ agronomic practices and land application of animal wastes. An applicant who is not the landowner may submit a long term written lease or other legal

document, indicating control over the land in lieu of the landowner's signature, provided the control runs the length of the life of the practice as listed in the respective Program Year's Implementation Plan. Signature on the agreement constitutes responsibility for BMP maintenance and continuation.

(b) As a condition for receiving cost share or cost share incentive payments for implementing BMP's, the applicant shall agree to continue and maintain those practices for the minimum life as set forth in the Detailed Implementation Plan, effective the date the BMP's are implemented.

(c) As a condition for receiving cost share payments, the applicant shall agree to submit a soil test sample for analysis and follow the fertilizer application recommendations as close as reasonably and practically possible. Soil testing shall be required a minimum of every two years on all cropland affected by cost share payments. Failure to soil test shall not constitute noncompliance with the cost share agreement.

(d) As a condition for receiving cost share payments for waste management systems, the applicant shall agree to have the waste material analyzed once every year to determine its nutrient content. If the waste is land applied, the applicant shall agree to soil test the area of application and to apply the waste as close as reasonably and practically possible to recommended rates. When waste is land applied, waste analysis and soil testing shall be conducted annually.

(e) The technical representative of the district shall determine if the practice(s) implemented have been installed according to specifications as defined for the respective program year in the

USDA-Natural Resources Conservation Service Technical Guide, Section IV, Raleigh, North Carolina, ~~or according to other specifications approved by the Commission, or according to specifications approved by the Division for district BMP's.~~ The district shall be responsible for making an annual spot check of five percent of all the ~~participating farms cost share agreements~~ to ensure proper maintenance. Waste management systems shall be included as part of the annual five percent check except for systems on farms without certified waste management plans. In those cases, the systems will receive annual status reviews for five years following implementation.

(f) If the technical representative of the district determines that a BMP for which program funds were received has been destroyed or has not been properly maintained, the applicant will be notified that the BMP must be repaired or re-implemented within 30 working days. For vegetative practices, applicants are given one calendar year to re-establish the vegetation. The district may grant a prescribed extension period if it determines compliance can not be met due to circumstances beyond the applicants control.

(g) If the practices are not repaired or reimplemented within the specified time, the applicant shall be required to repay to the Division a prorated refund for cost share BMP's as shown in Table 1 and 100 percent of the cost share incentive payments received.

Table 1

**PRORATED REFUND SCHEDULE FOR NONCOMPLIANCE
OF COST SHARE PAYMENTS**

Percent Age of Practice Life	Percent Refund
0	100
10	95
20	89
30	82
40	74
50	65
60	55
70	44
80	31
90	17
100	0

(h) An applicant, who has been found in noncompliance and who does not agree to repair or reimplement the cost shared practices, and a District may jointly request the commission to informally mediate the case. To invoke this method of mediation, both parties must stipulate that the commission mediation is binding.

(i) An applicant shall have a maximum of 180 days to make repayment to the Division following the final appeals process.

(j) The inability to properly maintain cost shared practices or the destruction of such practices through no fault of the applicant shall not be considered as noncompliance with the cost share agreement.

(k) When land under cost share agreement changes owners the new landowner shall be strongly encouraged by the district to continue and maintain practice(s) previously implemented, accept the remaining maintenance obligation. If the new landowner does not accept the maintenance requirements in writing, then the original applicant shall be required to refund 100 percent of all CSI payments and a prorated portion of cost share payments in accordance with Table 1 in Paragraph (g) of this Rule.

Authority G.S. 139-8; 143-215.74.

15A NCAC 06E .0108 DISTRICT PROGRAM OPERATION

- (a) As a component of the annual strategy plan developed by each district, both cropland and animal operations will be prioritized according to pollution potential. Technical and financial assistance will be targeted to facilitate BMP implementation on the identified critical areas.
- (b) Priority by the district may be given to implementing systems of BMP's which provide the most cost effective reduction of nonpoint source pollution.
- (c) All applicants shall apply to the district and complete the necessary forms in order to receive cost share payments.
- (d) The district shall review each application and the feasibility of each application. The district shall review and approve the evaluation and assign priority for cost sharing. All applicants shall be informed of cost share approval or denial.
- (e) Upon approval of the application by the district, the applicant and the district shall enter into a cost share agreement. The cost share agreement shall list the practices to be cost shared with state funds. The agreement shall also include the average cost of the recommended practice(s), cost incentive payment of the practice(s), and the expected implementation date of the practice(s). CPO's will be developed and become a part of the cost share agreement.
- (f) Upon completion of practice(s) implementation, the technical representative of the district shall notify the district of compliance with design specifications.
- (g) Upon notification, the district shall review the CPO. Upon approval, the district shall certify the practices in the CPO and notify the Division to make payment to the applicant.
- (h) Upon receipt of a quarterly statement from the district, the Division shall reimburse to the district the appropriate amount for technical and clerical assistance.
- (i) The district shall be responsible for and approve all BMP inspections as set forth in Rule .0107(e) of this Section to insure proper maintenance and continuation under the cost share agreement.
- ~~(j) Districts shall provide quarterly reports on program accomplishments to the commission on October 15, January 15, April 15 and an annual report on July 15.~~

~~(k)(j)~~ The district will be responsible for keeping appropriate records dealing with the program.

Authority G.S. 139-4; 139-8; 143-215.74; 143B-294.

SUBCHAPTER 06I – COMMUNITY CONSERVATION ASSISTANCE PROGRAM FOR NONPOINT SOURCE POLLUTION CONTROL

SECTION .0100 – COMMUNITY CONSERVATION ASSISTANCE PROGRAM

15A NCAC 06I .0107 COST SHARE AGREEMENT

- (a) The landowner shall be required to sign the agreement for all practices. An applicant who is not the landowner may submit a long term written lease or other legal document, indicating control over the land in lieu of the landowner's signature, provided the control runs the length of the life of the practice as listed in the respective Program Year's Implementation Plan. Signature on the agreement constitutes responsibility for BMP maintenance and continuation.
- (b) As a condition for receiving cost share or cost share incentive payments for implementing BMP's, the applicant shall agree to continue and maintain those practices for the minimum life as set forth in the Detailed Implementation Plan, effective the date the BMP's are implemented.
- (c) As a condition for receiving cost share payments, the applicant shall agree to submit a soil test sample for analysis and follow the fertilizer application recommendations as close as reasonably and practically possible.
- (d) The technical representative of the district shall determine if the practice(s) implemented have been installed according to specifications approved by the Commission or by the Division for district BMP's. The district shall be responsible for making an annual spot check of five percent of all cost share agreements for which the required BMP maintenance period has not expired.
- (e) If the technical representative of the district determines that a BMP for which program funds were received has been destroyed or has not been properly maintained, the applicant will be notified that the BMP must be repaired or re-implemented within 30 working days. For vegetative practices, applicants are given one calendar year to re-establish the vegetation. The district may grant a prescribed extension period if it determines compliance cannot be met due to circumstances beyond the applicants control.
- (f) If the practices are not repaired or reimplemented within the specified time, the applicant shall be required to repay to the Division a prorated refund for cost share BMP's as shown in Table 1 and 100 percent of the cost share incentive payments received.

Table 1

PRORATED REFUND SCHEDULE FOR NONCOMPLIANCE OF COST SHARE PAYMENTS

Percent Age of Practice Life

Percent Refund

<u>0</u>	<u>100</u>
<u>10</u>	<u>95</u>
<u>20</u>	<u>89</u>
<u>30</u>	<u>82</u>
<u>40</u>	<u>74</u>
<u>50</u>	<u>65</u>
<u>60</u>	<u>55</u>
<u>70</u>	<u>44</u>
<u>80</u>	<u>31</u>
<u>90</u>	<u>17</u>
<u>100</u>	<u>0</u>

(g) An applicant, who has been found in noncompliance and who does not agree to repair or reimplement the cost shared practices, and a District may jointly request the commission to informally mediate the case. To invoke this method of mediation, both parties must stipulate that the commission mediation is binding.

(i) An applicant shall have a maximum of 180 days to make repayment to the Division following the final appeals process.

(j) The inability to properly maintain cost shared practices or the destruction of such practices through no fault of the applicant shall not be considered as noncompliance with the cost share agreement.

(k) When land under cost share agreement changes owners, the new landowner shall be strongly encouraged by the district to accept the remaining maintenance obligation. If the new landowner does not accept the maintenance requirements in writing, then the original applicant shall be required to refund 100 percent of all CSI payments and a prorated portion of cost share payments in accordance with Table 1 in Paragraph (f) of this Rule.

Authority G.S. 139-8; 143-215.74(M).

15A NCAC 06I .0108 DISTRICT PROGRAM OPERATION

(a) As a component of the annual strategy plan developed by each district, all natural resource concerns will be prioritized according to pollution potential. Technical and financial assistance will be targeted to facilitate BMP implementation on the identified critical areas.

(b) Priority by the district may be given to implementing systems of BMP's which provide the most cost effective reduction of nonpoint source pollution.

(c) All applicants shall apply to the district and complete the necessary forms in order to receive cost share payments.

(d) The district shall review each application and the feasibility of each application. The district shall review and approve the evaluation and assign priority for cost sharing. All applicants shall be informed of cost share approval or denial.

(e) Upon approval of the application by the district, the applicant and the district shall enter into a cost share agreement.

The cost share agreement shall list the practices to be cost shared with state funds. The agreement shall also include the average cost of the recommended practice(s), cost incentive payment of the practice(s), and the expected implementation date of the practice(s). CPO's will be developed and become a part of the cost share agreement.

(f) Upon completion of practice(s) implementation, the technical representative of the district shall notify the district of compliance with design specifications.

(g) Upon notification, the district shall review the CPO. Upon approval, the district shall certify the practices in the CPO and notify the Division to make payment to the applicant.

(h) Upon receipt of a quarterly statement from the district, the Division shall reimburse to the district the appropriate amount for technical and clerical assistance.

(i) The district shall be responsible for and approve all BMP inspections as set forth in Rule .0107(d) of this Section to insure proper maintenance and continuation under the cost share agreement.

(j) The district will be responsible for keeping appropriate records dealing with the program.

Authority G.S. 139-4; 139-8; 143-215.74(M); 143B-294.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07B .0802, 07H .0209, .0305-.0306, .0312.

Proposed Effective Date: *March 1, 2008*

Public Hearing:

Date: *November 29, 2007*

Time: *5:00 p.m.*

Location: *City Hotel and Bistro, 203 SW Greenville Blvd., Greenville, NC 27834*

Reason for Proposed Action:

15A NCAC 07B .0802 - The Coastal Resources Commission (CRC) is proceeding with rule making in order to clarify how

local governments are to present their locally-adopted land use plans to the Commission for certification. The proposed changes are procedural clarifications.

15A NCAC 07H .0209 - The Coastal Resources Commission has proposed rule amendments that further refine the limitations under which existing structures built over public trust waters may be redeveloped and has clarified the acceptable non-water dependent uses of these structures.

15A NCAC 07H .0305 - The primary purposes for this proposed rule change, along with other minor and administrative changes: 1. To eliminate the alternate vegetation line (AVL) provision which has proven to be unworkable. 2. To re-define large-scale beach fill projects. To create a methodology other than the existing AVL methodology for establishing static vegetation lines for the communities of Oak Island and Ocean Isle Beach.

15A NCAC 07H .0306 - The proposed changes focus on three primary components; 1) setback requirements will be based on structure size, removing the single-family residence exemption; 2) setback distances will be calculated based on stepped setback factors with the maximum factor increased from 60 to 90 times the erosion rate; and 3) setback exceptions for development adjacent to large-scale beach nourishment projects.

15A NCAC 07H .0312 - The Division of Coastal Management (DCM) has recently identified certain technical difficulties within the rule that can make compliance with the rule impractical in some instances. For example, the rule currently requires a characterization of the native beach sediment from the dune crest offshore to a depth of 20 feet. On some parts of the coast this depth can still be found over three miles offshore, and it is not the CRC's intent to require sampling that far from the dry sand beach. In addition, the current rule requires seafloor surveys of potential borrow areas using a methodology that will not work in shallow water. This provision needs to be amended to allow for an alternate sampling methodology.

Procedure by which a person can object to the agency on a proposed rule: Objections may be filed in writing and addressed to the Director, NC Division of Coastal Management, 400 Commerce Ave, Morehead City, NC 28557.

Comments may be submitted to: Jim Gregson, 400 Commerce Avenue, Morehead City, NC 28557, phone (252)808-2808, fax (252)547-3330.

Comment period ends: December 31, 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** ($\geq \$3,000,000$)
- ☒ **None**

CHAPTER 07 - COASTAL MANAGEMENT

SUBCHAPTER 07B – CAMA LAND USE PLANNING

SECTION .0800 – CAMA LAND USE PLAN REVIEW AND CRC CERTIFICATION

15A NCAC 07B .0802 PRESENTATION TO COASTAL RESOURCES COMMISSION FOR CERTIFICATION

(a) Re-Certification: If the CRC adopts new CAMA Land Use Plan rules, plans shall be updated within six years of the effective date of the new rules. If a scoping process is held, a summary shall be provided to the CRC along with the request for re-certification of the existing CAMA Land Use Plan.

(b) Committee Designated by CRC to Review Local Land Use Plans:

- (1) The appropriate DCM District Planner shall submit a written report to the committee designated by the CRC as to the type of plan being presented, highlight any unique characteristics of the plan, identify any land use conflicts with adjacent planning jurisdictions or other state/federal agencies, identify any inaccuracy or inconsistency of items in the plan, and recommend certification, conditional certification, or non-certification.
- (2) The local government shall submit its draft Land Use Plan ~~shall be presented to the committee designated by the CRC. CRC by an elected local official, municipal or county staff member, or designated citizen representative.~~
- (3) The public shall have an opportunity to ~~present~~ submit written objections, comments, or statements of support prior to action by the committee designated by the CRC. Written objections shall be received by DCM no less than 15 business days prior to the next scheduled CAMA Land Use Plan review meeting and shall be limited to the criteria for CRC certification as defined in Subparagraph (c)(3) of this Rule. Written objections shall identify the specific plan elements that are opposed. A copy of any objections shall be sent by the DCM to the local government submitting the CAMA Land Use Plan.
- (4) The local government may withdraw the submitted CAMA Land Use Plan from CRC consideration at any time before review.

(c) CRC Certification:

- (1) The CRC shall certify the CAMA Land Use Plan following the procedures and conditions specified in this Rule.
- (2) Provided the locally adopted land use plan has been received by the Executive Secretary no earlier than 45 days and no later than 30 days prior to the next CRC meeting, the CRC shall certify, conditionally certify or not certify the plan at that meeting or mutually agreed upon date. If the CRC fails to take action as specified above the plan shall be certified.
- (3) The CRC shall certify plans which:
 - (A) are consistent with the current federally approved North Carolina Coastal Management Program; ~~and~~
 - (B) are consistent with the Rules of the CRC; ~~and~~
 - (C) do not violate state or federal law; ~~and~~
 - (D) contain policies that address each Management Topic. If a local government cannot meet any CAMA Land Use Plan requirement contained within Paragraphs (d) and (e) of 15A NCAC 07B .0702 the plan shall include a description of the analysis that was undertaken, explain the reason(s) the requirement could not be met, and the local government's alternative plan of action to address the CAMA Land Use Plan requirements. If such description(s) are not included in the plan, it shall not be certified; and
 - (E) contain a local resolution of adoption that includes findings which demonstrate that policy statements and the Future Land Use Plan Map (FLUP) have been evaluated, and determine that no internal inconsistencies exist.

(d) Non-Certification: If the plan is not certified the CRC shall within 30 days inform the local government as to how the plan might be changed so certification can be granted. Until the plan is certified, the pre-existing certified CAMA Land Use Plan shall remain in effect.

(e) Conditional Certification: If the plan is conditionally certified, the CRC shall within 30 days provide the local government with condition(s) that shall be met for certification. Until the condition(s) is met on a conditionally certified plan, the pre-existing certified CAMA Land Use Plan shall remain in effect. When the local government complies with all conditions for a conditionally certified plan, as determined by the Executive Secretary of the CRC, plan certification is automatic with no further action needed by the CRC.

Authority G.S. 113A-107(a); 113A-110; 113-111; 113A-124.

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0200 – THE ESTUARINE AND OCEAN SYSTEMS

15A NCAC 07H .0209 COASTAL SHORELINES

(a) Description. The Coastal Shorelines category includes estuarine shorelines and public trust shorelines. Estuarine shorelines AEC are those non-ocean shorelines extending from the normal high water level or normal water level along the estuarine waters, estuaries, sounds, bays, fresh and brackish waters, and public trust areas as set forth in an agreement adopted by the Wildlife Resources Commission and the Department of Environment and Natural Resources [described in Rule .0206(a) of this Section] for a distance of 75 feet landward. For those estuarine shorelines immediately contiguous to waters classified as Outstanding Resource Waters by the Environmental Management Commission, the estuarine shoreline AEC shall extend to 575 feet landward from the normal high water level or normal water level, unless the Coastal Resources Commission establishes the boundary at a greater or lesser extent following required public hearing(s) within the affected county or counties. Public trust shorelines AEC are those non-ocean shorelines immediately contiguous to public trust areas, as defined in Rule 07H .0207(a) of this Section, located inland of the dividing line between coastal fishing waters and inland fishing waters as set forth in that agreement and extending 30 feet landward of the normal high water level or normal water level.

(b) Significance. Development within coastal shorelines influences the quality of estuarine and ocean life and is subject to the damaging processes of shore front erosion and flooding. The coastal shorelines and wetlands contained within them serve as barriers against flood damage and control erosion between the estuary and the uplands. Coastal shorelines are the intersection of the upland and aquatic elements of the estuarine and ocean system, often integrating influences from both the land and the sea in wetland areas. Some of these wetlands are among the most productive natural environments of North Carolina and they support the functions of and habitat for many valuable commercial and sport fisheries of the coastal area. Many land-based activities influence the quality and productivity of estuarine waters. Some important features of the coastal shoreline include wetlands, flood plains, bluff shorelines, mud and sand flats, forested shorelines and other important habitat areas for fish and wildlife.

(c) Management Objective. The management objective is to ensure that shoreline development is compatible with the dynamic nature of coastal shorelines as well as the values and the management objectives of the estuarine and ocean system. Other objectives are to conserve and manage the important natural features of the estuarine and ocean system so as to safeguard and perpetuate their biological, social, aesthetic, and economic values; to coordinate and establish a management system capable of conserving and utilizing these shorelines so as to maximize their benefits to the estuarine and ocean system and the people of North Carolina.

(d) Use Standards. Acceptable uses shall be those consistent with the management objectives in Paragraph (c) of this Rule.

These uses shall be limited to those types of development activities that will not be detrimental to the public trust rights and the biological and physical functions of the estuarine and ocean system. Every effort shall be made by the permit applicant to avoid, mitigate or reduce adverse impacts of development to estuarine and coastal systems through the planning and design of the development project. In every instance, the particular location, use, and design characteristics shall comply with the general use and specific use standards for coastal shorelines, and where applicable, the general use and specific use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section.

- (1) All development projects, proposals, and designs shall preserve and not weaken or eliminate natural barriers to erosion, including, but not limited to, peat marshland, resistant clay shorelines, and cypress-gum protective fringe areas adjacent to vulnerable shorelines.
- (2) All development projects, proposals, and designs shall limit the construction of impervious surfaces and areas not allowing natural drainage to only so much as is necessary to adequately service the major purpose or use for which the lot is to be developed. Impervious surfaces shall not exceed 30 percent of the AEC area of the lot, unless the applicant can effectively demonstrate, through innovative design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. Redevelopment of areas exceeding the 30 percent impervious surface limitation may be permitted if impervious areas are not increased and the applicant designs the project to comply with the intent of the rule to the maximum extent feasible.
- (3) All development projects, proposals, and designs shall comply with the following mandatory standards of the North Carolina Sedimentation Pollution Control Act of 1973:
 - (A) All development projects, proposals, and designs shall provide for a buffer zone along the margin of the estuarine water which is sufficient to confine visible siltation within 25 percent of the buffer zone nearest the land disturbing development.
 - (B) No development project proposal or design shall permit an angle for graded slopes or fill which is greater than an angle which can be retained by vegetative cover or other erosion-control devices or structures.
 - (C) All development projects, proposals, and designs which involve uncovering more than one acre of land shall plant a ground cover sufficient to restrain erosion within 30 working days of completion of the

grading; provided that this shall not apply to clearing land for the purpose of forming a reservoir later to be inundated.

- (4) Development shall not have a significant adverse impact on estuarine and ocean resources. Significant adverse impacts shall include but not be limited to development that would directly or indirectly impair water quality standards, increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit spoils waterward of normal water level or normal high water, or cause degradation of shellfish beds.
- (5) Development shall not interfere with existing public rights of access to, or use of, navigable waters or public resources.
- (6) No public facility shall be permitted if such a facility is likely to require public expenditures for maintenance and continued use, unless it can be shown that the public purpose served by the facility outweighs the required public expenditures for construction, maintenance, and continued use. For the purpose of this standard, "public facility" shall mean a project that is paid for in any part by public funds.
- (7) Development shall not cause irreversible damage to valuable, historic architectural or archaeological resources as documented by the local historic commission or the North Carolina Department of Cultural Resources.
- (8) Established common-law and statutory public rights of access to the public trust lands and waters in estuarine areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways.
- (9) Within the AECs for shorelines contiguous to waters classified as Outstanding Resource Waters by the EMC, no CAMA permit shall be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site-specific information, degrade the water quality or outstanding resource values.
- (10) Within the Coastal Shorelines category (estuarine and public trust shoreline AECs), new development shall be located a distance of 30 feet landward of the normal water level or normal high water level, with the exception of the following:
 - (A) Water-dependent uses as described in Rule 07H .0208(a)(1) of this Section;
 - (B) Pile-supported signs (in accordance with local regulations);

- (C) Post- or pile-supported fences;
- (D) Elevated, slatted, wooden boardwalks exclusively for pedestrian use and six feet in width or less. The boardwalk may be greater than six feet in width if it is to serve a public use or need;
- (E) Crab Shedders, if uncovered with elevated trays and no associated impervious surfaces except those necessary to protect the pump;
- (F) Decks/Observation Decks limited to slatted, wooden, elevated and unroofed decks that shall not singularly or collectively exceed 200 square feet;
- (G) Grading, excavation and landscaping with no wetland fill except when required by a permitted shoreline stabilization project. Projects shall not increase stormwater runoff to adjacent estuarine and public trust waters;
- (H) Development over existing impervious surfaces, provided that the existing impervious surface is not increased and the applicant designs the project to comply with the intent of the rules to the maximum extent feasible;
- (I) Where application of the buffer requirement would preclude placement of a residential structure with a footprint of 1,200 square feet or less on lots, parcels and tracts platted prior to June 1, 1999, development may be permitted within the buffer as required in Subparagraph (d)(10) of this Rule, providing the following criteria are met:
 - (i) Development shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities such as water and sewer; and
 - (ii) The residential structure development shall be located a distance landward of the normal high water or normal water level equal to 20 percent of the greatest depth of the lot. Existing structures that encroach into the applicable buffer area may be replaced or repaired consistent with the criteria set out in Rules .0201 and .0211 in Subchapter 07J of this Chapter; and
- (J) Where application of the buffer requirement set out in 15A NCAC 07H .0209(d)(10) would preclude placement of a residential structure on an undeveloped lot platted prior to June 1, 1999 that are 5,000 square feet or less that does not require an on-site septic system, or on an undeveloped lot that is 7,500 square feet or less that requires an on-site septic system, development may be permitted within the buffer if all the following criteria are met:
 - (i) The lot on which the proposed residential structure is to be located, is located between:
 - (I) Two existing waterfront residential structures, both of which are within 100 feet of the center of the lot and at least one of which encroaches into the buffer; or
 - (II) An existing waterfront residential structure that encroaches into the buffer and a road, canal, or other open body of water, both of which are within 100 feet of the center of the lot;
 - (ii) Development of the lot shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities;
 - (iii) Placement of the residential structure and pervious decking may be aligned no further into the buffer than the existing residential structures and existing pervious decking on adjoining lots;

- (iv) The first one and one-half inches of rainfall from all impervious surfaces on the lot shall be collected and contained on-site in accordance with the design standards for stormwater management for coastal counties as specified in 15A NCAC 02H .1005. The stormwater management system shall be designed by an individual who meets applicable State occupational licensing requirements for the type of system proposed and approved during the permit application process. If the residential structure encroaches into the buffer, then no other impervious surfaces will be allowed within the buffer; and
- (v) The lots must not be adjacent to waters designated as approved or conditionally approved shellfish waters by the Shellfish Sanitation Section of the Division of Environmental Health of the Department of Environment and Natural Resources.

(e) The buffer requirements in Paragraph (d) of this Rule shall not apply to Coastal Shorelines where the Environmental Management Commission (EMC) has adopted rules that contain buffer standards, or to Coastal Shorelines where the EMC adopts such rules, upon the effective date of those rules.

(f) Specific Use Standards for Outstanding Resource Waters (ORW) Coastal Shorelines.

- (1) Within the AEC for estuarine and public trust shorelines contiguous to waters classified as ORW by the EMC, all development projects, proposals, and designs shall limit the built upon area in the AEC to no more than 25 percent or any lower site specific percentage as adopted by the EMC as necessary to protect the exceptional water quality and outstanding resource values of the ORW, and shall:
 - (A) have no stormwater collection system;
 - (B) provide a buffer zone of at least 30 feet from the normal high water line or normal water line;
 - (C) otherwise be consistent with the use standards set out in Paragraph (d) of this Rule.

- (2) Development (other than single-family residential lots) more than 75 feet from the normal high water line or normal water line but within the AEC as of June 1, 1989 shall be permitted in accordance with rules and standards in effect as of June 1, 1989 if:
 - (A) the development has a CAMA permit application in process, or
 - (B) the development has received preliminary subdivision plat approval or preliminary site plan approval under applicable local ordinances, and in which financial resources have been invested in design or improvement.
- (3) Single-family residential lots that would not be buildable under the low-density standards defined in Paragraph (g)(1) of this Rule may be developed for single-family residential purposes so long as the development complies with those standards to the maximum extent possible.
- (4) For an ORW nominated subsequent to June 1, 1989, the effective date in Paragraph (g)(2) of this Rule shall be the dates of nomination by the EMC.

(g) Urban Waterfronts.

- (1) Description. Urban Waterfronts are waterfront areas, not adjacent to Outstanding Resource Waters, in the Coastal Shorelines category that lie within the corporate limits of any municipality duly chartered within the 20 coastal counties of the state. In determining whether an area is an urban waterfront, the following criteria shall be met as of the effective date of this Rule:
 - (A) The area lies wholly within the corporate limits of a municipality; and
 - (B) the area ~~is in~~ has a central business district or similar commercial zoning classification where there is minimal undeveloped land, mixed land uses, and urban level services such as water, sewer, streets, solid waste management, roads, police and fire protection, or in an area with an industrial zoned area or similar zoning classification adjacent to a central business district.
- (2) Significance. Urban waterfronts are recognized as having cultural, historical and economic significance for many coastal municipalities. Maritime traditions and longstanding development patterns make these areas suitable for maintaining or promoting dense development along the shore. With proper planning and stormwater management, these areas may continue to preserve local

- historical and aesthetic values while enhancing the economy.
- (3) Management Objectives. To provide for the continued cultural, historical, aesthetic and economic benefits of urban waterfronts. Activities such as in-fill development, reuse and redevelopment facilitate efficient use of already urbanized areas and reduce development pressure on surrounding areas, in an effort to minimize the adverse cumulative environmental effects on estuarine and ocean systems. While recognizing that opportunities to preserve buffers are limited in highly developed urban areas, they are encouraged where practical.
- (4) Use Standards:
- (A) The buffer requirement pursuant to Subparagraph (d)(10) of this Rule is not required for development within ~~designated~~ Urban Waterfronts that meets the following standards:
- (i) The development must be consistent with the locally adopted land use plan;
- (ii) Impervious surfaces shall not exceed 30 percent of the AEC area of the lot. Impervious surfaces may exceed 30 percent if the applicant can effectively demonstrate, through a stormwater management system design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. The stormwater management system shall be designed by an individual who meets any North Carolina occupational licensing requirements for the type of system proposed and approved during the permit application process. Redevelopment of areas exceeding the 30 percent impervious surface limitation may be permitted if impervious areas are not increased and the applicant designs the project to comply with the intent of the rule to the maximum extent feasible; and
- (iii) The development shall meet all state stormwater management requirements as required by the NC
- Environmental Management Commission;
- (B) Non-water dependent uses over estuarine waters, public trust waters and coastal wetlands may be allowed only within ~~designated~~ Urban Waterfronts as set out below.
- (i) Existing structures over coastal wetlands, estuarine waters or public trust areas may be used for commercial non-water dependent purposes provided that the structure promotes, fosters, enhances or accommodates public benefit. Commercial, non-water dependent uses shall be limited to restaurants and retail services. Residential uses, lodging and new parking areas shall be prohibited.
- (ii) ~~Existing~~ For the purposes of this Rule, existing enclosed structures may be replaced and or expanded vertically provided that vertical expansion does not exceed the original footprint of the ~~structure.~~ structure, is limited to one additional story over the life of the structure and is consistent with local requirements or limitations.
- (iii) New structures built for non-water dependent purposes are limited to pile-supported, single-story, unenclosed decks and boardwalks, and ~~must~~ shall meet the following criteria:
- (I) The proposed development ~~must shall be consistent with a locally adopted waterfront access plan that provides~~ provide for enhanced public access to the shoreline;
- (II) Structures may be roofed but shall not be enclosed by partitions, plastic sheeting, screening, netting, lattice or

- solid walls of any kind and shall be limited to a single story;
- (III) Structures ~~must~~ shall be pile supported and require no filling of coastal wetlands, estuarine waters or public trust areas;
- (IV) Structures shall not extend more than 20 feet waterward of the normal high water level or normal water level;
- (V) Structures ~~must~~ shall be elevated at least three feet over the wetland substrate as measured from the bottom of the decking;
- (VI) Structures shall have no more than six feet of any dimension extending over coastal wetlands;
- (VII) Structures shall not interfere with access to any riparian property and shall have a minimum setback of 15 feet between any part of the structure and the adjacent property owners' areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the structure commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development;
- (VIII) Structures ~~must~~ shall be consistent with the US Army Corps of Engineers setbacks along federally authorized waterways;
- (IX) Structures shall have no significant adverse impacts on fishery resources, water quality or adjacent wetlands and there must be no reasonable alternative that would avoid wetlands. Significant adverse impacts shall include but not be limited to the development that would directly or indirectly impair water quality standards, increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit spoils

- (X) waterward of normal water level or normal high water level, or cause degradation of shellfish beds; Structures shall not degrade waters classified as SA or High Quality Waters or Outstanding Resource Waters as defined by the NC Environmental Management Commission;
- (XI) Structures shall not degrade Critical Habitat Areas or Primary Nursery Areas as defined by the NC Marine Fisheries Commission; and
- (XII) Structures shall not pose a threat to navigation.

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

SECTION .0300 - OCEAN HAZARD AREAS

15A NCAC 07H .0305 GENERAL IDENTIFICATION AND DESCRIPTION OF LANDFORMS

(a) Ocean Beaches. Ocean beaches are lands consisting of unconsolidated soil materials that extend from the mean low water line landward to a point where either:

- (1) the growth of vegetation occurs, or
- (2) a distinct change in slope or elevation alters the configuration of the landform, whichever is farther landward.

(b) Nearshore. The nearshore is the portion of the beach seaward of mean low water that is characterized by dynamic changes both in space and time as a result of storms.

(c) Primary Dunes. Primary dunes are the first mounds of sand located landward of the ocean beaches having an elevation equal to the mean flood level (in a storm having a one percent chance of being equaled or exceeded in any given year) for the area plus six feet. The primary dune extends landward to the lowest elevation in the depression behind that same mound of sand (commonly referred to as the dune trough).

(d) Frontal Dunes. The frontal dune is deemed to be the first mound of sand located landward of the ocean beach having sufficient vegetation, height, continuity and configuration to offer protective value.

(e) General Identification. For the purpose of public and administrative notice and convenience, each designated minor

development permit-letting agency with ocean hazard areas may designate, subject to CRC approval in accordance with the local implementation and enforcement plan as defined in 15A NCAC 07I .0500, a readily identifiable land area within which the ocean hazard areas occur. This designated notice area must include all of the land areas defined in Rule .0304 of this Section. Natural or man-made landmarks may be considered in delineating this area.

(f) ~~"Vegetation Line"~~ Vegetation Line. The vegetation line ~~means~~ refers to the first line of stable and natural vegetation, which shall be used as the reference point for measuring oceanfront setbacks. This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. ~~It~~ The vegetation line is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment. The Division of Coastal Management or Local Permit Officer shall determine the location of the stable and natural vegetation line based on visual observations of plant composition and density. If the vegetation has been planted, it may be considered stable when the majority of the plant stems are from continuous rhizomes rather than planted individual rooted sets. The vegetation may be considered natural when the majority of the plants are mature and additional species native to the region have been recruited, providing stem and rhizome densities that are similar to adjacent areas that are naturally occurring. In areas where there is no stable natural vegetation present, this line ~~shall~~ may be established by ~~connecting or extending the lines from the nearest adjacent vegetation on either side of the site and by extrapolating (by either on-ground observation or by aerial photographic interpretation) to establish the line.~~ In areas within the boundaries of a large scale beach nourishment or spoil deposition project, the vegetation line that existed prior to the onset of project construction shall be used as the vegetation line for determining oceanfront setbacks after the project is completed except for those circumstances described under Paragraph (g) of this Rule for projects constructed after September 1, 2000. ~~A project shall be considered large scale when: interpolation between the nearest adjacent stable natural vegetation by on ground observations or by aerial photographic interpretation.~~

- (1) ~~it places more than a total volume of 200,000 cubic yards of sand at an average ratio of more than 50 cubic yards of sand per linear foot of shoreline; or~~
- (2) ~~it is a Hurricane Protection project constructed by the U.S. Army Corps of Engineers.~~

~~(g) If within three years prior to the award of contract date of a large scale project as defined in Subparagraph (f)(1) or (f)(2) of this Rule, a large storm or series of storms cause the vegetation line to be relocated landward of its normal position relative to other natural features of the beach such as the typical high water or mid tide line, the affected local government may request that the CRC establish an alternative vegetation line where the storm effect on the vegetation line contained within the boundaries of a large scale beach nourishment or spoil deposition project is mitigated. Once the CRC grants the local government's request to establish an alternative vegetation line the following activities shall be conducted:~~

- (1) ~~A primary vegetation line shall be established prior to the onset of project construction as described in Paragraphs (f) of this Rule;~~
- (2) ~~An alternative vegetation line shall be determined based on a dry sand beach width template (measured from the wet/dry line or other appropriate shoreline indicator to the vegetation line) developed by DCM staff from analysis of historic aerial photographs, a ground reconnaissance survey of the site and adjacent areas, and where available, other historic data such as beach profiles and site specific studies. The template is intended to show the location of the vegetation line relative to the existing shoreline as if no storm had affected the location of the vegetation line. The template will be applied to the existing shoreline immediately prior to the commencement of project construction; and~~
- (3) ~~The storm effect mitigated vegetation line may be used to replace the primary pre-project vegetation line for setback determinations and other appropriate regulatory actions after a minimum time period of eight years from the award of contract date of the large scale project as defined in Subparagraph (f) of this Rule, and the Division of Coastal Management personnel have determined that natural vegetation is reestablished on the large scale project. To be considered as reestablished, natural vegetation shall meet all of the following criteria:~~
 - (A) ~~the dune grasses appear the same in terms of species composition and stem density as adjacent non project dune areas; and~~
 - (B) ~~the majority of stems are from continuous rhizomes rather than planted individual rooted sets and, the vegetation is established and stable at least as far seaward as the storm effect mitigated pre-project vegetation line.~~

(g) Static Vegetation Line. In areas within the boundaries of a large-scale beach fill project, the vegetation line that existed within one year prior to the onset of initial project construction shall be defined as the static vegetation line. A static vegetation line shall be established in coordination with the Division of Coastal Management using on-ground observation and survey or aerial imagery for all areas of oceanfront that undergo a large-scale beach fill project. Once a static vegetation line is established, and after the onset of project construction, this line shall be used as the reference point for measuring oceanfront setbacks in all locations where it is landward of the vegetation line. In all locations where the vegetation line as defined in this Rule is landward of the static vegetation line, the vegetation line shall be used as the reference point for measuring oceanfront setbacks. A static vegetation line shall not be established where a static vegetation line is already in place, including those established by the Division of Coastal Management prior to the

effective date of this Rule. A record of all static vegetation lines, including those established by the Division of Coastal Management prior to the effective date of this Rule, shall be maintained by the Division of Coastal Management for determining development standards as set forth in Rule .0306 of this Section. Because the impact of Hurricane Floyd (September 1999) caused significant portions of the vegetation line in Oak Island and Ocean Isle Beach to be relocated landward of its pre-storm position, the static line for areas adjacent to the beach fill construction in Oak Island and Ocean Isle, the onset of which occurred in 2000, shall be defined by the general trend of the vegetation line established by the Division of Coastal Management from June 1998 aerial orthophotography.

(h) Beach Fill. Beach fill refers to the placement of sediment along the oceanfront shoreline. Sediment used solely to establish or strengthen dunes shall not be considered a beach fill project under this Rule. A large-scale beach fill project shall be defined as any volume of sediment greater than 300,000 cubic yards or any hurricane protection project constructed by the U.S. Army Corps of Engineers. The onset of construction shall be defined as the date sediment placement begins with the exception of projects completed prior to the effective date of this Rule, in which case the award of contract date will be considered the onset of construction.

(h)(i) "Erosion Escarpment" means Erosion Escarpment. The normal vertical drop in the beach profile caused from high tide or storm tide erosion.

(i)(j) Measurement line means the Line. The line from which the ocean front hazard setback as described in Rule .0306(a) of this Section is measured in the unvegetated beach area of environmental concern as described in Rule .0304(4) of this Section. Procedures for determining the measurement line in areas designated pursuant to Rule .0304(4)(a) of this Section shall be adopted by the Commission for each area where such a line is designated pursuant to the provisions of G.S. 150B. These procedures shall be available from any local permit officer or the Division of Coastal Management. In areas designated pursuant to Rule .0304(4)(b) of this Section, the Division of Coastal Management shall establish a measurement line that approximates the location at which the vegetation line is expected to reestablish by:

- (1) determining the distance the vegetation line receded at the closest vegetated site to the proposed development site; and
- (2) locating the line of stable natural vegetation on the most current pre-storm aerial photography of the proposed development site and moving this line landward the distance determined in Subparagraph (g)(1) of this Rule.

The measurement line established pursuant to this process shall in every case be located landward of the average width of the beach as determined from the most current pre-storm aerial photography.

Authority G.S. 113A-107; 113A-113(b)(6); 113A-124.

**15A NCAC 07H .0306 GENERAL USE STANDARDS
FOR OCEAN HAZARD AREAS**

(a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in the CRC's Rules shall be located according to whichever of the following is applicable:

- ~~(1) If neither a primary nor frontal dune exists in the AEC on or landward of the lot on which the development is proposed, the development shall be landward of the erosion setback line. The erosion setback line shall be set at a distance of 30 times the long-term annual erosion rate from the first line of stable natural vegetation or measurement line, where applicable. In areas where the rate is less than two feet per year, the setback line shall be 60 feet from the vegetation line or measurement line, where applicable.~~

- (1) The ocean hazard setback for development shall be measured in a landward direction from the vegetation line, the static vegetation line or the measurement line, whichever is applicable. The setback distance shall be determined by both the size of development and the shoreline erosion rate as defined in Rule .0304 of this Section. Development size shall be defined by total floor area for buildings or total area of footprint for structures other than buildings. Total floor area is the total square footage of living space plus all roof-covered porches, walkways, and structurally attached parking. No portion of a building's total floor area may extend oceanward of the ocean hazard setback distance including elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings. The ocean hazard setback shall be established using the following conditions:

- (A) A building or other structure less than 5,000 square feet shall require a minimum setback factor of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
- (B) A building or other structure greater than 5,000 square feet but less than 10,000 square feet shall require a minimum setback factor of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
- (C) A building or other structure greater than or equal to 10,000 square feet but less than 20,000 square feet shall require a minimum setback factor of 130 feet or 65 times the shoreline erosion rate, whichever is greater;
- (D) A building or other structure greater than or equal to 20,000 square feet but less than 40,000 square feet shall require a minimum setback factor of

140 feet or 70 times the shoreline erosion rate, whichever is greater;

- (E) A building or other structure greater than or equal to 40,000 square feet but less than 60,000 square feet shall require a minimum setback factor of 150 feet or 75 times the shoreline erosion rate, whichever is greater;
- (F) A building or other structure greater than or equal to 60,000 square feet but less than 80,000 square feet shall require a minimum setback factor of 160 feet or 80 times the shoreline erosion rate, whichever is greater;
- (G) A building or other structure greater than or equal to 80,000 square feet but less than 100,000 square feet shall require a minimum setback factor of 170 feet or 85 times the shoreline erosion rate, whichever is greater;
- (H) A building or other structure greater than or equal to 100,000 square feet shall require a minimum setback factor of 180 feet or 90 times the shoreline erosion rate, whichever is greater;
- (I) Utility lines providing for the transmission of electricity, water, telephone, cable television, data, storm water, sewer and septic shall require a setback factor of 30 times the shoreline erosion rate;
- (J) Transportation structures such as roads, surface parking lots and bridges less than 5,000 square feet shall require a setback of 30 times the shoreline erosion rate and 60 times the shoreline erosion rate for areas greater than or equal to 5,000 feet.

- (2) If a primary dune exists in the AEC on or landward of the lot on which the development is proposed, the development shall be landward of the crest of the primary dune or the ~~long-term erosion setback line~~, ocean hazard setback, whichever is farthest from the ~~first line of stable natural vegetation line~~, static vegetation line or measurement line, ~~where~~ whichever is applicable. For existing lots, however, where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located ~~seaward~~ oceanward of the primary dune. In such cases, the development ~~shall~~ may be located landward of the ~~long-term erosion ocean hazard setback line~~ and ~~but~~ shall not be located on or ~~in front~~ oceanward of a frontal dune. The words "existing lots" in this Rule shall mean a lot or tract of land which, as of June 1,

- 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership.
- (3) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot on which the development is proposed, the development shall be set landward of the frontal dune or landward of the ~~long term erosion ocean hazard~~ setback line, whichever is farthest from the ~~first line of stable natural~~ vegetation line, static vegetation line or measurement line, ~~where~~ whichever is applicable.
 - ~~(4) Because large structures located immediately along the Atlantic Ocean present increased risk of loss of life and property, increased potential for eventual loss or damage to the public beach area and other important natural features along the oceanfront, increased potential for higher public costs for federal flood insurance, erosion control, storm protection, disaster relief and provision of public services such as water and sewer, and increased difficulty and expense of relocation in the event of future shoreline loss, a greater oceanfront setback is required for these structures than is the case with smaller structures. Therefore, in addition to meeting the criteria in this Rule for setback landward of the primary or frontal dune or both the primary and frontal dunes, for all multi-family residential structures (including motels, hotels, condominiums and moteliminiums) of more than 5,000 square feet total floor area, and for any non-residential structure with a total area of more than 5,000 square feet, the erosion setback line shall be twice the erosion setback as established in Subparagraph (a)(1) of this Rule, provided that in no case shall this distance be less than 120 feet. In areas where the rate is more than 3.5 feet per year, this setback line shall be set at a distance of 30 times the long term annual erosion rate plus 105 feet.~~
 - (4) If neither a primary nor frontal dune exist in the AEC on or landward of the lot on which development is proposed, the structure shall be landward of the ocean hazard setback.
 - (5) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the principal structure and both shall meet the setback requirements established in Paragraph (a) of this Rule and Rule .0309(a) of this Section. The enclosure of existing roof covered porches shall be exempt from this requirement if the footprint is not expanded, modifications to existing foundations are not required and the existing porch is located landward of the vegetation ~~line~~ line, static vegetation line or measurement ~~line which ever is line~~ whichever is applicable. New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with current setback requirements.
 - (6) Established common-law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways.
- (b) Beach fill represents a temporary response to coastal erosion, and compatible beach fill as defined in Rule .0312 of this Section can be expected to erode at least as fast as, if not faster than, the pre-project beach. Furthermore, there is no assurance of future funding or beach-compatible sediment for continued beach fill projects and project maintenance. Therefore, development setbacks in areas that have received large-scale beach fill shall be measured from the static vegetation line. If development landward of the large-scale beach fill project does not meet the setback requirements from the static vegetation line, but can or has the potential to meet the setback requirements from the vegetation line, a local government or community may petition the Coastal Resources Commission for a "static line exception" to allow development of oceanfront property that lies both within the jurisdictional boundary of the petitioner as well as the boundaries of the large-scale beach fill project. If the request is approved, the Coastal Resources Commission may allow development under the following conditions:
- (1) The local government or community provides evidence of a long-term commitment to beach fill including:
 - (A) plans for design, construction and maintenance of a beach fill project prepared by a licensed professional and designed for a period of at least 30 years; and
 - (B) documentation by a licensed professional of the location, volume and availability of compatible sand necessary to construct and maintain the beach fill project over its design life; and
 - (C) identification of the financial resources necessary to fully fund the beach fill project over its design life; and
 - (2) A minimum of five years has passed since the onset of the initial large-scale beach fill construction associated with the static vegetation line as defined in Section .0305 of this Rule; and
 - (3) Development shall meet all setback requirements from the vegetation line or

measurement line defined in this Rule, whichever is applicable; and

- (4) Total floor area of a building shall be no greater than 2,000 square feet; and
- (5) Development setbacks shall be calculated from the shoreline erosion rate in place at the time of permit issuance; and
- (6) No portion of a building's total floor area, including elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, may extend oceanward of the total floor area of the landward-most adjacent structure. When the geometry or orientation of a lot precludes the placement of a building in line with the landward-most adjacent structure of similar use, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line a distance no less than 30 times the shoreline erosion rate or 60 feet, whichever is greater; and
- (7) With the exception of swimming pools, the development outlined in Rule .0309(a) may be allowed oceanward of the static vegetation line; and
- (8) Development shall not be eligible for the single-family exception defined in Rule .0309(b) outlined in this Section; and
- (9) The Coastal Resources Commission reserves the right to revoke the "static line exception" and require ocean hazard setbacks to be measured landward from the static vegetation line at any time there is evidence that a local government's or community's long-term commitments to beach fill as defined in this Rule are not being upheld.

~~(b)(c)~~ In order to avoid weakening the protective nature of ocean beaches and primary and frontal dunes, no development shall be permitted that involves the removal or relocation of primary or frontal dune sand or vegetation thereon which would adversely affect the integrity of the dune. Other dunes within the ocean hazard area shall not be disturbed unless the development of the property is otherwise impracticable, and any disturbance of any other dunes shall be allowed only to the extent allowed by Rule .0308(b) of this Section.

~~(e)(d)~~ Development shall not cause irreversible damage to documented historic architectural or archaeological resources documented by the Division of Archives and History, the National Historical Registry, the local land-use plan, or other sources.

~~(d)(e)~~ Development shall comply with minimum lot size and set back requirements established by local regulations.

~~(e)(f)~~ Mobile homes shall not be placed within the high hazard flood area unless they are within mobile home parks existing as of June 1, 1979.

~~(f)(g)~~ Development shall comply with general management objective for ocean hazard areas set forth in Rule .0303 of this Section.

~~(g)(h)~~ Development shall not interfere with legal access to, or use of, public resources nor shall such development increase the risk of damage to public trust areas.

~~(h)(i)~~ Development proposals shall incorporate measures to avoid or minimize adverse impacts of the project. These measures shall be implemented at the applicant's expense and may include actions that:

- (1) minimize or avoid adverse impacts by limiting the magnitude or degree of the action,
- (2) restore the affected environment, or
- (3) compensate for the adverse impacts by replacing or providing substitute resources.

~~(i)(j)~~ Prior to the issuance of any permit for development in the ocean hazard AECs, there shall be a written acknowledgment from the applicant to DCM that the applicant is aware of the risks associated with development in this hazardous area and the limited suitability of this area for permanent structures. By granting permits, the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development.

~~(j)(k)~~ All relocation of structures require permit approval. Structures relocated with public funds shall comply with the applicable setback line as well as other applicable AEC rules. Structures including septic tanks and other essential accessories relocated entirely with non-public funds shall be relocated the maximum feasible distance landward of the present location; septic tanks may not be located seaward of the primary structure. In these cases, all other applicable local and state rules shall be met.

~~(k)(l)~~ Permits shall include the condition that any structure shall be relocated or dismantled when it becomes imminently threatened by changes in shoreline configuration as defined in 07H .0308(a)(2)(B). The structure(s) shall be relocated or dismantled within two years of the time when it becomes imminently threatened, and in any case upon its collapse or subsidence. However, if natural shoreline recovery or beach renourishment takes place within two years of the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or dismantled at that time. This condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed under Rule .0308(a)(2) of this Section.

Authority G.S. 113A-107; 113A-113(b)(6); 113A-124.

15A NCAC 07H .0312 TECHNICAL STANDARDS FOR BEACH FILL PROJECTS

Emplacement of sediment along the oceanfront shoreline shall be referred to in this Rule as beach fill. Beach fill projects including beach nourishment, dredged material disposal, habitat restoration, storm protection, and erosion control may be permitted under the following conditions:

- (1) The applicant shall characterize the recipient beach according to the following methodology:

- (a) Characterization of the recipient beach shall not be required for the placement of sediment directly from and completely confined to a federally or state maintained navigation channel;
- (b) Sediment sampling and analysis shall be used to capture the three-dimensional spatial variability of the sediment characteristics including grain size, sorting and mineralogy within the natural system;
- (c) Shore-perpendicular topographic and bathymetric surveying of the recipient beach shall be conducted to determine the beach profile. Topographic and bathymetric surveying shall occur along a minimum of five (5) shore-perpendicular transects evenly spaced throughout the entire project area. Each transect shall extend from the frontal dune crest seaward to a depth of 20 feet (6.1 meters) below sea level, or to the shore-perpendicular distance 2,400 feet (732 meters) seaward of mean low water, whichever is in a more landward position. Transect spacing shall not exceed 5,000 feet (1,524 meters) in the shore-parallel direction. Elevation data for all transects shall be referenced to the North American Vertical Datum on 1988 (NAVD 88) and the North American Datum of 1983 (NAD 83);
- (d) No less than 13 sediment samples shall be taken along each beach profile transect. At least one (1) sample shall be taken from each of the following morphodynamic zones where present: frontal dune, frontal dune toe, mid berm, mean high water (MHW), mid tide (MT), mean low water (MLW), trough, bar crest and at even depth increments from 6 feet (1.8 meters) below sea level to 20 feet (6.1 meters) below sea level, or to a shore-perpendicular distance 2,400 feet (732 meters) seaward of mean low water, whichever is in a more landward position. The total number of samples taken landward of MLW shall equal the total number of samples taken seaward of MLW;
- (e) For the purpose of this Rule, sediment grain size categories shall be defined as "fine" (less than 0.0625 millimeters), "sand" (greater than or equal to 0.0625 millimeters and less than 2 millimeters), "granular" (greater than or equal to 2 millimeters and less than 4.76 millimeters) and "gravel" (greater than or equal to 4.76 millimeters and less than 76 millimeters). Each sediment sample shall report percentage by weight of each of these four (4) grain size categories;
- (f) A composite of the simple arithmetic mean for each of the four (4) grain size categories defined in Sub-Item (1)(e) of this Rule shall be calculated for each transect. A grand mean shall be established for each of the four (4) grain size categories by summing the mean for each transect and dividing by the total number of transects. The value that characterizes grain size values for the recipient beach shall be the grand mean of percentage by weight for each grain size category defined in Sub-Item (1)(e) of this Rule;
- (g) Percentage by weight calcium carbonate shall be calculated from a composite of all sediment samples along each transect defined in Sub-Item (1)(d) of this Rule. The value that characterizes the carbonate content of the recipient beach shall be a grand mean calculated by summing the percentage by weight calcium carbonate for each transect and dividing by the total number of ~~transects;~~ transects. For beaches on which fill activities have taken place prior to the effective date of this Rule, the Division of Coastal Management shall consider visual estimates of shell content as a proxy for carbonate weight percent;
- (h) The total number of sediments and shell material greater than three (3) inches (76 millimeters) in diameter, observable on the surface of the beach between mean low water (MLW) and the frontal dune toe, shall be calculated for an area of 50,000 square feet (4,645 square meters) within the beach fill project boundaries. This area shall be considered a representative sample of the entire project area and referred to as the "background" value; ~~and~~
- (i) Beaches that have received sediment prior to the effective date of this Rule shall be characterized in a way that is consistent with Sub-Items (1)(a)

- through (1)(h) of this Rule and shall use data collected from the recipient beach prior to the addition of beach fill. If such data were not collected or are unavailable, a dataset best reflecting the sediment characteristics of the recipient beach prior to beach fill shall be developed in coordination with the Division of Coastal Management. Management; and
- (j) All data used to characterize the recipient beach shall be provided in digital and hardcopy format to the Division of Coastal Management upon request.
- (2) The applicant shall characterize the sediment to be placed on the recipient beach according to the following methodology:
- (a) The characterization of borrow areas including submarine sites, upland sites, and dredged material disposal area shall be designed to capture the three-dimensional spatial variability of the sediment characteristics including grain size, sorting and mineralogy within the natural system or dredged material disposal area;
- (b) The characterization of borrow sites shall include sediment characterization data provided by the Division of Coastal Management;
- (c) Geophysical imaging—Seafloor surveys shall measure elevation and provide acoustic imagery of the seafloor. Measurement of the seafloor elevation at each submarine borrow site shall provide 100 percent coverage and use survey-grade swath sonar in accordance with current US Army Corps of Engineers standards for navigation and dredging. Seafloor imaging without an elevation component shall also provide 100 percent US Army Corps of Engineers standards for navigation and dredging. Because shallow submarine areas can provide technical challenges and physical limitations for acoustic measurements, alternative elevation surveying methods for water depths less than 10 feet (3 meters) may be evaluated on a case-by-case basis by the Division of Coastal Management and seafloor imaging without an elevation component may not be required for water depths less than 10 feet (3 meters). All final hydrographic Elevation data shall be tide-and
- motion-corrected and referenced to the North American Vertical Datum of 1988 (NAVD 88) and the North American Datum of 1983 (~~NAD 83~~) and (NAD 83). Seafloor imaging data without an elevation component shall be referenced to the NAD 83. All final seafloor survey data shall conform to standards for accuracy, quality control and quality assurance as set forth either by the US Army Corps of Engineers, the National Oceanic and Atmospheric Administration, or the International Hydrographic Organization;
- (d) Geophysical imaging of the seafloor subsurface shall be used to characterize each borrow site and shall use survey grids with a line spacing not to exceed 1,000 feet (305 meters). Survey grids shall incorporate at least one (1) tie point per survey line. Because shallow submarine areas can pose technical challenges and physical limitations for geophysical techniques, subsurface data may not be required in water depths less than 10 feet (3 meters). Subsurface geophysical imaging shall not be required for federally or state maintained navigation channels, channels or upland sites. All final subsurface geophysical data shall use accurate sediment velocity models for time-depth conversions, be time and motion corrected, conversions and be referenced to the North American Vertical Datum of 1988 (NAVD 88) and the North American Datum of 1983 (NAD 83);
- (e) Sediment sampling of all borrow sites shall use a vertical sampling device no less than 3 inches (76 millimeters) in diameter. Characterization of each borrow site shall use no less than 10 evenly spaced cores or one (1) core per 10 acres (grid spacing of 1,000 feet or 305 meters), 23 acres (grid spacing of 1,000 feet or 305 meters), whichever is greater. Characterization of borrow sites completely confined to federally or state maintained navigation channels shall use no less than five (5) evenly spaced vertical samples per channel or sample spacing of no more than 5,000 linear feet (1,524 meters), whichever is greater, and greater. In

- submarine borrow sites other than federally or state maintained navigation channels where water depths are no greater than 10 feet (3 meters) geophysical data of and below the seafloor are not acquired, sediment sample spacing shall be no less than one (1) core per six (6) acres (grid spacing of 500 feet or 152 meters). Vertical sampling shall penetrate to a depth equal to or greater than permitted dredge or excavation depth, depth or expected dredge or excavation depths for pending permit applications. All sediment samples shall be integrated with geophysical data to constrain the surficial, horizontal and vertical extent of lithologic units and determine excavation volumes of compatible sediment as defined in Item (3) of this Rule;
- (f) Grain size distributions shall be reported for all sub-samples taken within each vertical sample for each of the four (4) grain size categories defined in Sub-Item (1)(e) of this Rule. Weighted averages for each core shall be calculated based on the total number of samples and the thickness of each sampled interval. A simple arithmetic mean of the weighted averages for each grain size category shall be calculated to represent the average grain size values for each borrow site. Vertical samples shall be geo-referenced and digitally imaged using scaled, color-calibrated photography; and
- (g) Percentage by weight of calcium carbonate shall be calculated from a composite sample of each core. A weighted average of calcium carbonate percentage by weight shall be calculated for each borrow site based on the composite sample thickness of each core. Carbonate analysis shall not be required for sediment confined to federally or state maintained navigation channels; and
- (h) All data used to characterize the recipient beach shall be provided a digital and hardcopy format upon request to the Division of Coastal Management.
- (3) The Division of Coastal Management shall determine sediment compatibility according to the following criteria:
- (a) Sediment completely confined to the permitted dredge depth of a federally or state maintained navigation channel shall be considered compatible if the average percentage by weight of fine-grained (less than 0.0625 millimeters) sediment is less than 10 percent;
- (b) Sediment used solely to establish or strengthen dunes shall not be considered a beach fill project under this Rule;
- (c) Sediment used solely to re-establish state-maintained transportation corridors across a barrier island breach in a disaster area as declared by the Governor shall not be considered a beach fill project under this Rule;
- ~~(d) All material other than sediment and shell associated with the morphodynamic zones defined in Sub-Item (1)(d) of this Rule shall not be considered compatible;~~
- ~~(e)~~(d) The average percentage by weight of fine-grained sediment (less than 0.0625 millimeters) in each borrow site shall not exceed the average percentage by weight of fine-grained sediment of the recipient beach characterization plus five (5) percent;
- ~~(f)~~(e) The average percentage by weight of granular sediment (greater than or equal to 2 millimeters and <less than 4.76 millimeters) in a borrow site shall not exceed the average percentage by weight of coarse-sand sediment of the recipient beach characterization plus five (5) percent;
- ~~(g)~~(f) The average percentage by weight of gravel (greater than or equal to 4.76 millimeters) in a borrow site shall not exceed the average percentage by weight of gravel-sized sediment for the recipient beach characterization plus five (5) percent;
- ~~(h)~~(g) The average percentage by weight of calcium carbonate in a borrow site shall not exceed the average percentage by weight of calcium carbonate of the recipient beach characterization plus 15 percent; and
- ~~(i)~~(h) Techniques that take incompatible sediment within a borrow site or combination of sites and make it compatible with that of the recipient beach characterization shall be evaluated on a case-by-case basis by the Division of Coastal Management.

- (4) Excavation and placement of sediment shall conform to the following criteria:
- (a) Sediment excavation depth from a federally or state maintained navigation channel shall not exceed the permitted dredge depth of the channel;
 - (b) Sediment excavation depths for all borrow sites shall not exceed the maximum depth of recovered core at each coring location;
 - (c) In order to protect threatened and endangered species, and to minimize impacts to fish, shellfish and wildlife resources, no excavation or placement of sediment shall occur within the project area during times designated by the Division of Coastal Management in consultation with other State and Federal agencies, and;
 - (d) Sediment and shell material with a diameter greater than three (3) inches (76 millimeters) shall be considered incompatible if it has been placed on the beach during the beach fill project, is observed between mean low water (MLW) and the frontal dune toe, and is in excess of twice the background value of material of the same size along any 50,000-square-foot (4,645 square meter) section of beach.

Authority G.S. 113-229; 113A-102(b)(1); 113-229; 113A-103(5)(a); 113A-107(a); 113A-113(b)(5).

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 32 – NORTH CAROLINA MEDICAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Medical Board intends to amend the rule cited as 21 NCAC 32M .0107.

Proposed Effective Date: April 1, 2008

Public Hearing:

Date: January 25, 2008

Time: 1:00 p.m.

Location: Board of Nursing, 3724 National Drive, Suite 201, Raleigh, NC

Reason for Proposed Action: *To further clarify the continuing education requirements for nurse practitioners.*

Procedure by which a person can object to the agency on a proposed rule: *Any person may object to the proposed amendment by attending the public hearing on January 25, 2008 and/or submitting a written objection by January 25, 2008, to R. David Henderson, Executive Director, North Carolina Medical Board, 1203 Front Street, Raleigh, NC 27609, Fax (919) 326-1131, email david.henderson@ncmedboard.org. The North Carolina Medical Board is interested in all comments pertaining to the proposed rule. All persons interested and potentially affected by the proposal are strongly encouraged to read this entire notice and make comments on the proposed rule amendment.*

Comments may be submitted to: *R. David Henderson, 1203 Front Street, Raleigh, NC 27609, phone (919) 326-1100, fax (919) 326-1131, email david.henderson@ncmedboard.org*

Comment period ends: January 25, 2008

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

Fiscal Impact:

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

SUBCHAPTER 32M - APPROVAL OF NURSE PRACTITIONERS

21 NCAC 32M .0107 CONTINUING EDUCATION (CE)

In order to maintain nurse practitioner approval to practice, the nurse practitioner shall earn ~~400~~ 50 contact hours of continuing education ~~every two years~~ each year beginning with the first renewal after initial approval to practice has been granted. Continuing Education hours are those hours for which approval has been granted by the American Nurses Credentialing Center (ANCC) and Accreditation Council on Continuing Medical Education (ACCME); other national credentialing bodies or practice relevant courses in an institution of higher learning. Documentation shall be maintained by the nurse practitioner and made available upon request to either Board.

Authority G.S. 90-6; 90-18(14); 90-171.23(14).

CHAPTER 36 - BOARD OF NURSING

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Nursing intends to amend the rules cited as 21 NCAC 36 .0221, .0228, .0317, .0406, .0807.

Proposed Effective Date: April 1, 2008

Public Hearing:

Date: January 25, 2008

Time: 1:00 p.m.

Location: NC Board of Nursing Office, 3724 National Drive, Ste. 201, Raleigh, NC

Reason for Proposed Action:

21 NCAC 36 .0221 - In the current rule there was no provision for students in out-of-state prelicensure programs. This revision would grant "student status" to the students enrolled in out-of-state nursing programs utilizing facilities in North Carolina. Many out-of-state nursing education programs are offering clinical experience with preceptors in North Carolina.

21 NCAC 36 .0228 - To further clarify the requirements for a CNS to be recognized by the Board of Nursing.

21 NCAC 36 .0317 - To maintain the requirement for two years full time teaching continuing through January 1, 2015. This requirement was inadvertently omitted from the rules previously revised.

21 NCAC 36 .0406 - Legislation was enacted by the 2007 General Assembly authorizing the Board of Nursing to establish standards for applicant requirements for medication aide training.

21 NCAC 36 .0807 - To further clarify the continuing education requirements for the nurse practitioner.

Procedure by which a person can object to the agency on a proposed rule: Persons may submit objections to these rules by contacting Jean H. Stanley, APA Coordinator, North Carolina Board of Nursing, Post Office Box 2129, Raleigh, North Carolina, 27602, fax (919) 781-9461, or email jeans@ncbon.com.

Comments may be submitted to: Jean H. Stanley, CPS, NC Board of Nursing, P.O. Box 2129, Raleigh, NC 27602, phone (919) 782-3211 extension 252, fax (919) 781-9461, email jeans@ncbon.com

Comment period ends: January 25, 2008

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

SECTION .0200 - LICENSURE

21 NCAC 36 .0221 LICENSE REQUIRED

(a) No cap, pin, uniform, insignia or title shall be used to represent to the public, that an unlicensed person is a registered nurse or a licensed practical nurse as defined in G.S. 90-171.43.

(b) The repetitive performance of a common task or procedure which does not require the professional judgment of a registered nurse or licensed practical nurse shall not be considered the practice of nursing for which a license is required. Tasks that may be delegated to the Nurse Aide I and Nurse Aide II shall be established by the Board of Nursing pursuant to 21 NCAC 36 .0403. Tasks may be delegated to an unlicensed person which:

- (1) frequently recur in the daily care of a client or group of clients;
- (2) are performed according to an established sequence of steps;
- (3) involve little or no modification from one client-care situation to another;
- (4) may be performed with a predictable outcome; and
- (5) do not inherently involve ongoing assessment, interpretation, or decision-making which cannot be logically separated from the procedure(s) itself.

Client-care services which do not meet all of these criteria shall be performed by a licensed nurse

(c) The registered nurse or licensed practical nurse shall not delegate the professional judgment required to implement any treatment or pharmaceutical regimen which is likely to produce side effects, toxic effects, allergic reactions, or other unusual effects; or which may rapidly endanger a client's life or well-being and which is prescribed by a person authorized by state law to prescribe such a regimen. The nurse who assumes responsibility for implementing a treatment or pharmaceutical regimen shall be accountable for:

- (1) recognizing side effects;
- (2) recognizing toxic effects;
- (3) recognizing allergic reactions;
- (4) recognizing immediate desired effects;
- (5) recognizing unusual and unexpected effects;
- (6) recognizing changes in client's condition that contraindicates continued administration of the medication;

- (7) anticipating those effects which may rapidly endanger a client's life or well-being; and
- (8) making judgments and decisions concerning actions to take in the event such untoward effects occur.

(d) When health care needs of an individual are incidental to the personal care needs of the individual, nurses shall not be accountable for care performed by clients themselves, their families or significant others, or by caretakers who provide personal care to the individual.

(e) Pharmacists may administer drugs in accordance with 21 NCAC 46 .2507.

(f) Unlicensed nursing students enrolled in out of state nursing education programs who are requesting utilization of North Carolina clinical facilities shall be allowed such experiences following approval by the Board of Nursing. Upon receiving such a request, the chief nursing administrator of a North Carolina clinical facility shall provide the Board with the following at least 30 days prior to the start of the requested experience:

- (1) Letter of request for approval to provide the clinical offering including proposed starting and completion dates;
- (2) Documentation that the nursing program is currently approved by the Board of Nursing in the state in which the parent institution is located;
- (3) Name, qualifications and evidence of current RN licensure of the faculty responsible for coordinating the student's experience; and
- (4) Name, qualifications and evidence of current license to practice as an RN in NC for preceptor or on-site faculty.

(g) Copies of the following shall be distributed by the chief nursing administrator of the clinical facility to all students and faculty involved in the clinical experiences:

- (1) North Carolina Nursing Practice Act;
- (2) North Carolina administrative rules and related interpretations regarding the role of the RN, LPN, and unlicensed nursing personnel; and
- (3) North Carolina Board of Nursing developed Suggestions for Utilization of Preceptors.

(h) Failure to continue in compliance with the requirements in Paragraph (f) of this Rule shall result in the immediate withdrawal of the Board's approval of the clinical offering and student status consistent with G.S. 90-171.43(2).

Authority G.S. 90-85.3; 90-171.23(b); 90-171.43; 90-171.83.

21 NCAC 36 .0228 CLINICAL NURSE SPECIALIST PRACTICE

(a) A registered nurse who meets the qualifications as outlined in Paragraph (b) of this Rule may be recognized by the Board as a clinical nurse specialist, and perform nursing activities at an advanced skill level as outlined in Paragraph (c) of this Rule.

(b) In order to be recognized as a Clinical Nurse Specialist, the Board of Nursing shall require an applicant to the individual shall have an unencumbered license to practice as a registered nurse in North Carolina and meet the following qualifications:

(1) has an unrestricted license to practice as a registered nurse in North Carolina or a party state;

~~(2)(4) As of January 1, 2006 has completed a master's level or higher degree educational program in a clinical nursing specialty consisting of a minimum of 500 hours of clinical experience in the clinical nursing specialty as defined in 21 NCAC 36 .0120(41) and consistent with G.S. 90-171.21(d)(4). For a dual track graduate program, if less than 500 hours per track, a requirement that there must be documentation of any crossover which would justify less than an additional 500 hours for the second track; as defined in 21 NCAC 36 .0120(41) and consistent with G.S. 90-171.21(d)(4); and~~

~~(3)(2) Maintains has current certification in the clinical nursing specialty from a national credentialing body approved by the Board of Nursing in the clinical nursing specialty approved by the Board of Nursing, as defined in Paragraph (e) of this Rule and 21 NCAC 36 .0120(26).~~

(c) Clinical nurse specialist scope of practice incorporates the basic components of nursing practice as defined in Rule .0224 of this Section as well as the understanding and application of nursing principles at an advanced level in his/her area of clinical nursing specialization which includes:

- (1) assessing clients' health status, synthesizing and analyzing multiple sources of data, and identifying alternative possibilities as to the nature of a healthcare problem;
- (2) diagnosing and managing clients' acute and chronic health problems within a nursing framework;
- (3) formulating strategies to promote wellness and prevent illness;
- (4) prescribing and implementing therapeutic and corrective nursing measures;
- (5) planning for situations beyond the clinical nurse specialist's expertise, and consulting with or referring clients to other health care providers as appropriate;
- (6) promoting and practicing in collegial and collaborative relationships with clients, families, other health care professionals and individuals whose decisions influence the health of individual clients, families and communities;
- (7) initiating, establishing and utilizing measures to evaluate health care outcomes and modify nursing practice decisions;
- (8) assuming leadership for the application of research findings for the improvement of health care outcomes; and
- (9) integrating education, consultation, management, leadership and research into the advanced clinical nursing specialist role.

(d) The registered nurse who seeks recognition by the Board as a clinical nurse specialist shall:

- (1) complete the appropriate application, which shall include:
 - (A) evidence of the appropriate masters, post-master's certificate or doctoral degree as set out in Subparagraph (b)(2) ~~(b)(1)~~ of this Rule; and
 - (B) evidence of current certification in a clinical nursing specialty from a national credentialing body as set out in Subparagraph (b)(3) ~~(b)(2)~~ of this Rule;
- (2) submit a processing fee of twenty-five dollars (\$25.00) to cover the costs of duplicating and distributing the application materials; and
- (3) submit evidence of initial certification and recertification at the time such occurs in order to maintain Board of Nursing recognition consistent with Paragraphs (b) and (e) of this Rule.

(e) The Board of Nursing may approve those national credentialing bodies offering certification and recertification in a clinical nursing specialty which have established the following minimum requirements:

- (1) an unencumbered registered nurse license; and
- (2) certification as a clinical nurse specialist is limited to masters, post-master's certificate or doctoral prepared applicant effective January 1, 2010 ~~January 1, 2010; and~~
- (3) ~~500 hours of clinical experience as a registered nurse in a graduate program in the clinical nursing specialty. For a dual track graduate program, if less than 500 hours per track, a requirement that there must be documentation of any crossover which would justify less than an additional 500 hours for the second track.~~

Authority G.S. 90-171.20(4); 90-171.20(7); 90-171.21(d)(4); 90-171.23(b); 90-171.27(b); 90-171.42(b).

SECTION .0300 - APPROVAL OF NURSING PROGRAMS

21 NCAC 36 .0317 ADMINISTRATION

(a) The controlling institution of a nursing program shall provide those human, physical, technical and financial resources and services essential to support program processes, outcomes and maintain compliance with Section .0300 of this Chapter.

(b) A full time registered nurse qualified pursuant to Paragraph (c) of this Rule shall have the authority for the direction of the nursing program. This authority must encompass responsibilities for maintaining compliance with rules and other legal requirements in all areas of the program. The program director shall have non-teaching time sufficient to allow for program organization, administration, continuous review, planning and development.

(c) Program director qualifications in a program preparing for nurse licensure shall include:

- (1) faculty qualifications as specified in 21 NCAC 36 .0318;
- (2) ~~beginning January 1, 2015,~~ two years of full-time experience as a faculty member ~~with a master's degree~~ in an approved nursing ~~program; program.~~ Beginning January 1, 2015 this experience is as a faculty with a master's degree;
- (3) for a program preparing individuals for registered nurse practice, a master's degree; and
- (4) for a program leading to a baccalaureate, a doctoral degree in nursing; or a master's degree in nursing and a doctoral degree in a health or education field.

(d) The nursing education program shall implement, for quality improvement, a comprehensive program evaluation which shall include:

- (1) students' achievement of program outcomes;
- (2) evidence of program resources including fiscal, physical, human, clinical and technical learning resources; student support services, and the availability of clinical sites and the viability of those sites adequate to meet the objectives of the program;
- (3) measures of program outcomes for graduates;
- (4) evidence that accurate program information for consumers is readily available;
- (5) evidence that the head of the academic institution and the administration support program outcomes;
- (6) evidence that program director and program faculty meet board qualifications and are sufficient in number to achieve program outcomes;
- (7) evidence that the academic institution assures security of student information;
- (8) evidence that collected evaluative data is utilized in implementing quality improvement activities; and
- (9) evidence of student participation in program planning, implementation, evaluation and continuous improvement.

(e) The controlling institution and the nursing education program shall communicate information describing the nursing education program that is accurate, complete, consistent across mediums and accessible by the public. At least the following must be made known to all applicants and students:

- (1) admission policies and practices;
- (2) policy on advanced placement, transfer of credits;
- (3) number of credits required for completion of the program;
- (4) tuition, fees and other program costs;
- (5) policies and procedures for withdrawal, including refund of tuition/fees;
- (6) grievance procedure;

- (7) criteria for successful progression in the program including graduation requirements; and
- (8) policies for clinical performance.

Authority G.S. 90-171.23(b)(8); 90-171.38.

SECTION .0400 - UNLICENSED PERSONNEL: NURSE AIDES

21 NCAC 36 .0406 MEDICATION AIDE TRAINING REQUIREMENTS

(a) Faculty for the medication aide training program are required to:

- (1) have a current, unrestricted license to practice as a registered nurse in North Carolina;
- (2) have had at least two years of practice experience as a registered nurse that includes medication administration;
- (3) have successfully completed an instructor training program approved by the Board according to these Rules; and
- (4) maintain Board of Nursing certification as a medication aide instructor.

(b) The medication aide instructor certification shall be renewed every two years provided the following requirements are met:

- (1) the individual has taught at least one medication aide training program within the preceding two years; and

- (2) the individual successfully completes a review program approved by the Board according to these Rules.

(c) The applicant for a medication aide training program approved by the Board must have a high school diploma or GED.

Authority G.S. 90-171.56; 131E-114.2; 131E-270.

SECTION .0800 – APPROVAL AND PRACTICE PARAMETERS FOR NURSE PRACTITIONERS

21 NCAC 36 .0807 CONTINUING EDUCATION (CE)

In order to maintain nurse practitioner approval to practice, the nurse practitioner shall earn ~~400~~ 50 contact hours of continuing education each year beginning with the first renewal after initial approval to practice has been granted~~every two years~~. Continuing Education hours are those hours for which approval has been granted by the American Nurses Credentialing Center (ANCC) or Accreditation Council on Continuing Medical Education (ACCME); other national credentialing bodies or practice relevant courses in an institution of higher learning. Documentation shall be maintained by the nurse practitioner and made available upon request to either Board.

Authority G.S. 90-6; 90-18(14); 90-171.23(b)(14); 90-171.42.

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

Rules approved by the Rules Review Commission at its meeting on September 20, 2007.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

CEMETERY COMMISSION

<u>Declaratory Rulings</u>	04	NCAC	05B .0105*	G.S. 150B-21.5(a)(4)
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CULTURAL RESOURCES, DEPARTMENT OF

<u>Qualifications for Grants Eligibility</u>	07	NCAC	02E .0301*	21:23 NCR
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STATE BUDGET AND MANAGEMENT, OFFICE OF

<u>Purpose</u>	09	NCAC	03M .0101*	G.S. 150B-21.5(a)(3)
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<u>Definitions</u>	09	NCAC	03M .0102*	G.S. 150B-21.5(a)(3)
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<u>Office of the State Controller Responsibilities</u>	09	NCAC	03M .0301*	G.S. 150B-21.5(a)(3)
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MEDICAL CARE COMMISSION

<u>In-Home Aide Services</u>	10A	NCAC	13J .1107	21:23 NCR
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MENTAL HEALTH, COMMISSION FOR

<u>Waiver of Licensure Rules</u>	10A	NCAC	27G .0813*	21:07 NCR
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PUBLIC HEALTH, COMMISSION FOR

<u>Determination of Financial Eligibility</u>	10A	NCAC	45A .0202*	21:23 NCR
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ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Definitions</u>	15A	NCAC	02S .0102*	21:20 NCR
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PARKS AND RECREATION AUTHORITY

<u>Site Control and Dedication</u>	15A	NCAC	12K .0109*	21:22 NCR
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MASSAGE AND BODYWORK THERAPY, BOARD OF

<u>Board Approval</u>	21	NCAC	30 .0601*	21:21 NCR
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<u>Definitions</u>	21	NCAC	30 .0602*	21:21 NCR
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<u>Documentation of Successful Completion</u>	21	NCAC	30 .0603*	21:21 NCR
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<u>Verification of Compliance</u>	21	NCAC	30 .0607*	21:21 NCR
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<u>School Approval Fees</u>	21	NCAC	30 .0608	21:21 NCR
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<u>Disciplinary Sanctions; Reporting Requirements</u>	21	NCAC	30 .0609*	21:21 NCR
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<u>Authority to Operate</u>	21	NCAC	30 .0610*	21:21 NCR
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APPROVED RULES

<u>Instructional Staff Qualifications</u>	21	NCAC	30	.0612*	21:21 NCR
<u>Financial Management Systems and Economic Stability</u>	21	NCAC	30	.0616*	21:21 NCR
<u>Student Recruitment</u>	21	NCAC	30	.0617*	21:21 NCR
<u>Admissions</u>	21	NCAC	30	.0618*	21:21 NCR
<u>Program Requirements</u>	21	NCAC	30	.0620*	21:21 NCR
<u>Student Records and Academic Progress</u>	21	NCAC	30	.0621	21:21 NCR
<u>Educational Credential Issued; Graduates' Pass Rate on</u>	21	NCAC	30	.0622*	21:21 NCR
<u>Learning Resources</u>	21	NCAC	30	.0623	21:21 NCR
<u>Standards of Professional Conduct</u>	21	NCAC	30	.0624*	21:21 NCR
<u>School Complaint Policy</u>	21	NCAC	30	.0625*	21:21 NCR
<u>Student Compensation Prohibited</u>	21	NCAC	30	.0626*	21:21 NCR
<u>Transfer of Credit; Advanced Placement</u>	21	NCAC	30	.0627	21:21 NCR
<u>Ethical Requirements in Advertising</u>	21	NCAC	30	.0628*	21:21 NCR
<u>Student Enrollment Agreement</u>	21	NCAC	30	.0629*	21:21 NCR
<u>School Catalog</u>	21	NCAC	30	.0630*	21:21 NCR
<u>Board Approval Not Transferable</u>	21	NCAC	30	.0631	21:21 NCR
<u>Initial application for Board Approval</u>	21	NCAC	30	.0632*	21:21 NCR
<u>Application for Board Approval of Additional Programs</u>	21	NCAC	30	.0633*	21:21 NCR
<u>Closure of School; Termination of a Program</u>	21	NCAC	30	.0634	21:21 NCR
<u>School Staff Members as Students</u>	21	NCAC	30	.0635	21:21 NCR

OCCUPATIONAL THERAPY, BOARD OF

<u>Fees</u>	21	NCAC	38	.0204*	G.S. 150B-21.5(b)(1)
<u>Limited Permits</u>	21	NCAC	38	.0303*	G.S. 150B-21.5(b)(1)

PHARMACY, BOARD OF

<u>Hours Records Providers Correspondence Reciprocity</u>	21	NCAC	46	.2201*	21:23 NCR
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REAL ESTATE COMMISSION

<u>Agency Agreements and Disclosure</u>	21	NCAC	58A	.0104*	21:21 NCR
<u>Advertising</u>	21	NCAC	58A	.0105	21:21 NCR
<u>Broker-In-Charge</u>	21	NCAC	58A	.0110*	21:21 NCR
<u>Reporting Criminal Convictions and Disciplinary Actions</u>	21	NCAC	58A	.0113	21:21 NCR
<u>Residential Property Disclosure Statement</u>	21	NCAC	58A	.0114*	21:21 NCR
<u>Disclosure of Offers Prohibited</u>	21	NCAC	58A	.0115	21:21 NCR
<u>Business Entities</u>	21	NCAC	58A	.0502*	21:21 NCR
<u>Reinstatement of Expired License, Revoked, Surrendered</u>	21	NCAC	58A	.0505*	21:21 NCR
<u>Continuing Education Required of Nonresident Licensees</u>	21	NCAC	58A	.1711	21:21 NCR
<u>Administration</u>	21	NCAC	58C	.0206*	21:21 NCR
<u>Bulletins</u>	21	NCAC	58C	.0208*	21:21 NCR
<u>Enrollment Procedure and Contracts</u>	21	NCAC	58C	.0209*	21:21 NCR
<u>Admissions Policy and Practice</u>	21	NCAC	58C	.0210	21:21 NCR
<u>Program Structuring and Admission Requirements</u>	21	NCAC	58C	.0302	21:21 NCR
<u>Course Completion Reporting</u>	21	NCAC	58C	.0309	21:21 NCR
<u>Notice of Scheduled Courses</u>	21	NCAC	58C	.0313	21:21 NCR
<u>Application and Criteria for Original Approval</u>	21	NCAC	58C	.0603*	21:21 NCR

<u>Application and Criteria for Original Approval</u>	21	NCAC	58E .0203*	21:21 NCR
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RECREATIONAL THERAPY LICENSURE, BOARD OF

<u>Minimum Level of Education and Competency for Licensed Re...</u>	21	NCAC	65 .0301*	21:21 NCR
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<u>Minimum Level of Education and Competency for Licensed Re...</u>	21	NCAC	65 .0302*	21:21 NCR
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The following rules are subject to Legislative Review pursuant to G.S. 150B-21.3(b2).

COASTAL RESOURCES COMMISSION

<u>Staff Review of Variance Petitions</u>	15A	NCAC	07J .0702	21:22 NCR
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DENTAL EXAMINERS, BOARD OF

<u>General Anesthesia and Sedation Definitions</u>	21	NCAC	16Q .0101*	21:23 NCR
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<u>Credentials and Permits for Moderate Conscious Sedation,</u>	21	NCAC	16Q .0301*	21:23 NCR
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<u>Clinical Requirements and Equipment</u>	21	NCAC	16Q .0302*	21:23 NCR
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<u>Temporary Approval Prior to Site Inspection</u>	21	NCAC	16Q .0303*	21:23 NCR
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<u>Minimal Conscious Sedation Credentials, Evaluation and</u>	21	NCAC	16Q .0401*	21:23 NCR
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<u>Minimal Conscious Sedation Permit Requirements,</u> <u>Clinical</u>	21	NCAC	16Q .0402*	21:23 NCR
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<u>Temporary Approval Prior to Site Inspection</u>	21	NCAC	16Q .0403*	21:23 NCR
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<u>Annual Renewal Required</u>	21	NCAC	16Q .0501*	21:23 NCR
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TITLE 04 – DEPARTMENT OF COMMERCE

04 NCAC 05B .0105 DECLARATORY RULINGS

(a) The Cemetery Commission shall have the sole power to make declaratory rulings. All requests for declaratory rulings shall be written and mailed to:

North Carolina Cemetery Commission
1001 Navaho Drive, Suite 100
Raleigh, North Carolina 27609.

(b) All requests for a declaratory ruling must include the following information:

- (1) name and address of petitioner;
- (2) statute or rule to which petition relates;
- (3) concise statement of the manner in which petitioner is aggrieved by the rule or statute or its potential application to him;
- (4) a statement of whether an oral hearing is desired, and if so the reasons for such an oral hearing.

(c) Whenever the Cemetery Commission believes for good cause that the issuance of a declaratory ruling is undesirable, it may refuse to do so. When good cause for refusing to issue a declaratory ruling is deemed to exist, the Cemetery Commission shall notify the petitioner of its decision in writing, stating reasons for the denial of a declaratory ruling.

(d) For purposes of Paragraph (c) of this Rule, the Cemetery Commission shall not issue a declaratory ruling:

- (1) where there has been a similar controlling factual determination in a contested case, or
- (2) where the issue is pending in a current contested case, or
- (3) where the subject matter of the request is involved in pending litigation in any state or federal court in North Carolina.

(e) A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedures as may be appropriate in a particular case.

History Note: Authority G.S. 65-49; 150B-4; Eff. February 1, 1976; Readopted Eff. January 16, 1978; Amended Eff. October 1, 2007; May 3, 1993.

TITLE 07 – DEPARTMENT OF CULTURAL RESOURCES

07 NCAC 02E .0301 QUALIFICATIONS FOR GRANT ELIGIBILITY

Libraries requesting funding from the Aid to Public Libraries Fund shall submit annually to the State Library of North Carolina an application for State Aid and supporting

documentation including financial and statistical reports and shall meet the following eligibility requirements:

- (1) Be established consistent with the provisions of Article 14, Chapter 153A of the North Carolina General Statutes.
- (2) Provide library services in compliance with applicable State and Federal law to all residents of the political subdivision(s) supporting the library. Public library services shall be provided from at least one designated facility with a catalogued collection that is open to the public a minimum of 40 hours per week.
- (3) Employ a full-time library director having or eligible for North Carolina public librarian certification. Full-time means working a minimum of 35 hours per week.
- (4) Secure operational funds from local government sources at least equal to the average amount budgeted and available for expenditure for the previous three years. A grant to a local library system from the Aid to Public Libraries Fund shall not be terminated but shall be reduced proportionately by the Department if the amount budgeted and available for expenditure by local government is below the average of the previous three fiscal years. State funds shall not replace local funds budgeted and available for expenditure for public library operations.
- (5) Secure aggregate operational funds from local sources at least equaling state aid.
- (6) Expend funds as authorized in the budget adopted by the Board of Trustees of a Regional Library, a County, or a Municipality. Any library having an unencumbered operational balance of more than 17 percent of the previous year's operating receipts shall have the difference deducted from its state allocation.
- (7) Pay salaries for professional positions funded from the Aid to Public Libraries Fund at least at the minimum rate of a salary grade of 69 as established by the Office of State Personnel.
- (8) Provide to the State Library of North Carolina an annual audit of the political subdivision(s) funding the library consistent with generally accepted accounting principles.
- (9) Submit annually to the State Library of North Carolina a copy of the bylaws of the library system's Board(s) of Trustees.
- (10) Submit annually a current long-range plan of service to the State Library of North Carolina. A long-range plan of service is a plan of at least five years. Upon request, submit an assessment of a community's library needs to the State Library of North Carolina.

- (11) Submit a copy of the agreement establishing the library system, if composed of more than one local governmental unit.
- (12) Meet the following stipulations when establishing a new library or re-establishing eligibility for the Aid to Public Libraries Fund:
 - (a) meet all qualifications for the state aid to public libraries program on July 1 of the year prior to the fiscal year that the library plans to receive state aid,
 - (b) continue to meet all qualifications for the state aid to public libraries program from July 1 to June 30 of that year, which shall be known as the demonstration year,
 - (c) file a full application for state aid by the June 30 deadline at the close of the demonstration year in order to receive state aid in the next fiscal year.

History Note: Authority G.S. 125-7; 143B-10; Eff. February 1, 1976; Readopted Eff. December 1, 1977; Emergency Amendment Eff. July 1, 1979, for a period of 120 days to expire on October 29, 1979; Emergency Amendment Made Permanent Eff. October 29, 1979; Amended Eff. October 1, 2007; May 1, 1995; June 1, 1989; June 1, 1981.

TITLE 09 – OFFICE OF THE GOVERNER

09 NCAC 03M .0101 PURPOSE

Pursuant to G.S. 143-6-23, the rules in this Subchapter establish reporting requirements for non-State entities that receive, use, or expend State funds and ensure the uniform administration of State grants by all grantor State agencies, grantee, and subgrantees.

History Note: Authority G.S. 143C-6-22; 143C-6-23; Eff. July 1, 2005; Amended Eff. October 1, 2007.

09 NCAC 03M .0102 DEFINITIONS

As used in this Subchapter:

- (1) "Agency" shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.
- (2) "Audit" means an examination of records or financial accounts to verify their accuracy.
- (3) "Certification of Compliance" means a report provided by the grantor agency to the Office of

- the State Auditor that states that the grantee has met the reporting requirements established by this Subchapter and included a statement of certification by the grantor agency and copies of the submitted grantee reporting package.
- (4) "Compliance Supplement" refers to the North Carolina State Compliance Supplement, maintained by the State and Local Government Finance Division within the North Carolina Department of State Treasurer that has been developed in cooperation with agencies to assist the local auditor in identifying program compliance requirements and audit procedures for testing those requirements.
 - (5) "Contract" means a legal instrument that is used to reflect a relationship between the agency, grantee, and subgrantee.
 - (6) "Fiscal Year" means the annual operating year of the non-State entity.
 - (7) "Financial Assistance" means assistance that non-State entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other assistance. Financial assistance does not include amounts received as reimbursement for services rendered to individuals for Medicare and Medicaid patient services.
 - (8) "Financial Statement" means a report providing financial statistics relative to a given part of an organization's operations or status.
 - (9) "Grant" means financial assistance provided by an agency, grantee, or subgrantee to carry out activities whereby the grantor anticipates no programmatic involvement with the grantee or subgrantee during the performance of the grant.
 - (10) "Grantee" has the meaning in G.S. 143C-6-23(a)(2).
 - (11) "Grantor" means an entity that provides resources, generally financial, to another entity in order to achieve a specified goal or objective.
 - (12) "Non-State Entity" has the meaning in G.S. 143C-1-1(d)(18).
 - (13) "Public Authority" has the meaning in G.S. 159-7(10).
 - (14) "Single Audit" means an audit that includes an examination of an organization's financial statements, internal controls, and compliance with the requirements of Federal or State awards.
 - (15) "Special Appropriation" means a legislative act authorizing the expenditure of a designated amount of public funds for a specific purpose.
 - (16) "State Funds" means any funds appropriated by the North Carolina General Assembly or

collected by the State of North Carolina. State funds include federal financial assistance received by the State and transferred or disbursed to non-State entities. Both Federal and State funds maintain their identity as they are subgranted to other organizations.

(17) "Subgrantee" has the meaning in G.S. 143C-6-23(a)(3).

(18) "Unit of Local Government" has the meaning in G.S. 159-7(15).

History Note: Authority G.S. 143C-6-22; 143C-6-23;

Eff. July 1, 2005;

Amended Eff. October 1, 2007.

09 NCAC 03M .0301 OFFICE OF THE STATE CONTROLLER RESPONSIBILITIES

All grantees receiving State funds shall enter into a disbursing agreement with the Office of the State Controller in accordance with G.S. 143B-426.39 and G.S. 143B-426.40G.

History Note: Authority G.S. 143C-6-22; 143C-6-23;

Eff. July 1, 2005;

Amended Eff. October 1, 2007.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 13J .1107 IN-HOME AIDE SERVICES

(a) If an agency provides in-home aide services, the services shall be provided in accordance with the client's plan of care. Agencies participating in the Home and Community Care Block Grant or Social Services Block Grant through the Division of Aging and Adult Services shall comply, for those clients, with the in-home aide service level rules contained in 10A NCAC 06A and 10A NCAC 06X which are hereby incorporated by reference with all subsequent amendments. All other agencies providing in-home aide services shall comply with the provisions in Paragraphs (b) and (c) of this Rule.

(b) If the client's plan of care requires the in-home aide to provide extensive assistance to a client who is totally dependent in the activity or requires substantial hands on care and physical support including more than guided maneuvering of limbs or weight bearing assistance, the in-home aide shall be listed on the Nurse Aide Registry pursuant to G.S. 131E-255. However, if the client's plan of care requires the in-home aide to provide only limited assistance to the client which includes hands-on care involving guided maneuvering of limbs with eating, toileting, bathing, dressing, personal hygiene, self monitoring of medications or other non weight bearing assistance, the in-home aide shall not be required to be listed on the Nurse Aide Registry. Agencies shall be in compliance with this Paragraph no later than April 1, 2008.

(c) In-home aides shall follow instructions for client care written by the health care practitioner required for the services provided. In-home aide duties may include the following:

- (1) help with prescribed exercises which the client and in-home aides have been taught by a health care practitioner licensed pursuant to G.S. 90;
- (2) provide or assist with personal care (i.e., bathing, care of mouth, skin and hair);
- (3) assist with ambulation;
- (4) assist client with self-administration of medications which are ordered by a physician or other person authorized by state law to prescribe;
- (5) perform incidental household services which are essential to the client's care at home; and
- (6) record and report changes in the client's condition, family situation or needs to an appropriate health care practitioner.

History Note: Authority G.S. 131E-140;

Eff. July 1, 1992;

Amended Eff. October 1, 2007; October 1, 2006; February 1, 1996.

10A NCAC 27G .0813 WAIVER OF LICENSURE RULES

(a) The Secretary may waive any of these Rules related to licensure requirements. The decision to grant or deny the waiver request shall be based on the following:

- (1) the nature and extent of the request;
- (2) the existence of safeguards to ensure that the health, safety, or welfare of the clients will not be threatened;
- (3) the determination that the waiver will not affect the health, safety, or welfare of clients;
- (4) the existence of good cause; and
- (5) documentation of governing body approval when requests are from an area authority or county program and contract agencies of an area authority or county program, or documentation of governing body approval when requests are from private facilities not contracting with an area authority or county program.

(b) Requests for waivers shall be sent to the Director, Division of Health Service Regulation, 2718 Mail Service Center, Raleigh, North Carolina 27699-2718.

(c) The request shall be in writing and shall contain:

- (1) the name, address and telephone number of the requester;
- (2) the name, address and telephone number of the facility for which the waiver is requested;
- (3) the rule number and title of the rule or requirements for which waiver is being sought;
- (4) a statement of facts showing:
 - (A) the reason for, and the nature and extent of, the request; and
 - (B) that the health, safety or welfare of clients will not be threatened;

- (5) documentation of governing body approval when requests are from an area authority or county program and contract agencies of area/county programs, or documentation of governing body approval when requests are from private facilities not contracting with an area authority or county program.

(d) Prior to issuing a decision on the waiver request, the Director of DHSR shall consult with the Director of DMH/DD/SAS, and may also request additional information or consult with additional parties as appropriate.

(e) A decision regarding the waiver request shall be issued in writing by the Director of DHSR and shall state the reasons why the request was granted or denied and any special conditions relating to the request. A copy of the decision shall be sent to the Director of DMH/DD/SAS. If the rule in question was adopted by the Commission, the Director of DMH/DD/SAS shall send a copy of the decision to all Commission members.

(f) The decision of the Secretary regarding a waiver request may be appealed to the Office of Administrative Hearings through the contested case process set out in G.S. 150B, Article 3. The appeal shall be in writing and shall be filed within 60 days of receipt of the decision regarding the waiver request.

(g) Waivers shall not exceed the expiration date of the current license and shall be subject to renewal consideration upon the request of the licensee.

History Note: Authority G.S. 122C-23(f); 122C-26(4); 122C-27(9); 143B-147;

Eff. May 1, 1996;

Amended Eff. October 1, 2007.

10A NCAC 45A .0202 DETERMINATION OF FINANCIAL ELIGIBILITY

(a) A patient must meet the financial eligibility requirements of this Subchapter to be eligible for benefits provided by the payment programs. Financial eligibility shall be determined through application of income scales. The definition of annual net income in Rule .0203 of this Subchapter and the definitions of family in Rule .0204 of this Subchapter shall be used in applying the income scales, except as provided in Paragraphs (c), (e) and (f) of this Rule.

(b) A person is financially eligible for services under the Sickle Cell Program if the net family income is at or below the federal poverty level in effect on July 1 of each fiscal year.

(c) A person is financially eligible for the HIV Medications Program if the gross family income is at or below 250 percent of the federal poverty level in effect on July 1 of each fiscal year, with the following exceptions:

- (1) If a waiting list develops, priority for enrollment into the Program shall be given to those whose net family income is at or below 125 percent of the federal poverty level; and
- (2) At any time that the Program's financial eligibility level is changed, all clients enrolled in the Program during the most recent year or at the time the eligibility level is changed shall

be eligible to continue to be enrolled in and served by the Program. This shall be true even if the clients' financial status at that time places them above the newly-established level. The eligibility of these clients shall remain in force until:

- (A) they no longer qualify for the Program other than for financial reasons; or
- (B) they no longer require the services of the Program; or
- (C) their income increases such that they have an income that exceeds the level under which they originally qualified for and enrolled into the Program; or
- (D) they fail to comply with the rules of the Program.

Changes related to the Program's financial eligibility level or status shall be communicated to interested parties within North Carolina's HIV community (e.g., persons living with HIV disease, their families and caregivers, advocates and service providers, relevant local and state agencies) by the Program via electronic or print mechanisms.

(d) A person is financially eligible for the Kidney Program if the net family income is at or below the following scale:

Family Size 1: \$6,400;
 Family Size 2: \$8,000;
 Family Size 3: \$9,600;
 Family Size 4: \$11,000;
 Family Size 5: \$12,000;

Family Size 6 and over: add \$800 per family member.

(e) A person is financially eligible for the Cancer Program if gross family income is at or below 115 percent of the federal poverty level in effect on July 1 of each year.

(f) A child is financially eligible for Children's Special Health Services if the child is approved for Medicaid when applying or reapplying for program coverage, except for children eligible under Paragraph (g) and (h) of this Rule.

(g) A child approved for Children's Special Health Services post adoption coverage pursuant to 10A NCAC 43F .0800, is eligible for services under Children's Special Health Services if the child's net income is at or below the federal poverty level in effect on July 1 of each year.

(h) A person is financially eligible for services under the Adult Cystic Fibrosis Program if the net family income is at or below the federal poverty level in effect on July 1 of each year.

(i) The financial eligibility requirements of this Subchapter do not apply to:

- (1) Migrant Health Program;
- (2) School Health Fund financial eligibility determinations performed by a local health department which has chosen to use the financial eligibility standards of the Department of Public Instruction's free lunch program;
- (3) Prenatal outpatient services sponsored through local health department delivery funds, 10A NCAC 43C .0200; or through Perinatal Program high risk maternity clinic

reimbursement funds, 10A NCAC 43C .0300; and

- (4) Diagnostic assessments for infants up to 12 months of age with sickle cell syndrome.

(j) Except as provided in Paragraphs (k) and (l) of this Rule, once an individual is determined financially eligible for payment program benefits, the individual remains financially eligible for a period of one year after the date of application for financial eligibility unless there is a change in the individual's family size pursuant to Rule .0204 of this Subchapter or his family's financial resources or expenses during that period. If there is a change, financial eligibility for payment program benefits must be redetermined. Financial eligibility must be redetermined at least once a year.

(k) For purposes of the Kidney Program and HIV Medications Program, once an individual is determined to be financially eligible, if the application for financial eligibility was received by the Department in the fourth quarter of the fiscal year, the individual remains financially eligible for benefits until the end of the next fiscal year unless there is a change in the individual's family size pursuant to Rule .0204 of this Subchapter or his family's financial resources or expenses during that period.

(l) Children eligible for Children's Special Health Services Program benefits under Paragraph (f) of this Rule are financially eligible for a service if they were Medicaid eligible on the date the requested service was initiated.

(m) If the most current financial eligibility form on file with the Department shows that the patient was financially eligible on the date an Authorization Request for payment for drugs was received, the Authorization Request shall be approved so long as the Authorization Request is received less than 30 days prior to the expiration of financial eligibility and the authorized service does not extend more than 30 days after the expiration of financial eligibility.

History Note: Authority G.S. 130A-4.2; 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-205;

Eff. July 1, 1981;

Amended Eff. July 1, 1986; April 1, 1984; July 1, 1983; October 1, 1982;

Transferred and Recodified from 10 NCAC 4C .0202 Eff. April 4, 1990;

Temporary Amendment Eff. August 9, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Amended Eff. January 1, 1996; July 1, 1995; April 1, 1995; October 1, 1994;

Temporary Amendment Eff. July 1, 1997; April 1, 1997; March 1, 1997;

Amended Eff. August 1, 1998;

Temporary Amendment Eff. November 1, 2006;

Amended Eff. October 1, 2007.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 02S .0102 DEFINITIONS

The definition of any word or phrase used in this Subchapter shall be the same as given in G.S. 143-215.104B and the following words and phrases shall have the following meanings:

- (1) "Act" means the Dry-Cleaning Solvent Cleanup Act of 1997 and any amendments thereto.
- (2) "Apparel and household fabrics" means apparel and fabrics that have been purchased at retail or have been purchased at wholesale for rental at retail.
- (3) "Business" means "business" as defined in G.S. 59-102.
- (4) "Chemicals of concern" means the specific compounds and their breakdown products that are identified for evaluation in the risk-based corrective action process. Identification can be based on their historical and current use at the site, detected concentrations in environmental media and their mobility, toxicity, and persistence in the environment.
- (5) "Closed container solvent transfer system" means a device or system specifically designed to fill a dry-cleaning machine with dry-cleaning solvent through a mechanical valve or sealed coupling in order to prevent spills or other loss of solvent liquids or vapors to the environment.
- (6) "Complete exposure pathway" means an exposure pathway where a chemical of concern has reached a receptor.
- (7) "Contaminated site" or "site" means the area defined by the likely current and future location of the chemicals of concern from a facility or abandoned site. A contaminated site could be an entire property or facility, a defined area or portion of a facility or property or multiple facilities or properties.
- (8) "Discovery Site" means the physical site or area where dry-cleaning solvent contamination has been discovered. A discovery site may or may not be the same property as the facility site.
- (9) "Division" means the Division of Waste Management of the Department of Environment and Natural Resources.
- (10) "Dry-Cleaning Business" means a business having engaged in dry-cleaning operations or the operation of a wholesale distribution facility at a facility site.
- (11) "Environmental media" means soil, sediment, surface water, groundwater, air or other physical substance.
- (12) "Engineering controls" means physical modifications to a site to reduce or eliminate the potential for exposure to chemicals of concern.
- (13) "Exposure pathway" means the course that a chemical of concern takes or may take from a source area to a receptor. Each exposure pathway includes a source or release from a source of a chemical of concern, a potential point of exposure, an exposure route and the potential receptor.
- (14) "Facility site" means the physical location of a dry-cleaning facility, a wholesale distribution facility or an abandoned site.
- (15) "Hazard Index" means the sum of two or more hazard quotients for chemicals of concern or multiple exposure pathways to a particular receptor.
- (16) "Hazard quotient" means the ratio of level of exposure of a chemical of concern over a specified time period to a reference dose for that chemical of concern derived for a similar exposure period.
- (17) "Individual excess lifetime cancer risk" means the increase over background in an individual's probability of getting cancer over a lifetime due to exposure to a chemical.
- (18) "Institutional controls" means nonengineered measures, including land-use restrictions, used to prevent unsafe exposure to contamination.
- (19) "Material impervious to dry-cleaning solvent" means a material that has been certified by the manufacturer or an independent testing laboratory such as Underwriters Laboratory, to maintain its chemical and structural integrity in the presence of the applicable dry-cleaning solvent and prevent the movement of dry-cleaning solvent for a period of at least 72 hours.
- (20) "Monitored natural attenuation" means an approach to the reduction in the concentration of chemicals of concern in environmental media due to naturally occurring physical, chemical and biological processes, which is based on best available scientific information.
- (21) "Non-residential land use" means a use that is not a residential land use.
- (22) "Number of full time employees" means the number of full-time equivalent employees employed by a person who owns a dry-cleaning facility, as calculated pursuant to 15A NCAC 02S .0103.
- (23) "Person" means "person" as defined in G.S. 143-215.77(13).
- (24) "Petitioner" means a potentially responsible party who submits a petition for certification of a facility site.
- (25) "Point of demonstration" means the location selected between the source area and a point of exposure where levels of chemicals of concern are measured to ensure that site-specific target levels are being met.
- (26) "Point of exposure" means the location at which an individual or population may come in contact with a chemical of concern originating from a site.

- (27) "Receptor" means any human, plant, or animal which is, or has the potential to be, adversely affected by the release or migration of chemicals of concern.
- (28) "Reference dose" means a toxicity value for evaluating potential non-carcinogenic effects in humans resulting from exposure to a chemical of concern.
- (29) "Remedial action plan" means a plan that outlines activities to be undertaken to clean up a contaminated site and to reduce or eliminate current or potential exposures to receptors.
- (30) "Representative concentrations" means a typical or average concentration to which the receptor is exposed over the specified exposure duration, within a specified geographical area, and for a specific route of exposure.
- (31) "Residential land use" means use for human habitation, including dwellings such as single family houses and multi-family apartments, children's homes, nursing homes, and residential portions of government-owned lands (local, state or federal). Because of the similarity of exposure potential and the sensitive nature of the potentially exposed human population, use for day care facilities, educational facilities, hospitals, and parks (local, state or federal) shall be considered residential land use for the purpose of land use classification.
- (32) "Risk-based screening level" means chemical-specific, risk-based values for chemicals of concern that are protective of human health. The risk-based screening levels are as follows:
- For known or suspected carcinogens, except for those chemicals of concern that have groundwater standards or interim standards established in 15A NCAC 02L, risk-based screening levels are established for each chemical of concern at exposures that represent an individual excess lifetime cancer risk of one in 1,000,000.
 - For systemic toxicants, except for those chemicals of concern that have groundwater standards or interim standards established in 15A NCAC 02L, risk-based screening levels are established using a hazard quotient for each chemical of concern of 0.2.
 - For chemicals of concern in groundwater that have 15A NCAC 02L standards, the risk-based screening level shall be the standards and interim standards established in 15A NCAC 02L.
- (33) "Site-specific target level" means risk-based values for chemicals of concern that are protective of human health for specified exposure pathways and are derived from a consideration of site-specific information. The site-specific target levels are as follows:
- For known or suspected carcinogens, the sum of individual excess lifetime cancer risk values for all chemicals of concern for all exposure pathways may not exceed one in 100,000.
 - For systemic toxicants, the Hazard Index for all chemicals of concern for all complete exposure pathways may not exceed 1.0.
- (34) "Source" means non-aqueous phase liquid chemical, the locations of highest soil or ground water concentrations of the chemicals of concern or the location releasing the chemical of concern.
- (35) "Systemic toxicant" means a substance or agent that may enter the human body and have an adverse health effect other than causing cancer.
- (36) "Unsaturated zone" means that part of the subsurface where interconnected voids are not all filled with water.

Note: Portions of this rule extracted, with permission, from E2081-00(2004)e1 Standard Guide for Risk-Based Corrective Action, copyright ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, www.astm.org.

History Note: Authority G.S. 143-215.104D(b); 150B-21.2; Eff. August 1, 2000; Temporary Amendment Eff. June 1, 2001; Amended Eff. October 1, 2007; August 1, 2002.

15A NCAC 07J .0702 STAFF REVIEW OF VARIANCE PETITIONS

- (a) The Division of Coastal Management, as staff to the Commission, shall review petitions to determine whether they are complete according to the requirements set forth in Rule .0701. Incomplete petitions and a description of the deficiencies shall be returned to the petitioner. Complete variance petitions shall be scheduled for the appropriate Commission meeting.
- (b) The staff and the petitioner shall determine the facts that are relevant to the Commission's consideration of the variance petition. For all facts upon which staff and the petitioner agree, a document entitled Stipulated Facts shall be prepared and signed by both parties.
- (c) After the facts agreed upon by the petitioner and staff, the staff shall prepare a written recommendation which shall be submitted to the Commission before the petition is considered. The staff recommendation shall include:
- a description of the property in question;

- (2) a description of how the use of the property is restricted or otherwise affected by the applicable rules;
- (3) the Stipulated Facts;
- (4) staff's position on whether the petition meets or does not meet each of the requirements for a variance; and
- (5) petitioner's position on each of the variance criteria.

Copies of the staff recommendation shall be provided to the petitioner and the permit officer making the initial permit decision at the same time as it is provided to the Commission. If the Stipulated Facts are not agreed upon at least four weeks prior to a scheduled Coastal Resources Commission meeting, the variance petition shall be considered at the next scheduled Commission meeting.

(d) If the staff determines that agreement cannot be reached on sufficient facts on which to base a variance decision, the petition shall be considered by means of an administrative hearing to determine the relevant facts.

History Note: Authority G.S. 113A-120.1; 113A-124; Eff. December 12, 1979; Amended Eff. December 1, 1991; May 1, 1990; October 1, 1988; March 1, 1988; Temporary Amendment Eff. December 20, 2001; Temporary Amendment Expired October 12, 2002; Temporary Amendment Eff. December 1, 2002; Amended Eff. August 1, 2004; Amended Eff. Pending Legislative Review.

15A NCAC 12K .0109 SITE CONTROL AND DEDICATION

(a) Land acquired with PARTF assistance shall be dedicated in perpetuity for local park and recreation purposes for the use and benefit of the general public. The dedication shall be recorded in the public property records by the grantee.

(b) The site of a PARTF project for development shall be controlled (e.g. fee simple ownership or long-term lease) by the grantee by the closing date of the application submission period. Any lease agreement shall extend for a minimum of 25 years unless the property is the subject of a federal, state, or local leasing arrangement which provides assurance that 25 years of public recreational use will be maintained.

(c) Grantees shall assure that PARTF assisted development facilities are maintained and managed for public recreation use for a minimum period of 25 years after the completion date set forth in the grant agreement.

(d) PARTF-assisted land and facilities shall not be converted to uses that are other than public recreation without approval by DENR, in the following manner:

- (1) A grant recipient shall notify DENR and request approval before any conversion occurs.
- (2) The grant recipient shall address issues of local concern prior to forwarding a conversion request to DENR.

- (3) DENR shall deny the request if it determines that the grantee has reasonable alternatives available to avoid the conversion.
- (4) All conversions shall be mitigated with measures approved by DENR with advice from the Parks and Recreation Authority.
- (5) The primary mitigation for a conversion is to have the grantee replace, at its own expense, land acquired with PARTF assistance with land of equal current fair market value and recreational usefulness. Facilities built with PARTF assistance shall be replaced with facilities of equal current replacement value, and recreational usefulness. Replacement areas shall also be within the grantee's service area; provide or be part of a viable recreation area; and be to the maximum extent possible, consistent with all current application requirements for a new PARTF application.
- (6) Replacement property and facilities shall be encumbered by the same obligations as specified in the project agreement and rules for the converted property or facility.
- (7) If DENR determines that the local government cannot reasonably replace the land or facilities, DENR may mitigate the conversion by the grantee repaying PARTF with funds equal to the current value of the land or facilities.
- (8) DENR shall include provisions on conversions in all grant agreements.

(e) A conversion is defined as the use of PARTF-assisted land or facilities for a purpose other than public recreation.

(f) If PARTF-assisted facilities are built on public school property, the applicant(s) shall submit an agreement with the application describing that the facilities will be available to the general public during non-school hours. Projects on land owned by a school shall have sign(s) installed informing the public that the facilities are open to the general public. These signs shall also indicate the times when the facilities are reserved exclusively for school use.

(g) Failure by the grantee(s) to comply with the provisions of this Section or the project agreement may result, in addition to any other legal remedies, in the Authority on behalf of the Department declaring the grantee(s) ineligible for further participation in the PARTF until such time as compliance has been obtained.

History Note: Authority G.S. 113-44.15; Temporary Adoption Eff. November 1, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. April 1, 1995; Amended Eff. October 1, 2007; August 1, 1998.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

21 NCAC 16Q .0101 GENERAL ANESTHESIA AND SEDATION DEFINITIONS

For the purpose of these Rules relative to the administration of minimal conscious sedation, moderate conscious sedation, moderate conscious sedation limited to oral routes or nitrous oxide inhalation, moderate pediatric conscious sedation or general anesthesia by or under the direction of a dentist, the following definitions shall apply:

- (1) "Analgesia" – the diminution or elimination of pain.
- (2) "Anti-anxiety sedative" – a sedative agent administered in a dosage intended to reduce anxiety without diminishing consciousness or protective reflexes.
- (3) "Anxiolysis" – pharmacological reduction of anxiety through the administration of a single dose of a minor psychosedative, possibly in combination with nitrous oxide, to children or adults prior to commencement of treatment on the day of the appointment which allows for uninterrupted interactive ability in a totally awake patient with no compromise in the ability to maintain a patent airway continuously and without assistance. Nitrous oxide may be administered in addition to the minor psychosedative without constituting multiple dosing for purpose of these Rules.
- (4) "Behavior control" – the use of pharmacological techniques to control behavior to a level that dental treatment can be performed effectively and efficiently.
- (5) "Behavioral management" – the use of pharmacological or psychological techniques, singly or in combination, to modify behavior to a level that dental treatment can be performed effectively and efficiently.
- (6) "Competent" – displaying special skill or knowledge derived from training and experience.
- (7) "Conscious sedation" - an induced state of a depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command, and that is produced by pharmacologic or non-pharmacologic agents, or a combination thereof. In accordance with this particular definition, the drugs or techniques used shall carry a margin of safety wide enough to render unintended loss of consciousness unlikely.
- (8) "Deep sedation" – an induced state of a depressed level of consciousness accompanied by partial loss of protective reflexes, including the ability to continually maintain an airway independently or respond purposefully to verbal command, and is produced by pharmacological agents.
- (9) "Direct supervision" – the dentist responsible for the sedation/anesthesia procedure shall be physically present in the facility and shall be continuously aware of the patient's physical status and well being.
- (9) "Facility" – the location where a permit holder practices dentistry and provides anesthesia/sedation services.
- (10) "Facility inspection" - an on-site inspection to determine if a facility where the applicant proposes to provide anesthesia/sedation is supplied, equipped, staffed and maintained in a condition to support provision of anesthesia/sedation services that meet the minimum standard of care.
- (11) "General anesthesia" - the intended controlled state of a depressed level of consciousness that is produced by pharmacologic agents and accompanied by a partial or complete loss of protective reflexes, including the ability to maintain an airway and respond purposefully to physical stimulation or verbal commands.
- (12) "Immediately available" – on-site in the facility and available for immediate use.
- (13) "Local anesthesia" – the elimination of sensations, especially pain, in one part of the body by the regional application or injection of a drug.
- (14) "May" – indicates freedom or liberty to follow a reasonable alternative.
- (15) "Minimal conscious sedation" – conscious sedation characterized by a minimally depressed level of consciousness, in which patient retains the ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command, provided to patients 13 years or older, by oral or rectal routes of administration of a single pharmacological agent, in one or more doses, not to exceed the manufacturer's maximum recommended dose, at the time of treatment, possibly in combination with nitrous oxide. Minimal conscious sedation is provided for behavioral management.
- (16) "Minor psychosedative/Minor tranquilizer" – pharmacological agents which allow for uninterrupted interactive ability in a patient with no compromise in the ability to maintain a patent airway continuously and without assistance and carry a margin of safety wide enough to render unintended loss of consciousness unlikely.
- (17) "Moderate conscious sedation" – conscious sedation characterized by a drug induced depression of consciousness, during which patients respond purposefully to verbal commands, either alone or accompanied by

light tactile stimulation, provided to patients 13 years or older, by oral, nasal, rectal or parenteral routes of administration of multiple pharmacological agents, in multiple doses, within a 24 hour period, including the time of treatment, possibly in combination with nitrous oxide. Moderate conscious sedation is provided for behavior control.

- (18) "Moderate conscious sedation limited to oral routes and nitrous oxide inhalation" – conscious sedation characterized by a drug induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation, provided to patients 13 years or older, by oral routes of administration and nitrous oxide inhalation, of single or multiple pharmacological agents, in single or multiple doses, within a 24 hour period. Moderate conscious sedation limited to oral routes and nitrous oxide inhalation is provided for behavior control.
- (19) "Moderate pediatric conscious sedation" - conscious sedation characterized by a drug induced depression of consciousness, during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation, provided to patients under 13 years of age, by oral, nasal, rectal or parenteral routes of administration of single or multiple pharmacological agents, in single or multiple doses, within a 24 hour period, including the time of treatment, possibly in combination with nitrous oxide. Moderate pediatric conscious sedation is provided for behavior control.
- (20) "Must" or "shall" – indicates an imperative need or duty or both; an essential or indispensable item; mandatory.
- (21) "Parenteral" - the administration of pharmacological agents intravenously, intraosseously, intramuscularly, subcutaneously, submucosally, intranasally, or transdermally.
- (22) "Protective reflexes" – includes the ability to swallow and cough.
- (23) "Supplemental dosing" – the oral administration of a pharmacological agent that results in an enhanced level of conscious sedation when added to the primary sedative agent administered for the purpose of oral moderate conscious sedation, and which, when added to the primary agent, does not exceed the maximum safe dose of either agent, separately or synergistically.
- (24) "Vested adult" – a responsible adult who is the legal parent or guardian, or designee of a legal parent or guardian, entrusted with the care of a

minor following the administration of general anesthesia or conscious sedation.

History Note: Authority G.S. 90-28; 90-30.1; Eff. February 1, 1990; Temporary Amendment Eff. December 11, 2002; Amended Eff. August 1, 2004; Amended Eff. Pending Legislative Review.

21 NCAC 16Q .0301 CREDENTIALS AND PERMITS FOR MODERATE CONSCIOUS SEDATION, MODERATE PEDIATRIC CONSCIOUS SEDATION AND MODERATE CONSCIOUS SEDATION LIMITED TO ORAL ROUTES OF ADMINISTRATION AND NITROUS OXIDE

(a) Before a dentist licensed to practice in North Carolina may administer or supervise a certified registered nurse anesthetist (CRNA) to administer moderate conscious sedation, moderate pediatric conscious sedation or moderate conscious sedation limited to oral routes of administration and nitrous oxide to dental patients on an outpatient basis, the dentist shall obtain a permit from the Board by completing an application form provided by the Board and paying a fee of one hundred dollars (\$100.00). Such permit shall be renewed annually and shall be displayed with the current renewal at all times in a conspicuous place in the facility of the permit holder.

(b) For a dentist to employ a certified registered nurse anesthetist to administer moderate conscious sedation, moderate conscious sedation limited to oral routes and nitrous oxide or moderate pediatric conscious sedation, the dentist must demonstrate through the permitting process that he/she is capable of performing all duties and procedures to be delegated to the CRNA. The dentist must not delegate said CRNA to perform procedures outside of the scope of the technique and purpose of moderate conscious sedation, moderate pediatric conscious sedation or moderate conscious sedation limited to oral routes and nitrous oxide as defined in Rule .0101 of this Subchapter.

(c) A dentist applying for a permit to administer moderate conscious sedation or moderate pediatric conscious sedation must meet at least one of the following criteria:

- (1) Satisfactory completion of a minimum of 60 hours of didactic training, including PALS, and instruction in intravenous conscious sedation and satisfactory management of a minimum of 10 patients, under supervision, using intravenous sedation; or
- (2) Satisfactory completion of a pre-doctoral dental or postgraduate program which included intravenous conscious sedation training equivalent to that defined in Subparagraph (c)(1) of this Rule; or
- (3) Satisfactory completion of an internship or residency which included intravenous conscious sedation training equivalent to that defined in Subparagraph (c)(1) of this Rule.

(d) A dentist may modify his/her moderate conscious sedation permit to include the privilege of moderate pediatric conscious sedation by completing a Board approved pediatric dental degree

or pediatric dental residency program or obtaining the equivalent hours of continuing education program in pediatric dental anesthesia. If said qualifications are satisfied, it shall be so designated on the dentist's moderate conscious sedation permit and will be subject to the renewal requirements stated in Rule .0501(d) of this Subchapter.

(e) To be eligible for a moderate conscious sedation permit, moderate conscious sedation limited to oral routes and nitrous oxide inhalation permit or moderate pediatric conscious sedation permit, a dentist must operate within a facility which includes the capability of delivering positive pressure oxygen, and is staffed with supervised auxiliary personnel for each procedure performed. The dentist shall ensure that auxiliary personnel document annual, successful completion of basic life support (BLS) training and are capable of assisting with procedures, problems and emergencies incident thereto.

(f) Prior to issuance of a moderate conscious sedation permit, moderate conscious pediatric sedation permit or moderate conscious sedation permit limited to oral routes and nitrous oxide inhalation permit, the applicant shall undergo an evaluation which includes a facility inspection. The Board shall direct an evaluator to perform this evaluation. The applicant shall be notified in writing that an evaluation and facility inspection is required and provided with the name of the evaluator who shall perform the evaluation and facility inspection. The applicant shall be responsible for successful completion of the evaluation and inspection of his or her facility within three months of notification. An extension of no more than 90 days shall be granted if the designated evaluator or applicant requests one.

(g) The evaluator shall assign a grade of pass or fail and shall report his recommendation to the Board, setting out the basis for his conclusion. The Board is not bound by the evaluator's recommendation and shall make a final determination regarding whether the applicant has passed the evaluation. The applicant shall be notified of the Board's decision in writing.

(h) A dentist who holds a moderate conscious sedation, moderate conscious sedation limited to oral routes and nitrous oxide inhalation or moderate pediatric conscious sedation permit shall not intentionally administer deep sedation although deep sedation may occur briefly and unintentionally.

(i) A dentist may obtain a moderate conscious sedation permit limited to oral routes of administration and nitrous oxide inhalation, including the ability to add supplemental dosing to the techniques set out in Rule .0101(23) of this Subchapter upon compliance with the following requirements:

- (1) successfully complete 24 hours of didactic training and manage at least 10 adult case experiences, including at least three live clinical dental experiences. The live clinical cases shall not be handled by groups with more than five student participants. The remaining cases may include simulations, video presentations or both, but must include one experience in returning/rescuing a patient from deep to moderate sedation; or
- (2) document, with patient names and dates of completion, at least 100 cases of oral moderate conscious sedation procedures successfully

completed within one year preceding the effective date of these Rules; and

- (3) fulfill all the requirements listed in Rule .0401 of this Subchapter for minimal conscious sedation.

(j) A dentist who is qualified to administer general anesthesia, moderate conscious sedation or moderate pediatric conscious sedation and holds a general anesthesia, moderate conscious sedation permit or a moderate pediatric conscious sedation permit may administer minimal conscious sedation without obtaining a separate minimal conscious sedation permit.

(k) Any dentist who holds an active parenteral conscious sedation permit as of October 1, 2007 shall be deemed to hold an active moderate conscious sedation permit. Such permits shall be subject to the renewal requirements set out in Rule .0501 of this Subchapter.

History Note: Authority G.S. 90-28; 90-30.1;

Eff. February 1, 1990;

Amended Eff. April 1, 2001; August 1, 2000; January 1, 1994;

Temporary Amendment Eff. December 11, 2002;

Amended Eff. August 1, 2004;

Amended Eff. Pending Legislative Review.

21 NCAC 16Q .0302 CLINICAL REQUIREMENTS AND EQUIPMENT

(a) A dentist administering moderate conscious sedation or moderate pediatric conscious sedation or supervising the administration of moderate conscious sedation by a certified registered nurse anesthetist shall ensure that the facility in which the sedation is to be administered meets the following requirements:

- (1) The facility is equipped with:
 - (A) An operatory of size and design to permit access of emergency equipment and personnel and to permit effective emergency management;
 - (B) A CPR Board or a dental chair without enhancements, suitable for providing emergency treatment;
 - (C) Lighting as necessary for specific procedures; and
 - (D) Suction equipment as necessary for specific procedures, including non-electrical back-up suction.
- (2) The following equipment is maintained:
 - (A) Positive oxygen delivery system, including full face mask for adults and pediatric patients and back-up E-cylinder portable oxygen tank apart from the central system;
 - (B) Oral and nasal airways of various sizes;
 - (C) Blood pressure monitoring device;
 - (D) Pulse oximeter; and
 - (E) Automatic External Defibrillator (AED).

- (3) The following emergency equipment is maintained:
 - (A) I.V. set-up as necessary for specific procedures, including hardware and fluids, if anesthesia is intravenous;
 - (B) Syringes as necessary for specific procedures; and
 - (C) Tourniquet and tape.
- (4) The following drugs are maintained with a current shelf life and within easy access from the operatory and recovery area:
 - (A) Epinephrine;
 - (B) Atropine;
 - (C) Narcotic antagonist;
 - (D) Antihistamine;
 - (E) Corticosteroid;
 - (F) Nitroglycerine;
 - (G) Bronchial dilator;
 - (H) Antiemetic;
 - (I) Benzodiazepine antagonist; and
 - (J) 50% Dextrose.
- (5) Written emergency and patient discharge protocols are maintained and training to familiarize office personnel in the treatment of clinical emergencies is provided; and
- (6) The following records are maintained for at least 10 years:
 - (A) Patient's current written medical history, including known allergies and previous surgery;
 - (B) Drugs administered during the procedure, including route of administration, dosage, strength, time and sequence of administration;
 - (C) A sedation record which shall include:
 - (i) blood pressure;
 - (ii) pulse rate;
 - (iii) respiration;
 - (iv) duration of procedure;
 - (v) documentation of complications or morbidity; and
 - (vi) status of patient upon discharge.

(b) During an inspection or evaluation, the applicant or permit holder shall demonstrate the administration of moderate conscious sedation on a patient, or where applicable, moderate pediatric conscious sedation on a patient, including the deployment of an intravenous delivery system, while the evaluator observes. Practices limited to pediatric dentistry will not be required to demonstrate the deployment of an intravenous delivery system. Instead, they will orally describe to the evaluator the technique of their training in intravenous and intraosseous deployment. During the demonstration, the applicant or permit holder shall demonstrate competency in the following areas:

- (1) Monitoring blood pressure, pulse, and respiration;

- (2) Drug dosage and administration;
 - (3) Treatment of untoward reactions including respiratory or cardiac depression, if applicable;
 - (4) Sterile technique;
 - (5) Use of CPR certified personnel;
 - (6) Monitoring of patient during recovery; and
 - (7) Sufficiency of patient recovery time.
- (c) During an inspection or evaluation, the applicant or permit holder shall verbally demonstrate competency to the evaluator in the treatment of the following clinical emergencies:
- (1) Laryngospasm;
 - (2) Bronchospasm;
 - (3) Emesis and aspiration;
 - (4) Respiratory depression and arrest;
 - (5) Angina pectoris;
 - (6) Myocardial infarction;
 - (7) Hypertension/Hypotension;
 - (8) Allergic reactions;
 - (9) Convulsions;
 - (10) Syncope;
 - (11) Bradycardia;
 - (12) Insulin shock; and
 - (13) Cardiac arrest.
- (d) A dentist administering moderate conscious sedation or moderate pediatric conscious sedation shall ensure that the facility is staffed with sufficient auxiliary personnel for each procedure performed who shall document annual successful completion of basic life support training and be capable of assisting with procedures, problems, and emergency incidents that may occur as a result of the sedation or secondary to an unexpected medical complication.
- (e) Upon request, the holder of a moderate pediatric conscious sedation or moderate conscious sedation permit may travel to the office of a licensed dentist who does not hold such a permit and provide minimal sedation, moderate conscious sedation or moderate pediatric conscious sedation services for the patients of that dentist who are undergoing dental procedures. The permit holder is solely responsible for providing that the facility in which the sedation is administered meets the requirements established by the Board, that the required drugs and equipment are present, and that the permit holder utilizes sufficient auxiliary personnel for each procedure performed who shall document annual successful completion of basic life support training and be capable of assisting with procedures, problems, and emergency incidents that may occur as a result of the sedation or secondary to an unexpected medical complication. Holders of moderate conscious sedation permits limited to oral routes and nitrous oxide inhalation may not provide sedation at the office of a licensed dentist who does not hold an appropriate sedation permit.

History Note: Authority G.S. 90-28; 90-30.1; 90-48; Eff. February 1, 1990; Amended Eff. August 1, 2002; August 1, 2000; Temporary Amendment Eff. December 11, 2002; Amended Eff. August 1, 2004; Amended Eff. Pending Legislative Review.

21 NCAC 16Q .0303 TEMPORARY APPROVAL

PRIOR TO SITE INSPECTION

(a) If a dentist meets the requirements of Paragraphs (a) – (e) of Rule .0301 of this Subchapter, he/she shall be granted temporary approval to administer moderate conscious sedation, or moderate pediatric conscious sedation until a permit can be issued. If a dentist meets the requirements of Paragraph (j) of Rule .0301 of this Subchapter, he/she shall be granted temporary approval to administer moderate conscious sedation limited to oral routes and nitrous oxide inhalation. Temporary approval may be granted based solely on credentials until all processing and investigation has been completed. Temporary approval may not exceed three months. An on-site evaluation of the facilities, equipment, procedures, and personnel shall be required prior to issuance of a permanent permit. The evaluation shall be conducted in accordance with Rules .0204 - .0205 of this Subchapter, except that evaluations of dentists applying for moderate conscious sedation permits may be conducted by dentists who have been issued moderate conscious sedation permits by the Board and who have been approved by the Board, as set out in these Rules. Fees required by Rule .0204 of this Subchapter shall apply.

(b) An inspection may be made upon renewal of the permit or for cause.

(c) Temporary approval shall not be granted to a provisional licensee or applicants who are the subject of a pending Board disciplinary investigation or whose licenses have been revoked, suspended or are subject to an order of stayed suspension or probation.

History Note: Authority G.S. 90-28; 90-30.1; Eff. February 1, 1990; Amended Eff. August 1, 2002; January 1, 1994; Temporary Amendment Eff. December 11, 2002; Amended Eff. August 1, 2004; Amended Eff. Pending Legislative Review.

21 NCAC 16Q .0401 MINIMAL CONSCIOUS SEDATION CREDENTIALS, EVALUATION AND PERMIT

(a) Before a dentist licensed to practice in North Carolina may administer or supervise a certified registered nurse anesthetist to administer minimal conscious sedation, the dentist shall obtain a Board-issued permit for minimal conscious sedation, moderate pediatric conscious sedation, moderate conscious sedation or general anesthesia. A permit is not required for prescription administration of DEA controlled drugs prescribed for postoperative pain control intended for home use. A dentist may obtain a minimal conscious sedation permit from the Board by completing an application form provided by the Board and paying a fee of one hundred dollars (\$100.00). Such permit must be renewed annually and shall be displayed with the current renewal at all times in a conspicuous place in the office of the permit holder.

(b) Only a dentist who holds a general anesthesia license may administer deep sedation or general anesthesia.

(c) Application:

- (1) A minimal conscious sedation permit may be obtained by completing an application form provided by Board, a copy of which may be

obtained from the Board office, and meeting the requirements of Section .0400 of this Subchapter.

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

- (3) An applicant for a minimal conscious sedation permit shall be licensed and in good standing with the Board in order to be approved. For purposes of these Rules "good standing" means that the applicant is not subject to a disciplinary investigation and his or her licensee has not been revoked or suspended and is not subject to a probation or stayed suspension order.

(d) Evaluation:

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

- (2) During an inspection or evaluation, the applicant or permit holder shall demonstrate competency in the following areas:

- (A) Monitoring of blood pressure, pulse, pulse oximetry and respiration;
- (B) Drug dosage and administration (by verbal demonstration);
- (C) Treatment of untoward reactions including respiratory or cardiac depression (by verbal demonstration);
- (D) Sterilization;
- (E) Use of CPR certified personnel;
- (F) Monitoring of patient during recovery (by verbal demonstration); and
- (G) Sufficiency of patient recovery time (by verbal demonstration).

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

- (A) Laryngospasm;
- (B) Bronchospasm;
- (C) Emesis and aspiration;
- (D) Respiratory depression and arrest;
- (E) Angina pectoris;
- (F) Myocardial infarction;
- (G) Hypertension/Hypotension;
- (H) Syncope;
- (I) Allergic reactions;

- (J) Convulsions;
- (K) Bradycardia;
- (L) Insulin shock; and
- (M) Cardiac arrest.

- (4) The evaluator shall assign a grade of pass or fail and shall report his recommendation to the Board, setting out the basis for his conclusion. The Board is not bound by the evaluator's recommendation and shall make a final determination regarding whether the applicant has passed the evaluation. The applicant shall be notified of the Board's decision in writing.

(e) Educational/Professional Requirements:

- (1) The dentist applying for a minimal conscious sedation permit shall meet one of the following criteria:

- (A) successful completion of training consistent with that described in Part I or Part III of the American Dental Association (ADA) Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry, and have documented administration of minimal conscious sedation in a minimum of five cases;
- (B) successful completion of an ADA accredited post-doctoral training program which affords comprehensive training necessary to administer and manage minimal conscious sedation;
- (C) successful completion of an 18-hour minimal conscious sedation course which must be approved by the Board based on whether it affords comprehensive training necessary to administer and manage minimal conscious sedation;
- (D) successful completion of an ADA accredited postgraduate program in pediatric dentistry; or
- (E) is a North Carolina licensed dentist in good standing who has been using minimal conscious sedation in a competent manner for at least one year immediately preceding October 1, 2007 and his or her office facility has passed an on-site inspection by a Board evaluator as required in Paragraph (d) of this Rule. Competency shall be determined by presentation of successful administration of minimal conscious sedation in a minimum of five clinical cases.

- (2) All applicants for a minimal sedation permit must document successful completion of a Basic Life Saving (BLS) course within the 12 months prior to the date of application.

History Note: Authority G.S. 90-28; 90-30.1; Temporary Adoption Eff. March 13, 2003; December 11, 2002; Eff. August 1, 2004; Amended Eff. Pending Legislative Review.

21 NCAC 16Q .0402 MINIMAL CONSCIOUS SEDATION PERMIT REQUIREMENTS, CLINICAL PROVISIONS AND EQUIPMENT

(a) Minimal conscious sedation is indicated for use only as defined in Rule .0101(15) of this Subchapter (relating to Definitions). Minimal conscious sedation is not indicated for use to achieve deep sedation.

(b) A minimal conscious sedation permit is not required for minor psychosedatives used for anxiolysis prescribed for administration outside of the dental office when pre-procedure instructions are likely to be followed. Medication administered for the purpose of minimal conscious sedation shall not exceed the maximum doses recommended by the drug manufacturer, sedation textbooks, or juried sedation journals. Except for nitrous inhalation, drugs in combination are not permitted for minimal conscious sedation. During longer periods of minimal conscious sedation, in which the amount of time of the procedures exceeds the effective duration of the sedative effect of the drug used, the incremental doses of the sedative shall not exceed total safe dosage levels based on the effective half-life of the drug used.

(c) Each dentist shall:

- (1) adhere to the clinical requirements as detailed in Paragraph (e) of this Rule;
- (2) maintain under continuous direct supervision any auxiliary personnel, who shall be capable of assisting in procedures, problems, and emergencies incident to the use of minimal conscious sedation or secondary to an unexpected medical complication;
- (3) utilize sufficient auxiliary personnel for each procedure performed who shall document annual successful completion of basic life support training; and
- (4) not allow a minimal conscious sedation procedure to be performed in his or her office by a Certified Registered Nurse Anesthetist (CRNA) unless the dentist holds a permit issued by the Board for the procedure being performed. This provision addresses dentists and is not intended to address the scope of practice of persons licensed by any other agency.

(d) Each dentist shall meet the following requirements:

- (1) Patient Evaluation. Patients who are administered minimal conscious sedation must be evaluated for medical health risks prior to the start of any sedative procedure. A patient receiving minimal conscious sedation must be healthy or medically stable (ASA I, or ASA II as defined by the American Society of Anesthesiologists). An evaluation is a review of the patient's current medical history and

medication use. However, for individuals who are not medically stable or who have a significant health disability Physical Status III (ASA III, as defined by the American Society of Anesthesiologists) a consultation with their primary care physician or consulting medical specialist regarding potential procedure risk is required.

- (2) Pre-procedure preparation, informed consent:
- (A) The patient or guardian must be advised of the procedure associated with the delivery of the minimal conscious sedation.
 - (B) Equipment must be evaluated and maintained for proper operation.
 - (C) Baseline vital signs shall be obtained at the discretion of the operator depending on the medical status of the patient and the nature of the procedure to be performed.
 - (D) Dentists administering minimal conscious sedation shall use sedative agents that he/she is competent to administer and shall administer such agents in a manner that is within the standard of care.

(e) Patient monitoring:

- (1) Patients who have been administered minimal conscious sedation shall be monitored during waiting periods prior to operative procedures. An adult who has accepted responsibility for the patient and been given written pre-procedural instruction may provide such monitoring. The patient shall be monitored for alertness, responsiveness, breathing and skin coloration.
- (2) Dentists administering e minimal conscious sedation shall maintain direct supervision of the patient during the operative procedure and for such a period of time necessary to establish pharmacologic and physiologic vital sign stability.
 - (A) Oxygenation. Color of mucosa, skin or blood shall be continually evaluated. Oxygen saturation shall be evaluated continuously by pulse oximetry, except as provided in Paragraph (e)(4) of this Rule.
 - (B) Ventilation. Observation of chest excursions or auscultation of breath sounds or both shall be performed.
 - (C) Circulation. Blood pressure and pulse shall be taken and recorded initially and thereafter as appropriate except as provided in Paragraph (e)(4) of this Rule.
 - (D) AED. Dentists administering minimal conscious sedation shall

maintain a functioning automatic external defibrillator (AED).

- (3) An appropriate time oriented anesthetic record of vital signs shall be maintained in the permanent record including documentation of individual(s) administering the drug and showing the name of drug, strength and dosage used.
- (4) If the dentist responsible for administering minimal conscious sedation must deviate from the requirements set out in this Rule, he or she shall document the occurrence of such deviation and the reasons for such deviation.

(f) Post-operative procedures:

- (1) Following the operative procedure, positive pressure oxygen and suction equipment shall be immediately available in the recovery area or operatory.
- (2) Vital signs shall be continuously monitored when the sedation is no longer being administered and the patient shall have direct continuous supervision until oxygenation and circulation are stable and the patient is sufficiently responsive for discharge from the office.
- (3) Patients who have adverse reactions to minimal conscious sedation shall be assisted and monitored either in an operatory chair or recovery area until stable for discharge.
- (4) Recovery from minimal conscious sedation shall include:
 - (A) cardiovascular function stable;
 - (B) airway patency uncompromised;
 - (C) patient easily arousable and protective reflexes intact;
 - (D) state of hydration within normal limits;
 - (E) patient can talk, if applicable;
 - (F) patient can sit unaided, if applicable;
 - (G) patient can ambulate, if applicable, with minimal assistance; and
 - (H) for the patient who is disabled, or incapable of the usually expected responses, the pre-sedation level of responsiveness or the level as close as possible for that patient shall be achieved.
- (5) Prior to allowing the patient to leave the office, the dentist shall determine that the patient has met the recovery criteria set out in Paragraph (f)(4) of this Rule and the following discharge criteria:
 - (A) oxygenation, circulation, activity, skin color and level of consciousness are sufficient and stable and have been documented;
 - (B) explanation and documentation of written postoperative instructions

- (C) have been provided to the patient or a responsible adult at time of discharge; responsible individual is available for the patient to transport the patient after discharge;
- (D) A vested adult must be available to transport patients for whom a motor vehicle restraint system is required and an additional responsible individual must be available to attend to the patients.

(g) The dentist, personnel and facility shall be prepared to treat emergencies that may arise from the administration of minimal conscious sedation, and shall have the ability to provide positive pressure ventilation with 100% oxygen with an age appropriate device.

*History Note: Authority G.S. 90-28; 90-30.1;
Temporary Adoption Eff. December 11, 2002;
Eff. August 1, 2004;
Amended Eff. Pending Legislative Review.*

**21 NCAC 16Q .0403 TEMPORARY APPROVAL
PRIOR TO SITE INSPECTION**

- (a) A dentist whose facility has not been inspected but who has otherwise met the requirements of Rule .0401 of this Section may seek temporary approval to administer minimal conscious sedation until a permit can be issued. Temporary approval may be granted based solely on credentials until all processing and investigation has been completed. Temporary approval may not exceed three months.
- (b) Temporary approval shall not be granted to a provisional licensee or to an applicant who is the subject of a disciplinary investigation or whose license has been revoked or suspended or is the subject of a probation or stayed suspension order.

*History Note: Authority G.S. 90-28; 90-30.1;
Temporary Adoption Eff. December 11, 2002;
Eff. August 1, 2004;
Amended Eff. Pending Legislative Review.*

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

- (a) General anesthesia and all sedation permits shall be renewed by the Board annually. Such renewal shall be accomplished in conjunction with the license renewal process, and applications for permits shall be made at the same time as applications for renewal of licenses. A one hundred (\$100.00) annual renewal fee shall be paid at the time of renewal.
- (b) All sedation permits shall be subject to the same renewal deadlines as are dental practice licenses, in accordance with G.S. 90-31. If the permit renewal application is not received by the date specified in G.S. 90-31, continued administration of general anesthesia or any level of conscious sedation shall be unlawful and shall subject the dentist to the penalties prescribed by Section .0700 of this Subchapter.
- (c) As a condition for renewal of the general anesthesia permit, the permit holder shall meet the requirements of 21 NCAC 16Q .0202 and document current, successful completion of advanced

cardiac life support (ACLS) training, or its age-specific equivalent or other equivalent course, and auxiliary personnel shall document annual, successful completion of basic life support (BLS) training.

(d) As a condition for renewal of the moderate conscious sedation permit or moderate pediatric conscious sedation permit, the permit holder shall meet the requirements of 21 NCAC 16Q .0302 and the following criteria:

- (1) document annual, successful completion of BLS training and obtain three hours of continuing education each year in one or more of the following areas, which may be counted toward fulfillment of the continuing education required each calendar year for license renewal:
 - (A) sedation;
 - (B) medical emergencies;
 - (C) monitoring IV sedation and the use of monitoring equipment;
 - (D) pharmacology of drugs and agents used in IV sedation;
 - (E) physical evaluation, risk assessment, or behavioral management; or
 - (F) audit ACLS/Pediatric Advanced Life Support (PALS) courses.
- (2) document current, successful completion of ACLS training or its age-specific equivalent, or other equivalent course and annual successful completion of BLS; and
- (3) moderate pediatric conscious sedation permit holders must have current PALS at all times.

(e) As a condition for renewal of the minimal conscious sedation permit and the moderate conscious sedation permit limited to oral routes and nitrous oxide inhalation, the permit holder shall meet the requirements of 16Q .0402 and shall document annual, successful completion of BLS training and obtain six hours of continuing education every two years in one or more of the following areas, which may be counted toward fulfillment of the continuing education required each calendar year for license renewal:

- (1) pediatric or adult sedation;
- (2) medical emergencies;
- (3) monitoring sedation and the use of monitoring equipment;
- (4) pharmacology of drugs and agents used in sedation;
- (5) physical evaluation, risk assessment, or behavioral management; or
- (6) audit ACLS/PALS courses.

(f) Any dentist who fails to renew a general anesthesia or sedation permit on or before March 31 of each year must complete a reinstatement application, pay the one hundred dollar (\$100.00) renewal fee and a one hundred dollar (\$100.00) penalty and comply with all conditions for renewal set out in this Rule for the permit sought. Dentists whose anesthesia or sedation permits have been lapsed for more than 12 calendar months must pass a facilities inspection as part of the reinstatement process.

History Note: Authority G.S. 90-28; 90-30.1; 90-48;
Eff. February 1, 1990;
Amended Eff. August 1, 2002;
Transferred and Recodified from 16Q .0401 to 16Q .0501;
Temporary Amendment Eff. December 11, 2002;
Amended Eff. August 1, 2004;
Amended Eff. Pending Legislative Review.

CHAPTER 30 – BOARD OF MASSAGE AND BODYWORK THERAPY

21 NCAC 30 .0601 BOARD APPROVAL

- (a) Any school, whether in this State or another state or territory that offers a certificate, diploma or degree program in massage and bodywork therapy may make application for Board approval on a form provided by the Board. Every school must submit an application to be considered for approval, whether or not such school has been licensed, approved or accredited by another regulatory agency, accreditation commission or trade association. A school that operates in more than one location shall submit a separate application for each location.
- (b) The Board shall grant approval to schools that meet the standards set forth in this Section. The approval shall be for a period of one year unless increased pursuant to Paragraph (c) of this Rule. The Board shall maintain a list of approved schools.
- (c) In order to maintain approval status, each school shall submit a report by April 1 of the year the school's approval expires. This report shall be on a form provided by the Board, that shall require documentation of authority to operate pursuant to Rule .0610 of this Section if granted by any entity other than this Board, student enrollments, and any changes in curriculum, instructional staff or administrative staff. If a school has remained in compliance with all Board rules for a period of five consecutive years and has no disciplinary action taken against it by the Board for a period of five consecutive years, the Board shall increase the period of approval for that school from one to two years.
- (d) An approved school shall notify the Board in writing within 30 days of any change in the school's location address, ownership, controlling interest, administration, facilities, instructional staff, or curriculum.
- (e) The school approval term begins on July 1 and ends on June 30. For the purposes of this Section, this term shall be considered the fiscal year.
- (f) If a Board-approved school has not met the requirements for renewal by June 30 preceding the new fiscal year, its approval status shall be deemed expired.
- (g) Approval shall be reinstated by the Board if a school whose approval has expired pursuant to Paragraph (f) of the Rule completes its renewal process by July 31 of the fiscal year. A school that has had its approval reinstated by July 31 shall be considered to have maintained its approval status on a continuous basis, pursuant to Paragraph (i) of this Rule.
- (h) The Board shall not renew the approval of a school that has not met the approval standards by July 31 of the year in which the school is scheduled to renew.

- (i) Pursuant to G.S. 90-629(4), "successful completion of a course of study at a Board-approved school" means that the applicant graduated from a school that maintained its approval status with the Board on a continuous basis during the applicant's time of enrollment.

History Note: Authority G.S. 90-626(9); 90-631;
Temporary Adoption Eff. February 15, 2000;
Eff. April 1, 2001;
Amended Eff. October 1, 2007.

21 NCAC 30 .0602 DEFINITIONS

The following definitions shall apply to this Section:

- (1) Accreditation; accredited – Status granted to a post-secondary institution of higher learning that has met standards set by an accrediting agency recognized by the Secretary of the United States Department of Education.
- (2) Additional location. -- A facility not part of, nor adjoining the facility of an approved school, where an approved school intends to offer a program. Each such location is considered a separate school, requiring a new Application for School Approval to be submitted to the Board.
- (3) Additional program. -- A program that is of a different title, subject matter, or that increases or decreases by more than 10 percent the number of hours of instruction than the program under which the school received its initial approval from the Board. An approved school that intends to offer an additional program shall submit an Application for Additional Program Approval.
- (4) Instructor. -- A person who meets the qualifications set forth in Rule .0612 of this Section who is responsible for delivering course content according to curricula established by the school, and who is responsible for managing the classroom environment.
- (5) Key administrative staff. -- The school's program director, director of education, and other administrative staff members who direct key areas such as operations, admissions, financial aid, placement, or student services.
- (6) Massage and bodywork therapy school. -- Any educational institution that conducts a program, as defined in this Rule, for a tuition charge. Such institutions may be organized as proprietary schools, that are privately owned and operated by a sole proprietor, partnership, corporation, association, or other entity; or may be post-secondary colleges or universities, whether publicly or privately owned.
- (7) One classroom hour of supervised instruction. -- At least 50 minutes of any one clock hour during which the student participates in a

- learning activity in the physical presence of a member of the school's instructional staff.
- (8) One year of professional experience. -- In determining the qualifications of administrative or instructional staff members, at least 500 hours of documentable work in the professional job responsibility or subject area in a given year.
 - (9) Program. -- A course of study or curriculum consisting of a specified number hours of instruction consistent with the standards set forth in Rule .0620 of this Section that is intended to teach adults the skills and knowledge necessary for the professional practice of massage and bodywork therapy, as defined in G.S. 90-622(3). Each program of a specified number of instructional hours shall be considered a separate program for the purposes of Board approval, and shall require a separate application for approval.
 - (10) Student enrollment. -- The total number of students at an approved school in a designated fiscal year who have begun a program for which they have registered and paid a fee in said fiscal year, and who have completed more than 15 percent of such program.
 - (11) Teaching assistant. -- A person who meets the qualifications set forth in Rule .0612 of this Section, who is in the classroom to support the role of the instructor, and who may provide instruction to students only in the presence of and under the direct supervision of the instructor.

*History Note: Authority G.S. 90-626(9); 90-631;
Temporary Adoption Eff. February 15, 2000;
Temporary Adoption Eff. April 1, 2001 replaces the Temporary
Adoption Eff. February 15, 2000;
Eff. August 1, 2002;
Amended Eff. October 1, 2007.*

**21 NCAC 30 .0603 DOCUMENTATION OF
SUCCESSFUL COMPLETION**

- (a) In order to be acknowledged as having successfully completed a course of study as required by G.S. 90-629(4), an applicant for licensure must submit a transcript to the Board's administrative office.
- (b) Such transcript must document that the applicant has completed all requirements in a course of study that meets the standards set forth in this Section, and shall indicate the following:
 - (1) Passing grades in all courses;
 - (2) Dates of attendance;
 - (3) Date of graduation or successful completion of the entire program;
 - (4) Total number of supervised classroom hours of instruction; and
 - (5) Credential awarded, whether a certificate, diploma, or degree.

*History Note: Authority G.S. 90-626(9); 90-631
Temporary Adoption Eff. February 15, 2000;
Eff. April 1, 2001;
Amended Eff. October 1, 2007.*

**21 NCAC 30 .0607 VERIFICATION OF
COMPLIANCE**

In order to verify that a school is in compliance with the standards for approval set forth in this Section, the Board may inspect a school during the application process or after approval has been granted. Such inspection may include the school's physical facilities, equipment, learning materials, class observation, and records. Such inspection may also include interviews with members of the school's administrative staff, instructional staff, or student body. The Board may also interview or survey graduates of the school or employers of the school's graduates.

*History Note: Authority G.S. 90-626(9); 90-631;
Eff. October 1, 2007.*

21 NCAC 30 .0608 SCHOOL APPROVAL FEES

(a) The fees collected under this Section are intended to cover the administrative costs of the approval program. No fee for approval application, renewal or inspection shall be refunded in the event the application is rejected or the approval suspended or revoked.

(b) Fees for Board approval of schools are as follows:

- (1) Request for Application Approval Package
\$ 20.00
- (2) Initial application for approval (one program)
2,000.00
- (3) Initial application for approval of additional
program at same location 750.00
- (4) Inspection for initial approval or renewal (one
program) 1,500.00
- (5) Inspection for initial approval or renewal of
additional program, same location 500.00
- (6) Renewal of approval (one program)
1,000.00
- (7) Renewal of approval (each additional
program) 750.00

(c) A school that is required to have more than one inspection in a fiscal year, in order to investigate or verify areas of noncompliance with the standards for school approval, shall pay a fee of fifteen hundred dollars (\$1500) for each additional inspection.

(d) In addition to the inspection fee, schools shall also pay actual expenses for travel, lodging and subsistence necessary to the inspection.

*History Note: Authority G.S. 90-626(8); 90-631;
Eff. October 1, 2007.*

**21 NCAC 30 .0609 DISCIPLINARY SANCTIONS;
REPORTING REQUIREMENTS**

(a) The Board may utilize disciplinary sanctions for schools set forth in Rule .0905(b) if the applicant for approval or holder of such approval:

- (1) fails to maintain, at any time, the requirements for approval set forth in this Section;
- (2) fails to require its students to complete the minimum standards in order to graduate;
- (3) submits documents to the Board that contain false or misleading information;
- (4) fails to allow authorized representatives of the Board to conduct inspections of the school, or refuses to make available to them at any time information pertaining to the requirements for approval set forth in this Section;
- (5) violates any statute or rule required for licensure or approval of that school by its educational licensing authority; or
- (6) violates any applicable rule of this Section.

(b) An approved school that is accredited by an agency recognized by the United States Department of Education (USDE) shall notify the Board in writing within 30 days of any notification it receives from its accrediting agency or the USDE Office of Postsecondary Education of a show cause action, probation action, or denial of accreditation.

(c) An approved school outside the State shall notify the Board in writing within 30 days of any notification it receives from its state, provincial, territorial or national licensing or approval authority of non-compliance with its regulatory standards or disciplinary actions.

History Note: Authority G.S. 90-626(9); 90-631; Eff. October 1, 2007.

21 NCAC 30 .0610 AUTHORITY TO OPERATE

(a) A proprietary school shall provide documentation to the Board that it is licensed or approved by the regulatory authority for schools of massage and bodywork therapy in the state or territory in which it operates or is exempt by statute.

(b) An accredited post-secondary institution outside North Carolina that offers a certificate, diploma, or degree program in the field of massage and bodywork therapy shall have approval from the regulatory authority in the state or territory in which it operates.

History Note: Authority G.S. 90-626(9); 90-631; Eff. October 1, 2007.

21 NCAC 30 .0612 INSTRUCTIONAL STAFF QUALIFICATIONS

(a) The requirements in this Rule are intended to assure that instructors, as defined in Rule .0602 are competent in the fundamental knowledge and methodology of teaching and possess a professional level of skills, knowledge and practical experience in every subject they teach in the program.

(b) Instructors shall be trained in teaching methods, that shall include:

- (1) Presentation skills;
- (2) Development and implementation of lesson plans;
- (3) Dynamics of the teacher/student relationship;
- (4) Management of the classroom environment;
- (5) Evaluation of student performance;
- (6) Instructional strategies for the adult learner;
- (7) Accommodations for students with special needs; and
- (8) Knowledge of the school's administrative policies and procedures.

(c) Instructors shall be trained in the subject taught, and shall have:

- (1) At least two years of professional experience in the subject area; and
- (2) Received certification to teach a trademarked modality if such certification is available.

(d) Instructors shall have one of the following professional credentials:

- (1) Be licensed under the practice act for at least two years; or
- (2) Have a baccalaureate degree from an accredited post-secondary institution with at least 12 semester credit hours of academic course work in the subject area they teach from such institution; or
- (3) Be a licensed physician, dentist, chiropractor, osteopath, registered nurse, physical therapist, occupational therapist, acupuncturist; or
- (4) Hold a state license or certification from a state other than North Carolina in massage and bodywork therapy for at least two years; if no such credential is available, hold a valid certification in massage and bodywork therapy for at least two years from an agency whose certification program is accredited by the National Commission for Certifying Agencies.

(e) Teaching assistants, as defined in Rule .0602 of this Section, shall have the following qualifications:

- (1) Assistants in courses related to the theory and practice of massage and bodywork therapy shall be licensed under the Practice Act, and shall have training in the subject area of the course.
- (2) Assistants in courses other than the theory and practice of massage and bodywork therapy shall have training in the subject area of the course, in addition to one of the following qualifications:
 - (A) Be licensed under the practice act;
 - (B) Have at least one year of professional experience in the subject area; or
 - (C) Have at least six semester credit hours of academic course work in the subject area from an accredited post-secondary institution.

(f) A school shall observe, evaluate, and document the performance of every instructional staff member at least

annually in each course taught to assure that competency in teaching methods and subject area is maintained.

History Note: Authority G.S. 90-626(9); 90-631; Eff. October 1, 2007.

21 NCAC 30 .0616 FINANCIAL MANAGEMENT SYSTEMS AND ECONOMIC STABILITY

(a) The school shall maintain sufficient resources for its ongoing operations and the discharge of its obligations to the students and staff. To demonstrate this, the school shall:

- (1) Maintain financial management systems that assure reliability, accountability and effective use of financial resources, that provide accurate information for assessing the financial condition of the institution, and that assure the accuracy and security of records.
- (2) Provide annually a review or audit, prepared in accordance with Generally Accepted Accounting Principles. This annual financial statement shall demonstrate that the current assets of the school exceed the current liabilities, and that there was a positive net working capital for the prior year. If the school does not meet the requirements in this Subparagraph, the Board shall require a financial improvement plan, teach-out plan, or form of surety guaranteeing that the resources are sufficient to protect the current students. If the Board determines that the school does not have sufficient resources, it may take disciplinary actions pursuant to Rule .0905(b) of this Chapter up to and including revocation of approval.

(b) The Board may request a credit report on a school from a nationally recognized credit reporting agency.

(c) The school shall maintain professional liability insurance to guarantee the fiscal viability of the school in the case of a claim of malpractice related to massage and bodywork therapy performed as a part of the school's instructional program.

History Note: Authority G.S. 90-626(9); 90-631; Eff. October 1, 2007.

21 NCAC 30 .0617 STUDENT RECRUITMENT

(a) In its recruitment of students, an approved school shall:

- (1) Not use employment agencies to recruit prospective students, or place advertisements in help-wanted sections of classified advertisements, or otherwise lead prospective students to believe they are responding to a job opportunity;
- (2) Ensure that its recruiting agents and other personnel do not make false or misleading statements about the institution, its personnel, its programs, its services, its approval status, its accreditation, or any other pertinent information;

- (3) Inform each student accurately about financial assistance and obligations for repayment of loans;
- (4) Not make explicit or implicit promises of employment or salary expectations to prospective students;
- (5) Not permit the payment of cash or nonmonetary incentives to any student or prospective student as an inducement to enroll; nor shall it use the word "free" or its synonyms in reference to any equipment, tuition, books, or other items in conjunction with recruiting or advertising;
- (6) Conduct the recruitment process to ensure that its personnel do not discredit other institutions by
 - (A) falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or similar negative characteristics;
 - (B) making other false representations;
 - (C) disparaging the character, nature, quality, value or scope of their program of instruction or services; or
 - (D) demeaning their students.

(b) The school shall also ensure that its personnel do not knowingly influence any student to leave another institution or encourage a student to change plans after signing an enrollment application and paying a registration fee to another institution.

History Note: Authority G.S. 90-626(9); 90-631; Eff. October 1, 2007.

21 NCAC 30 .0618 ADMISSIONS

(a) A school shall maintain admission policies and procedures that are disclosed to the public and administered consistently.

(b) A school shall conduct an orientation session for persons who have applied for admission or who are considering application for admission. Such orientation shall include an overview of the program's educational objectives and curriculum, the academic and physical requirements of the program, existing employment opportunities in the field, the time and financial requirements of the program, and state requirements for licensure.

(c) Admissions standards shall be designed to ensure that only those applicants are admitted who have the cognitive, motor and behavioral skills and moral character necessary to successfully complete the program and to practice massage and bodywork therapy in a safe and effective manner.

(d) A school shall conduct a pre-enrollment interview with each applicant to determine the applicant's qualifications. The information gathered from this interview shall be evaluated with all written documentation submitted by the applicant before the school renders a decision on the application.

(e) A school shall maintain written documentation of the basis for admission of the student. Such records shall include copies of high school diploma or transcripts, proof of age, and other specific admission requirements of the school.

- (f) Documentation of the reasons for the denial of admission of any student shall be maintained for at least three years.
- (g) A school must comply with the admissions standards of this Rule but may enroll students in individual courses not leading to a credential.

History Note: Authority G.S. 90-626(9); 90-631;
Eff. October 1, 2007.

21 NCAC 30 .0620 PROGRAM REQUIREMENTS

Pursuant to G.S. 90-631(1), programs shall meet the following requirements:

- (1) A school shall develop and adhere to a set of educational objectives that describe the intended skills, knowledge, and attitudes that the program is designed to develop in the student by the completion of the program;
- (2) The program shall have a core curriculum of at least 500 classroom hours of supervised instruction. The core curriculum shall contain the following hours of specific course work that are consistent with the school's mission and educational objectives:
 - (a) 200 hours in the fundamental theory and practice of massage and bodywork therapy that is designed to produce comprehensive entry-level skills in the application of direct manipulation to the soft tissues of the human body, and is based in therapeutic methods consistent with the definition set forth in G.S. 90-622(3) such as Swedish massage, acupressure, shiatsu, deep muscle massage, trigger point therapy, and connective tissue bodywork. Of the 200 hours in this category, at least 100 hours shall be in the application of hands-on methods. The balance of the hours shall include client assessment skills, indications and contraindications for treatment, body mechanics, draping procedures, standard practices for hygiene and control of infectious diseases, and the history of massage and bodywork therapy;
 - (b) 100 hours in anatomy and physiology related to the practice of massage and bodywork therapy, that shall include the structure and function of the human body and common pathologies;
 - (c) 15 hours in professional ethics, and North Carolina laws and rules for the practice of massage and bodywork therapy;
 - (d) 15 hours in business management practices related to the practice of massage and bodywork therapy;
 - (e) 20 hours in psychological concepts related to the practice of massage and bodywork therapy, including dynamics of the client/therapist relationship, professional communication skills, the mind-body connection, and boundary functions;
 - (f) 150 hours in other courses related to the practice of massage and bodywork therapy. The courses may include additional hands-on techniques, specific applications, adjunctive modalities, in-depth anatomy and physiology, kinesiology, psychological concepts, or supervised clinical practice. First Aid or CPR shall not be included in this category. Techniques that are considered exempt from licensure pursuant to G.S. 90-624(6) or (7), and that are further defined by Rule .0203(a) constitute up to 50 hours of the 150 hours in this category.
- (3) For programs that include a student clinic or fieldwork experiential component, the hours shall not exceed 100 hours of the minimum requirement set forth in Sub-item (2)(f) of this Rule. All work shall be in the presence of and directly supervised and evaluated by an instructional staff member;
- (4) For programs that include an externship component, the hours shall not be included in the requirements set forth in Item (2) of this Rule, and shall not comprise more than 20 percent of the total program hours. All work at the externship site shall be supervised by a person at the externship site who is acceptable to the school, and shall be monitored and evaluated by the school;
- (5) The program shall provide curriculum hours that allow its graduates to meet the minimum eligibility requirements for at least one of the competency assurance examinations that are approved by the Board as meeting the licensure requirement set forth in G.S. 90-629(5);
- (6) Programs shall consist of a series of courses that are organized in a logical sequence, and that are consistent with the educational objectives. Sequential organization means that within a course, each class prepares students for the next class; overall, each course gives students the skills and knowledge necessary for the next course. Material is not presented unless students have the necessary skills and

- knowledge to utilize that material safely and effectively;
- (7) Course titles shall match the content of the course; published course descriptions shall accurately reflect the specific learning objectives of each course; sufficient hours shall be allotted to each course to allow students to gain competence in the subject areas covered;
 - (8) A course curriculum is developed for each course that shows the basic content of each individual class in the course in the sequence presented;
 - (9) Course requirements and competencies are consistent from instructor to instructor. Teaching materials, including lesson plans, are developed and maintained for each course to ensure consistency. Teaching methods are appropriate to course content, and to diverse learning styles;
 - (10) Programs shall be at least 24 weeks in length, with no more than nine instructional hours in one day. There shall be no more than two hours of instruction without a break. There shall be no more than four hours of instruction without a meal break;
 - (11) For a student to receive credit in a course, the student shall attend no less than 75 percent of the instructional hours of the course. The student shall also make up sufficient missed instructional hours to equal no less than 98 percent of the instructional hours in the course according to the procedures established by the school;
 - (12) A syllabus shall be developed for each course and provided to students prior to the beginning of instruction. The syllabus shall include the following elements:
 - (a) course title,
 - (b) course description,
 - (c) learning objectives,
 - (d) teaching methodologies,
 - (e) total number of instructional hours,
 - (f) meeting dates and class times,
 - (g) assignments,
 - (h) textbooks,
 - (i) evaluation methods,
 - (j) quiz and examination dates, and
 - (k) performance standards.
 - (13) For post-secondary institutions, courses that fulfill the requirements set forth in Item (2) of this Rule shall support the program in massage and bodywork therapy. Courses in addition to these requirements may include courses from other departments or programs that are relevant to the practice of massage and bodywork therapy; and
 - (14) For classes that involve hands-on practice, the student to instructor ratio shall not exceed 16

to 1. Both instructors and teaching assistants, as defined in Rule .0612 of this Section shall be considered in calculating these ratios.

History Note: Authority G.S. 90-626(9); 90-631; Eff. October 1, 2007.

21 NCAC 30 .0621 STUDENT RECORDS AND ACADEMIC PROGRESS

- (a) A school shall maintain current, complete, and accurate records on each student. The records shall show attendance, academic progress, grades, date entered, dates attended, courses studied, program completed, and date of graduation.
- (b) Records shall be maintained in perpetuity, shall be stored in such a manner as to ensure their confidentiality, and shall be safe from theft, fire, or other possible loss.
- (c) Students and graduates shall be allowed access to their records. Transcripts shall be released upon written request from students and graduates.
- (d) All school policies, including those relating to satisfactory attendance, academic progress, and conduct shall be enforced by the school. Students shall be notified when completion standards are not being met.

History Note: Authority G.S. 90-626(9); 90-631; Eff. October 1, 2007.

21 NCAC 30 .0622 EDUCATIONAL CREDENTIAL ISSUED; GRADUATES' PASS RATE ON NATIONAL EXAMINATIONS

- (a) Upon completion of the program, the student shall be given a certificate, diploma, or degree stating that the educational requirements have been met and the program has been successfully completed.
- (b) Such credentials shall be granted only to students who have completed the entire program for which the student enrolled.
- (c) A school shall authorize agencies that conduct national certification examinations that are accepted by the Board as meeting the requirement of G.S. 90-629(5) to report directly to the Board the pass rate of the school's graduates on such examinations.

History Note: Authority G.S. 90-626(9); 90-631; Eff. October 1, 2007.

21 NCAC 30 .0623 LEARNING RESOURCES

The school shall provide sufficient learning resources to students and instructional staff to support the educational objectives of the program as follows:

- (1) The school shall maintain a library or resource center that contains books, periodicals, and other informational materials in the field of massage and bodywork therapy. As an alternative, the school may have a contractual agreement with another facility to provide access to such resources.
- (2) All other resources, such as charts, models, or electronic media, shall be maintained in good condition.

History Note: Authority G.S. 90-626(9); 90-631;
Eff. October 1, 2007.

21 NCAC 30 .0624 STANDARDS OF PROFESSIONAL CONDUCT

(a) The following standards of professional conduct shall apply to instructional staff, administrative staff and students:

- (1) Conduct shall be in accordance with Standards of Conduct set forth in Section .0500 of this Chapter.
- (2) Nudity is not permitted where massage and bodywork therapy is taught or practiced. For the purpose of this Section, "nudity" is defined as exposure of the genital or anal area for men or women, or exposure of the breast area for women. The only exception shall be for treatment to the breast area while utilizing therapeutic techniques.
- (3) The school shall provide a private area where persons receiving therapeutic treatments may dress or undress, whether for in-class practice or treatments performed in a student clinic. As an alternative, the school may provide instruction to persons receiving therapeutic treatments in the procedure of undressing while on the treatment table under a full sheet covering.

(b) The requirements of this Rule shall apply to all school facilities, as well as any other location where staff or students are demonstrating or delivering therapeutic treatments as a part of course requirements.

History Note: Authority G.S. 90-626(9); 90-631;
Eff. October 1, 2007.

21 NCAC 30 .0625 SCHOOL COMPLAINT POLICY

An approved school shall administer an internal complaint policy for students and staff, and shall maintain a complaint file that provides the following information:

- (1) Person(s) filing complaint and date filed;
- (2) Nature of complaint and person(s) involved;
- (3) Response(s) to complaint by school; and
- (4) Resolution of complaint.

History Note: Authority G.S. 90-626(9); 90-631;
Eff. October 1, 2007.

21 NCAC 30 .0626 STUDENT COMPENSATION PROHIBITED

A student enrolled in a Board-approved school shall not receive a fee, tip or other consideration for the massage and bodywork therapy they perform while completing clinical requirements for graduation, whether or not the school charges a fee for services provided in a student clinic.

History Note: Authority G.S. 90-626(9); 90-631;
Eff. October 1, 2007.

21 NCAC 30 .0627 TRANSFER OF CREDIT; ADVANCED PLACEMENT

(a) A school shall not grant transfer credit from another institution unless the following standards are met:

- (1) The school from where credit is being transferred shall be licensed or approved by the educational licensing authority in the state in which it operates, or be exempt by statute;
- (2) The school from where credit is being transferred shall provide an official transcript;
- (3) Courses for which credit is granted shall be parallel in content and intensity to the courses presently offered by the school; and
- (4) Documentation of previous training shall be included in each student's permanent file.

(b) A school may only grant advanced placement to a student, or exempt the student from curriculum requirements, based on the student's performance on an examination that the school administers to determine competency in that subject area. Advanced placement or exemption shall not exceed 35 percent of the total number of hours in the program and shall not reduce the total hours attended to less than 500 hours.

History Note: Authority G.S. 90-626(9); 90-631;
Eff. October 1, 2007.

21 NCAC 30 .0628 ETHICAL REQUIREMENTS IN ADVERTISING

The following requirements pertain to all advertising and promotional activities conducted by, or on behalf of the school, including such media utilized as print, broadcast, verbal presentations, data transfer technologies, videotape, or audiotape:

- (1) Educational programs and services offered shall be the primary emphasis of all advertisements, publications, promotional literature, and recruitment activities, whether distributed to prospective students or the general public.
- (2) All statements and representations made shall be factually accurate and current. Supporting information shall be kept on file and available for review for at least three years. All advertising and promotional materials shall include the correct name and location of the school.
- (3) A school shall not falsely represent its facilities in photographs, illustrations, or through other means.
- (4) The school catalog or bulletin shall contain all information required in Rule .0630 of this Section.
- (5) All advertising and promotional activities shall indicate that massage and bodywork training and not employment is being offered. No overt or implied claim of individual employment shall be made. No false or deceptive statements regarding employment opportunities or earning potential in the field

- of massage and bodywork as a result of the completion of the course of study shall be used to solicit students.
- (6) Letters of endorsement, commendation, or recommendation in favor of a school shall be used for advertising or promotion only with the written consent of the author without any offer of financial compensation, and only when such letters portray current conditions or facts. Letters shall contain the date they were received, shall be kept on file and be subject to inspection.
- (7) Programs that use placement information in advertisements, catalogs or other printed documentation shall corroborate the data.
- (8) School literature and advertisements shall not quote "high top" or "up to" salaries unless they also indicate the normal range or starting salaries for graduates.
- (9) Schools offering programs that are not approved by the Board shall identify which programs are Board approved.
- (10) Schools shall describe requirements for state licensure.
- (11) Schools shall not defame competitors by falsely imputing to them dishonorable conduct, inability to perform on contracts, or by the false disparagement of the character, nature, quality, values, or scope of their educational services, or in any other material respect.

*History Note: Authority G.S. 90-626(9); 90-631;
Eff. October 1, 2007.*

21 NCAC 30 .0629 STUDENT ENROLLMENT AGREEMENT

(a) An approved school shall execute a Student Enrollment Agreement for training with every student. The agreement shall contain the following:

- (1) Name and telephone number of the school and location of where the student will attend classes;
- (2) Student's name, address, telephone number;
- (3) Name of the program in which student is enrolling, number of clock or credit hours of the program, beginning and ending dates, length of program in weeks or months, and expected graduation date;
- (4) Program tuition and all related costs, including application and registration fees, and estimated cost of books and supplies;
- (5) Refund and cancellation policies, including student's right to cancel;
- (6) Payment methods, including cash, installment payment plans, or financial aid (as applicable); interest charged; methods used to collect delinquent tuition;
- (7) Placement guarantee disclaimer;
- (8) Grounds for dismissal from the school;

- (9) Statement referencing the school catalog and student handbook as a part of the enrollment agreement;
 - (10) Statement certifying that student has read and understands all terms of the enrollment agreement; and
 - (11) Signature lines for school official and student.
- (b) A copy of the executed agreement shall be provided to the student and a copy shall be placed in the student's permanent file.

*History Note: Authority G.S. 90-626(9); 90-631;
Eff. October 1, 2007.*

21 NCAC 30 .0630 SCHOOL CATALOG

An approved school shall publish a catalog or bulletin that is certified by an official of the school as being current, true, and correct in content and policy. The catalog shall include the following information:

- (1) School name, location address, and phone number;
- (2) Volume number and date of publication;
- (3) Ownership structure, including type of legal entity and names of owners, Board of Directors members, or academic officers at public institutions;
- (4) Names and titles of all instructional and key administrative staff;
- (5) Statement of school mission, philosophy, and educational program objectives;
- (6) School history and identification of all licenses, approvals or accreditations that the school maintains;
- (7) Definition of measurement of program, whether in clock hours or credit hours;
- (8) Course descriptions, including number of hours for each course;
- (9) Graduation requirements, including type of credential issued upon graduation;
- (10) Requirements for licensure, certification or registration of therapists in the state, province, or country in which the school operates;
- (11) Standards for admission, description of the school's admissions process, and requirement of a signed Student Enrollment Agreement;
- (12) School calendar, including beginning and ending dates of all programs, all holidays and days off;
- (13) Length of time required for completion of the program;
- (14) Program tuition and all associated costs, including textbooks, supplies, and other expenses.
- (15) Refund policy;
- (16) Description of facilities and learning resources;
- (17) Student services;

- (18) Policy regarding prohibition of compensation to student for performing massage and bodywork therapy; and
- (19) Academic policies, including the following:
 - (a) Grading system;
 - (b) Standards of satisfactory academic progress;
 - (c) Description of disciplinary procedures, including conditions for probation, suspension, dismissal or expulsion, conditions of reentrance for students dismissed for unsatisfactory academic progress;
 - (d) Transfer of credit from other institutions;
 - (e) Attendance requirements, make-up work, tardiness, leave of absence;
 - (f) Standards of conduct, including a sexual harassment policy; and
 - (g) Complaint policy, process for complaint resolution, name and address of the school regulatory agency for filing complaints when institutional process does not bring resolution.

History Note: Authority G.S. 90-626(9); 90-631; Eff. October 1, 2007.

21 NCAC 30 .0631 BOARD APPROVAL NOT TRANSFERABLE

- (a) In the event of the change of ownership of a school, the approval already granted to the original owner or operator thereof shall not be transferable to the new ownership or operators. The Board may issue temporary operating approval for a period of up to 180 days to a school upon its change of ownership if the school held a valid, current approval prior to the change, and if the Board finds that the school is likely to qualify after the change of ownership for approval under this Section.
- (b) For the purposes of this Section, "change of ownership" includes the following situations:
 - (1) Sale of the school;
 - (2) Transfer of controlling interest of stock of the school or its parent corporation;
 - (3) Merger of two or more schools;
 - (4) Transfer of controlling interest of stock to parent corporation;
 - (5) Transfer of assets or liabilities of school to parent corporation or owners; or
 - (6) Change from profit to non-profit status.

History Note: Authority G.S. 90-626(9); 90-631; Eff. October 1, 2007.

21 NCAC 30 .0632 INITIAL APPLICATION FOR BOARD APPROVAL

A school seeking initial approval shall submit an application for approval on a form provided by the Board, that shall be accompanied by the following:

- (1) A certified check for the application fee set forth in Rule .0608 of this Section, made payable to the Board;
- (2) Completed personnel qualification forms on the school director, administrative staff, instructors, and teaching assistants, with photocopies of academic transcripts, degrees, diplomas, and professional licenses and certifications for each person;
- (3) Job descriptions for school director, administrative staff, instructors, and teaching assistants;
- (4) Examples of contracts for administrative and instructional staff;
- (5) Ownership structure of the school, and organizational chart;
- (6) Facility plan, including floor plans with dimensions and fixtures, uses of each room, specifications on lighting, ventilation, and temperature control;
- (7) Equipment list, including furniture, office equipment, and instructional equipment for classroom;
- (8) Copy of deed if school owns its facility, or copy of lease if school does not own its facility;
- (9) Copies of reports from city or county inspections for fire, safety, health, and sanitation, made within the three months prior to submission of application for approval;
- (10) Statement of Financial Affirmation including the following financial documentation:
 - (a) A plan setting forth the sources, kinds and amounts of both current and anticipated financial resources. The plan shall include a budget for the school's first year of operation, identifying sources of revenue to ensure effective operations;
 - (b) A pro forma balance sheet prepared in accordance with Generally Accepted Accounting Principles for the type of institution making application;
 - (c) If the corporation that controls the school is ongoing, the school shall provide a financial statement of the parent corporation, reviewed or audited in accordance with Generally Accepted Accounting Principles, and
 - (d) Schools that are new and do not have a history of educational operations shall provide financial statements of the controlling principals, compiled, reviewed, or audited in accordance with Generally Accepted Accounting Principles. These statements must demonstrate sufficient resources to ensure institutional development.

- (11) Copy of the application for admission that is submitted by prospective students; copies of materials used to document the admission process with applicants;
- (12) Copies of the forms used for documentation of attendance, missed class make-up work, student academic progress, grades earned, notification of unsatisfactory progress and notification of disciplinary action;
- (13) Copy of the educational credential granted to students who complete the program and a transcript issued by the school;
- (14) Documentation of program requirements, including copies of course curricula, copies of course syllabi, one example lesson plan for each course, and school calendar for the current academic year;
- (15) List of student to instructor ratios for each course offered;
- (16) List of learning resources provided by the school, including numbers of books, periodicals, and other informational materials in the school library. If the school has no library, a copy of the agreement for use of another facility, with its list of resources shall be included;
- (17) Copies of all advertisements and promotional materials from the previous year, including website addresses and tapes of broadcast advertisements;
- (18) Copy of the Student Enrollment Agreement issued by the school;
- (19) Catalog Certification Form and copy of the current school catalog or bulletin, with accompanying student handbook (if applicable);
- (20) Agenda for a student orientation program, and a personnel orientation program provided by the school; and
- (21) As applicable pursuant to Rule .0610 of this Section, copy of license or approval to operate school, and copy of certificate of accreditation.

History Note: Authority G.S. 90-626(9); 90-631;
Eff. October 1, 2007.

21 NCAC 30 .0633 APPLICATION FOR BOARD APPROVAL OF ADDITIONAL PROGRAMS

An approved school shall submit an application for approval of an additional program on a form provided by the Board, which shall be accompanied by the following:

- (1) A certified check for the application fee set forth in Rule .0608 of this Section, made payable to the Board;
- (2) Documentation of program requirements, including copies of course curricula; copies of course syllabi; one example lesson plan for each course and school calendar for the current academic year;

- (3) A list of student to instructor ratios for each course offered;
- (4) A copy of the educational credential granted to students who complete the program and an example of the transcript issued by the school;
- (5) A copy of the school catalog or bulletin that describes the additional program, and
- (6) Complete documentation of any other requirement set forth in Rule .0632 of this Section that is different than what the school documented in its initial application for approval, or what has been documented in its most recent application for renewal of approval.

History Note: Authority G.S. 90-626(9); 90-631;
Eff. October 1, 2007.

21 NCAC 30 .0634 CLOSURE OF SCHOOL; TERMINATION OF A PROGRAM

(a) An approved school which intends to cease operations completely, or which intends to terminate the offering of a program if it offers more than one approved program, shall submit to the Board a written plan for such cessation or termination at least 90 days before such action.

(b) The plan shall include the following information:

- (1) The projected date of cessation or termination;
- (2) The means by which the school will maintain standards for approval until the last student has completed their training or transferred to another institution; and
- (3) The arrangement for storage of permanent student records.

History Note: Authority G.S. 90-626(9); 90-631;
Eff. October 1, 2007.

21 NCAC 30 .0635 SCHOOL STAFF MEMBERS AS STUDENTS

If a member of the administrative or instructional staff at an approved school is enrolled as a student in any course within the program, the staff member shall not have any administrative or academic authority over that course.

History Note: Authority G.S. 90-626(9); 90-631;
Eff. October 1, 2007.

CHAPTER 38 – BOARD OF OCCUPATIONAL THERAPISTS

21 NCAC 38 .0204 FEES

(a) Fees are as follows:

- (1) a request for an initial application for licensure as an occupational therapist or occupational therapy assistant is ten dollars (\$10.00);

- (2) application for issuance of a license or re-issuance of an expired license is one hundred dollars (\$100.00);
- (3) annual renewal of a license is fifty dollars (\$50.00);
- (4) late renewal of a license is an additional fifty dollars (\$50.00).

(b) Fees shall be non-refundable and shall be paid in cash or in the form of a cashier's check, certified check or money order made payable to the North Carolina Board of Occupational Therapy. Personal checks shall be accepted for payment of renewal fees.

History Note: Authority G.S. 90-270.77; Eff. July 1, 1985; Amended Eff. February 1, 1994; May 1, 1989; May 1, 1987; Amended Eff. October 1, 2007; July 1, 2007.

21 NCAC 38 .0303 LIMITED PERMITS

History Note: Authority G.S. 90-270.69(4); 90-270.74; Eff. July 1, 1985; Amended Eff. July 1, 2007; May 1, 1989; May 1, 1987; Repealed Eff. October 1, 2007.

CHAPTER 46 – BOARD OF PHARMACY

21 NCAC 46 .2201 HOURS: RECORDS: PROVIDERS: CORRESPONDENCE: RECIPROCITY

- (a) As a condition of license renewal, a pharmacist shall accumulate 15 hours of continuing education annually.
- (b) Eight of these continuing education hours shall be obtained through contact programs. Contact programs are those in which there is an opportunity for live two-way communication between the presenter and attendee. An on-line continuing education course may satisfy this contact-hour requirement provided that the live two-way communication standard is met.
- (c) A pharmacist who accumulates more than the required 15 hours of continuing education in a single year may carry forward up to five surplus hours to be applied to the following year's continuing education requirements.
- (d) A pharmacist shall preserve all continuing education records for three years.
- (e) Upon license renewal, the pharmacist shall report continuing education hours on a form provided by the Board. The Board may require a pharmacist to submit records, reports of accredited hours and certificates of credit on a random basis pursuant to a continuing education audit.
- (f) All continuing education shall be obtained through accredited continuing education courses. The Board shall approve continuing education courses as accredited if they provide education on matters that will maintain or increase the participant's professional competence and proficiency as a pharmacist.
- (g) Continuing education shall not serve as a barrier to reciprocity; however all licensees by reciprocity must observe

the continuing education standards specified in this Rule within the first renewal period after licensure in this state.

History Note: Authority G.S. 90-85.6; 90-85.17; 90-85.18; Eff. January 1, 1985; Amended Eff. January 1, 2008; April 1, 2005; August 1, 2004; August 1, 1998; September 1, 1993; May 1, 1989.

CHAPTER 58 – REAL ESTATE COMMISSION

21 NCAC 58A .0104 AGENCY AGREEMENTS AND DISCLOSURE

- (a) Every agreement for brokerage services in a real estate transaction and every agreement for services connected with the management of a property owners association shall be in writing and signed by the parties thereto. Every agreement for brokerage services between a broker and an owner of the property to be the subject of a transaction must be in writing and signed by the parties from the time of its formation. Every agreement for brokerage services between a broker and a buyer or tenant shall be express and shall be reduced to writing and signed by the parties thereto not later than the time one of the parties makes an offer to purchase, sell, rent, lease, or exchange real estate to another. However, every agreement between a broker and a buyer or tenant which seeks to bind the buyer or tenant for a period of time or to restrict the buyer's or tenant's right to work with other agents or without an agent shall be in writing and signed by the parties thereto from its formation. A broker shall not continue to represent a buyer or tenant without a written, signed agreement when such agreement is required by this Rule. Every written agreement for brokerage services of any kind in a real estate transaction shall provide for its existence for a definite period of time, shall include the licensee's license number, and shall provide for its termination without prior notice at the expiration of that period, except that an agency agreement between a landlord and broker to procure tenants or receive rents for the landlord's property may allow for automatic renewal so long as the landlord may terminate with notice at the end of any contract period and any subsequent renewals. For the purposes of this rule, an agreement between licensees to cooperate or share compensation shall not be considered an agreement for brokerage services and, except as required by Rule .1807 of this Subchapter, need not be memorialized in writing.
- (b) Every listing agreement, written buyer agency agreement or other written agreement for brokerage services in a real estate transaction shall contain the following provision: The broker shall conduct all brokerage activities in regard to this agreement without respect to the race, color, religion, sex, national origin, handicap or familial status of any party or prospective party to the agreement. The provision shall be set forth in a clear and conspicuous manner which shall distinguish it from other provisions of the agreement. For the purposes of this Rule, the term, familial status, shall be defined as it is in G.S. 41A-3(1b).
- (c) In every real estate sales transaction, a broker shall, at first substantial contact directly with a prospective buyer or seller, provide the prospective buyer or seller with a copy of the

publication "Working with Real Estate Agents," set forth the broker's name and license number thereon, review the publication with the buyer or seller, and determine whether the agent will act as the agent of the buyer or seller in the transaction. If the first substantial contact with a prospective buyer or seller occurs by telephone or other electronic means of communication where it is not practical to provide the "Working with Real Estate Agents" publication, the broker shall at the earliest opportunity thereafter, but in no event later than three days from the date of first substantial contact, mail or otherwise transmit a copy of the publication to the prospective buyer or seller and review it with him or her at the earliest practicable opportunity thereafter. For the purposes of this Rule, "first substantial contact" shall include contacts between a broker and a consumer where the consumer or broker begins to act as though an agency relationship exists and the consumer begins to disclose to the broker personal or confidential information.

(d) A real estate broker representing one party in a transaction shall not undertake to represent another party in the transaction without the written authority of each party. Such written authority must be obtained upon the formation of the relationship except when a buyer or tenant is represented by a broker without a written agreement in conformity with the requirements of Paragraph (a) of this Rule. Under such circumstances, the written authority for dual agency must be reduced to writing not later than the time that one of the parties represented by the broker makes an offer to purchase, sell, rent, lease, or exchange real estate to another party.

(e) In every real estate sales transaction, a broker working directly with a prospective buyer as a seller's agent or subagent shall disclose in writing to the prospective buyer at the first substantial contact with the prospective buyer that the broker represents the interests of the seller. The written disclosure shall include the broker's license number. If the first substantial contact occurs by telephone or by means of other electronic communication where it is not practical to provide written disclosure, the broker shall immediately disclose by similar means whom he represents and shall immediately mail or otherwise transmit a copy of the written disclosure to the buyer. In no event shall the broker mail or transmit a copy of the written disclosure to the buyer later than three days from the date of first substantial contact with the buyer.

(f) In every real estate sales transaction, a broker representing a buyer shall, at the initial contact with the seller or seller's agent, disclose to the seller or seller's agent that the broker represents the buyer's interests. In addition, in every real estate sales transaction other than auctions, the broker shall, no later than the time of delivery of an offer to the seller or seller's agent, provide the seller or seller's agent with a written confirmation disclosing that he represents the interests of the buyer. The written confirmation may be made in the buyer's offer to purchase and shall include the broker's license number.

(g) The provisions of Paragraphs (c), (d) and (e) of this Rule shall not apply to real estate licensees representing sellers in auction sales transactions.

(h) A broker representing a buyer in an auction sale transaction shall, no later than the time of execution of a written agreement memorializing the buyer's contract to purchase, provide the seller or seller's agent with a written confirmation disclosing that

he represents the interests of the buyer. The written confirmation may be made in the written agreement.

(i) A firm which represents more than one party in the same real estate transaction is a dual agent and, through the brokers associated with the firm, shall disclose its dual agency to the parties.

(j) When a firm represents both the buyer and seller in the same real estate transaction, the firm may, with the prior express approval of its buyer and seller clients, designate one or more individual brokers associated with the firm to represent only the interests of the seller and one or more other individual brokers associated with the firm to represent only the interests of the buyer in the transaction. The authority for designated agency must be reduced to writing not later than the time that the parties are required to reduce their dual agency agreement to writing in accordance with Paragraph (d) of this Rule. An individual broker shall not be so designated and shall not undertake to represent only the interests of one party if the broker has actually received confidential information concerning the other party in connection with the transaction. A broker-in-charge shall not act as a designated broker for a party in a real estate sales transaction when a provisional broker under his or her supervision will act as a designated broker for another party with a competing interest.

(k) When a firm acting as a dual agent designates an individual broker to represent the seller, the broker so designated shall represent only the interest of the seller and shall not, without the seller's permission, disclose to the buyer or a broker designated to represent the buyer:

- (1) that the seller may agree to a price, terms, or any conditions of sale other than those established by the seller;
- (2) the seller's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule; and
- (3) any information about the seller which the seller has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

(l) When a firm acting as a dual agent designates an individual broker to represent the buyer, the broker so designated shall represent only the interest of the buyer and shall not, without the buyer's permission, disclose to the seller or a broker designated to represent the seller:

- (1) that the buyer may agree to a price, terms, or any conditions of sale other than those established by the seller;
- (2) the buyer's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule; and
- (3) any information about the buyer which the buyer has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

(m) A broker designated to represent a buyer or seller in accordance with Paragraph (j) of this Rule shall disclose the identity of all of the brokers so designated to both the buyer and the seller. The disclosure shall take place no later than the presentation of the first offer to purchase or sell.

(n) When an individual broker represents both the buyer and seller in the same real estate sales transaction pursuant to a written agreement authorizing dual agency, the parties may provide in the written agreement that the broker shall not disclose the following information about one party to the other without permission from the party about whom the information pertains:

- (1) that a party may agree to a price, terms or any conditions of sale other than those offered;
- (2) the motivation of a party for engaging in the transaction, unless disclosure is otherwise required by statute or rule; and
- (3) any information about a party which that party has identified as confidential, unless disclosure is otherwise required by statute or rule.

History Note: Authority G.S. 41A-3(1b); 41A-4(a); 93A-3(c); 93A-9;

Eff. February 1, 1976;

Readopted Eff. September 30, 1977;

Amended Eff. July 1, 2008; April 1, 2006; July 1, 2005; July 1, 2004; April 1, 2004; September 1, 2002; July 1, 2001; October 1, 2000; August 1, 1998; July 1, 1997; August 1, 1996; July 1, 1995.

21 NCAC 58A .0105 ADVERTISING

(a) Blind Ads. A licensee shall not advertise the sale, purchase, exchange, rent or lease of real estate, for another or others, in a manner indicating the offer to sell, purchase, exchange, rent, or lease is being made by the licensee's principal only. Every such advertisement shall conspicuously indicate that it is the advertisement of a broker or brokerage firm and shall not be confined to publication of only a post office box number, telephone number, street address, internet web address, or e-mail address.

(b) Registration of Assumed Name. In the event that any licensee shall advertise in any manner using a firm name or an assumed name which does not set forth the surname of the licensee, the licensee shall first file the appropriate certificate with the office of the county register of deeds in compliance with G.S. 66-68 and notify the Commission in writing of the use of such a firm name or assumed name.

(c) Authority to Advertise.

- (1) A provisional broker shall not advertise the sale, purchase, exchange, rent or lease of real estate for another or others without his or her broker's consent and without including in the advertisement the name of the broker or firm with whom the provisional broker is associated.
- (2) A licensee shall not advertise or display a "for sale" or "for rent" sign on any real estate without the consent of the owner or his or her authorized agent.

(d) Business names. A licensee shall not include the name of a provisional broker or an unlicensed person in the name of a sole proprietorship, partnership or non-corporate business formed for the purpose of real estate brokerage.

(e) A person licensed as a limited nonresident commercial broker shall comply with the provisions of Rule .1809 of this Subchapter in connection with all advertising concerning or relating to his or her status as a North Carolina licensee.

History Note: Authority G.S. 55B-5; 66-68; 93A-3(c); 93A-9; *Eff. February 1, 1976;*

Readopted Eff. September 30, 1977;

Amended Eff. January 1, 2008; April 1, 2006; July 1, 2004; October 1, 2000; August 1, 1998; April 1, 1997; July 1, 1989; February 1, 1989.

21 NCAC 58A .0110 BROKER-IN-CHARGE

(a) Every real estate firm shall designate a broker to serve as the broker-in-charge at its principal office and a broker to serve as broker-in-charge at any branch office. No broker shall be broker-in-charge of more than one office at a time. If a firm shares office space with one or more other firms, one broker may serve as broker-in-charge of each firm at that location. No office or branch office of a firm shall have more than one designated broker-in-charge. A broker who is a sole proprietor shall designate himself or herself as a broker-in-charge if the broker engages in any transaction where the broker is required to deposit and maintain monies belonging to others in a trust account, engages in advertising or promoting his or her services as a broker in any manner, or has one or more other brokers affiliated with him or her in the real estate business. A broker-in-charge shall declare in writing his or her designation as broker-in-charge of an office to the Commission on a form prescribed by the Commission within 10 days following the broker's designation as broker in charge of any office. The broker-in-charge shall, in accordance with the requirements of G.S. 93A and the rules adopted by the Commission, assume the responsibility at his or her office for:

- (1) the retention of current license renewal pocket cards by all brokers employed at the office for which he or she is broker-in-charge; the proper display of licenses at such office in accordance with Rule .0101 of this Section; and assuring that each licensee employed at the office has complied with Rules .0503, .0504, and .0506 of this Subchapter;
- (2) the proper notification to the Commission of any change of business address or trade name of the firm and the registration of any assumed business name adopted by the firm for its use;
- (3) the proper conduct of advertising by or in the name of the firm at such office;
- (4) the proper maintenance at such office of the trust or escrow account of the firm and the records pertaining thereto;
- (5) the proper retention and maintenance of records relating to transactions conducted by or on behalf of the firm at such office, including those required to be retained pursuant to Rule .0108 of this Section;
- (6) the proper supervision of provisional brokers associated with or engaged on behalf of the

- (7) firm at such office in accordance with the requirements of Rule .0506 of this Subchapter; the proper supervision of all licensees employed at the office for which he or she is broker-in-charge with respect to adherence to agency agreement and disclosure requirements.

(b) When used in this Rule, the term:

- (1) "Branch Office" means any office in addition to the principal office of a broker which is operated in connection with the broker's real estate business; and
- (2) "Office" means any place of business where acts are performed for which a real estate license is required or where monies received by a licensee acting in a fiduciary capacity are handled or records for such trust monies are maintained.

(c) To qualify to become a broker-in-charge, a broker shall not be a provisional broker and shall:

- (1) possess at least two years of full-time real estate brokerage experience or equivalent part-time real estate brokerage experience within the previous five years or real estate education or experience in real estate transactions that the Commission finds equivalent to such experience; and
- (2) complete the Commission's 12 classroom hour broker-in-charge course either within three years prior to designation as a broker-in-charge or within 120 days following designation as a broker-in-charge.

A broker-in-charge shall certify his or her experience qualifications in the written broker-in-charge declaration he or she submits to the Commission and shall provide to the Commission upon request evidence that he or she possesses the required experience. Status as a broker-in-charge shall be immediately terminated if a broker-in-charge fails to complete the broker-in-charge course during the required time period or if the Commission finds the broker-in-charge does not possess the required experience. A broker who is removed as broker-in-charge for failure to timely complete the Commission's 12 hour broker-in-charge course must first complete the 12 hour broker-in-charge course before he or she may again be designated as broker-in-charge. A broker-in-charge, upon written request of the Commission or a broker who has been affiliated with the broker-in-charge within the previous five years, shall provide the Commission or broker on a form prescribed by the Commission an accurate written statement regarding the broker's work at the office of the broker-in-charge, including the dates of affiliation, average number of hours worked per week, and the number and type of properties listed, sold, bought, leased, or rented for others by the licensee during his or her affiliation with the broker-in-charge.

(d) A broker who was the broker-in-charge of a real estate office on April 1, 2006, whose broker-in-charge declaration was received by the Commission prior to that date, and who completed the Commission's broker-in-charge course prior to April 1, 2006 or within 120 days following designation as a

broker-in-charge, may continue to serve as a broker-in-charge thereafter until his or her eligibility to serve as a broker-in-charge is terminated as provided in Paragraph (e) of this Rule.

(e) A broker's eligibility to serve as a broker-in-charge shall be terminated upon the occurrence of any of the following events:

- (1) The broker's license expires or the broker's license is suspended, revoked or surrendered; or
- (2) the broker's license is made inactive for any reason, including failure to satisfy the continuing education requirements described in Rule .1702 of this Subchapter or Paragraph (f) of this Rule.

When a broker's eligibility to serve as a broker-in-charge is terminated pursuant to this Paragraph and the broker subsequently seeks to again serve as broker-in-charge of the same or a different office, the broker must fully satisfy all the current broker-in-charge experience and education qualification requirements stated in Paragraph (c) of this Rule. A broker-in-charge course taken by such broker prior to April 1, 2006 shall not be recognized toward the current education requirement.

(f) To maintain eligibility to serve as a broker-in-charge, a broker shall complete during each license year a special four classroom hour continuing education course prescribed by the Commission only for brokers-in-charge. This course must be taken during the first full license year following designation as a broker-in-charge and each license year thereafter in order for the broker to remain eligible to serve as broker-in-charge. The course shall satisfy the broker's general continuing education elective course requirement, but the broker must continue to take the mandatory continuing education update course each license year. When a broker-in-charge or a broker who retains broker-in-charge eligibility fails to take the special continuing education course specified in this Paragraph for brokers-in-charge during any license year, his or her eligibility to serve as broker-in-charge shall be terminated at the end of that license year. Before such broker may again be designated a broker-in-charge, he or she must first satisfy the qualification requirements set forth in Paragraph (c) of this Rule. If, however, such broker has taken the 12 hour broker-in-charge course within the preceding three years, he or she still shall not be eligible to be redesignated as broker-in-charge of any office until he or she first either takes the current year's special broker-in-charge continuing education course required by this paragraph or repeats the 12 hour broker-in-charge course, as he or she may elect. The special continuing education course specified in this paragraph is reserved only for licensees who are brokers-in-charge or who retain broker-in-charge eligibility or who are seeking to reinstate broker-in-charge eligibility pursuant to this paragraph and only such licensees shall receive continuing education elective credit for the special continuing education course prescribed herein.

(g) A broker-in-charge shall notify the Commission in writing that he or she no longer is serving as broker-in-charge of a particular office within 10 days following any such change.

(h) A licensed real estate firm shall not be required to designate a broker-in-charge if it:

- (1) has been organized for the sole purpose of receiving compensation for brokerage services

- furnished by its qualifying broker through another firm or broker;
- (2) is treated for tax purposes as a Subchapter S corporation by the United States Internal Revenue Service;
- (3) has no principal or branch office; and
- (4) has no person associated with it other than its qualifying broker.

(i) A broker-in-charge residing outside of North Carolina who is the broker-in-charge of a principal or branch office not located in North Carolina shall not be required to complete the broker-in-charge course or the special continuing education course prescribed for brokers-in-charge under Paragraph (f) of this Rule. However, if such broker-in-charge either becomes a resident of North Carolina or becomes broker-in-charge of an office located within North Carolina, then he or she must take the 12 hour broker-in-charge course within 120 days of such change, unless he or she has taken the 12 hour course within the preceding three years. Such broker-in-charge shall take the special broker-in-charge continuing education course prescribed in Paragraph (f) of this Rule during the first full license year following said change and each license year thereafter so long as the broker-in-charge remains a resident of North Carolina or continues to manage an office located in North Carolina.

(j) A nonresident commercial real estate broker licensed under the provisions of Section .1800 of this Subchapter shall not act as or serve in the capacity of a broker-in-charge of a firm or office in North Carolina.

History Note: Authority G.S. 93A-2; 93A-3(c); 93A-4; 93A-4.1; 93A-4.2; 93A-9;

Eff. September 1, 1983;

Amended Eff. January 1, 2008; April 1, 2006; July 1, 2005; July 1, 2004; April 1, 2004; September 1, 2002; July 1, 2001; October 1, 2000; August 1, 1998; April 1, 1997; July 1, 1995; July 1, 1994.

21 NCAC 58A .0113 REPORTING CRIMINAL CONVICTIONS AND DISCIPLINARY ACTIONS

Any broker who is convicted of any felony or misdemeanor, or who is disciplined by any governmental agency in connection with any other occupational license, shall file with the Commission a written report of such conviction or disciplinary action within 60 days of the final judgment or final order in the case. A form for this report is available from the Commission.

History Note: Authority G.S. 93A-3(c); 93A-6(a); 93A-6(a)(10); 93A-6(b)(2);

Eff. August 1, 1996;

Amended Eff. January 1, 2008; April 1, 2006; July 1, 2003; July 1, 2000.

21 NCAC 58A .0114 RESIDENTIAL PROPERTY DISCLOSURE STATEMENT

(a) Every owner of real property subject to a transfer of the type contemplated by Chapter 47E of the General Statutes, shall

complete the following residential property disclosure statement and furnish a copy of the complete statement to a purchaser in accordance with the requirements of G.S. 47E-4. The form shall bear the seal of the North Carolina Real Estate Commission and shall read as follows:

[N.C. REAL ESTATE COMMISSION SEAL]

STATE OF NORTH CAROLINA RESIDENTIAL PROPERTY DISCLOSURE STATEMENT

Instructions to Property Owners

1. G.S. 47E requires owners of residential real estate (single-family homes and buildings with up to four dwelling units) to furnish purchasers a property disclosure statement. This form is the only one approved for this purpose. A disclosure statement must be furnished in connection with the sale, exchange, option and sale under a lease with option to purchase (unless the tenant is already occupying or intends to occupy the dwelling). A disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited and transactions of residential property made pursuant to a lease with option to purchase where the lessee occupies or intends to occupy the dwelling. For a complete list of exemptions, see G.S. 47E-2.
2. You must check $\sqrt{}$ one of the boxes for each of the 20 questions on the reverse side of this form.
 - a. If you check "Yes" for any question, you must explain your answer and either describe any problem or attach a report from an engineer, contractor, pest control operator or other expert or public agency describing it. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in it so long as you were not grossly negligent in obtaining or transmitting the information.
 - b. If you check "No", you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misstatement.
 - c. If you check "No Representation", you have no duty to disclose the conditions or characteristics of the property, even if you should have known of them.
 - * If you check "Yes" or "No" and something happens to the property to make your Statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly give the purchaser a corrected Statement or correct the problem.
3. If you are assisted in the sale of your property by a licensed real estate broker, you are still responsible for completing and delivering the Statement to the

purchasers; and the broker must disclose any material facts about your property which they know or reasonably should know, regardless of your responses on the Statement.

offer to purchase your property. If you do not, the purchaser can, under certain conditions, cancel any resulting contract (See **"Note to Purchasers"** below). You should give the purchaser a copy of the Statement containing your signature and keep a copy signed by the purchaser for your records.

4. You must give the completed Statement to the purchaser no later than the time the purchaser makes an

Note to Purchasers

If the owner does not give you a Residential Property Disclosure Statement by the time you make your offer to purchase the property, you may under certain conditions cancel any resulting contract and be entitled to a refund of any deposit monies you may have paid. To cancel the contract, you must personally deliver or mail written notice of your decision to cancel to the owner or the owner's agent within three calendar days following your receipt of the Statement, or three calendar days following the date of the contract, whichever occurs first. However, in no event does the Disclosure Act permit you to cancel a contract after settlement of the transaction or (in the case of a sale or exchange) after you have occupied the property, whichever occurs first.

5. In the space below, type or print in ink the address of the property (sufficient to identify it) and your name. Then sign and date.

Property Address: _____	
Owner's Name(s): _____	
<i>Owner(s) acknowledge having examined this Statement before signing and that all information is true and correct as of the date signed.</i>	
Owner Signature: _____	Date _____, ____
Owner Signature: _____	Date _____, ____
<i>Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that they have examined it before signing; that they understand that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections they may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain their own inspection from a licensed home inspector or other professional.</i>	
Purchaser Signature: _____	Date _____, ____
Purchaser Signature: _____	Date _____, ____

Property Address/Description: _____

[Note: In this form, "property" refers only to dwelling unit(s) and not sheds, detached garages or other buildings.]

Regarding the property identified above, do you know of any problem (malfunction or defect) with any of the following:

	Yes*	No	No Representation
1. FOUNDATION, SLAB, FIREPLACES/CHIMNEYS, FLOORS, WINDOWS (INCLUDING STORM WINDOWS AND SCREENS), DOORS, CEILINGS, INTERIOR AND EXTERIOR WALLS, ATTACHED GARAGE, PATIO, DECK OR OTHER STRUCTURAL COMPONENTS including any modifications to them?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Siding is: <input type="checkbox"/> Masonry <input type="checkbox"/> Wood <input type="checkbox"/> Composition/Hardboard <input type="checkbox"/> Vinyl <input type="checkbox"/> Synthetic Stucco <input type="checkbox"/> Other _____			<input type="checkbox"/>
b. Approximate age of structure? _____			<input type="checkbox"/>
2. ROOF (leakage or other problem)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- a. Approximate age of roof covering? _____ ☐
3. WATER SEEPAGE, LEAKAGE, DAMPNESS OR STANDING WATER in the basement, crawl space or slab? ☐ ☐ ☐
4. ELECTRICAL SYSTEM (outlets, wiring, panel, switches, fixtures etc.)? ☐ ☐ ☐
5. PLUMBING SYSTEM (pipes, fixtures, water heater, etc.)? ☐ ☐ ☐
6. HEATING AND/OR AIR CONDITIONING? ☐ ☐ ☐
- a. Heat Source is: ☐ Furnace ☐ Heat Pump ☐ Baseboard ☐ Other _____ ☐
- b. Cooling Source is: ☐ Central Forced Air ☐ Wall/Window Unit(s) ☐ Other _____ ☐
- c. Fuel Source is: ☐ Electricity ☐ Natural Gas ☐ Propane ☐ Oil ☐ Other _____ ☐
7. WATER SUPPLY (including water quality, quantity and water pressure)? ☐ ☐ ☐
- a. Water supply is: ☐ City/County ☐ Community System ☐ Private Well ☐ Other _____ ☐
- b. Water pipes are: ☐ Copper ☐ Galvanized ☐ Plastic ☐ Other _____ ☐
☐ Unknown
8. SEWER AND/OR SEPTIC SYSTEM? ☐ ☐ ☐
- a. Sewage disposal system is: ☐ Septic Tank ☐ Septic Tank with Pump ☐ Community System ☐ Connected to City/County System ☐ City/County System available ☐ Straight pipe (wastewater does not go into a septic or other sewer system [note: use of this type of system violates state law]) ☐
☐ Other _____
9. BUILT-IN APPLIANCES (RANGE/OVEN, ATTACHED MICROWAVE, HOOD/FAN, DISHWASHER, DISPOSAL, etc.)? ☐ ☐ ☐
10. PRESENT INFESTATION, OR DAMAGE FROM PAST INFESTATION OF WOOD DESTROYING INSECTS OR ORGANISMS which has not been repaired? ☐ ☐ ☐
11. DRAINAGE, GRADING OR SOIL STABILITY OF LOT? ☐ ☐ ☐
12. OTHER SYSTEMS AND FIXTURES: CENTRAL VACUUM, POOL, HOT TUB, SPA, ATTIC FAN, EXHAUST FAN, CEILING FAN, SUMP PUMP, IRRIGATION SYSTEM, TV CABLE WIRING OR SATELLITE DISH, OR OTHER SYSTEMS? ☐ ☐ ☐
- Also regarding the property identified above, including the lot, other improvements, and fixtures located thereon, do you have any**
13. ROOM ADDITIONS OR OTHER STRUCTURAL CHANGES ? ☐ ☐ ☐
14. ENVIRONMENTAL HAZARDS (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination)? ☐ ☐ ☐
15. COMMERCIAL OR INDUSTRIAL NUISANCES (noise, odor, smoke, etc.) affecting the property? ☐ ☐ ☐

- | | |
|---|--|
| 16. VIOLATIONS OF ZONING ORDINANCES, RESTRICTIVE COVENANTS OR OTHER LAND-USE RESTRICTIONS, OR BUILDING CODES INCLUDING THE FAILURE TO OBTAIN PROPER PERMITS FOR ROOM ADDITIONS OR OTHER STRUCTURAL CHANGES(S)? | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| 17. UTILITY OR OTHER EASEMENTS, SHARED DRIVEWAYS, PARTY WALLS OR ENCROACHMENTS FROM OR ON ADJACENT PROPERTY? | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| 18. LAWSUITS, FORECLOSURES, BANKRUPTCY, TENANCIES, JUDGMENTS, TAX LIENS, PROPOSED ASSESSMENTS, MECHANICS' LIENS, MATERIALMENS' LIENS, OR NOTICE FROM ANY GOVERNMENTAL AGENCY that could affect title to the property? | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| 19. OWNERS' ASSOCIATION OR "COMMON AREA" EXPENSES OR ASSESSMENTS? | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| 20. FLOOD HAZARD or that the property is in a FEDERALLY-DESIGNATED FLOOD PLAIN? | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| 21. PRIVATE ROAD(S) OR STREETS adjoining the property? | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| a. If yes, do you know of an existing owner's association or maintenance agreement to maintain the road or street? | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |

* If you answered "Yes" to any of the above questions, please explain (Attach additional sheets, if necessary):

(b) The form described in Paragraph (a) of this Rule may be reproduced, but the form shall not be altered or amended in any way.

History Note: Authority G.S. 47E-4(b); 93A-3(c); 93A-6;
Eff. October 1, 1998;
Amended Eff. January 1, 2008; July 1, 2006; September 1, 2002; July 1, 2000.

21 NCAC 58A .0115 DISCLOSURE OF OFFERS PROHIBITED

A broker shall not disclose the price or other material terms contained in a party's offer to purchase, sell, lease, rent, or to option real property to a competing party without the express authority of the offering party.

History Note: Authority G.S. 93A-3(c); 93A-6;
Eff. July 1, 2008.

21 NCAC 58A .0502 BUSINESS ENTITIES

(a) Every business entity other than a sole proprietorship shall apply for and obtain from the Commission a firm license prior to engaging in business as a real estate broker. An entity that changes its business form other than by conversion shall submit a new license application immediately upon making the change and obtain a new firm license. An entity which converts to a different business entity in conformity with and pursuant to applicable North Carolina General Statutes is not required to apply for a new license. However, such converted entity shall provide the information required by this Paragraph in writing to the Commission within 10 days of said conversion and shall include the applicable fee to have the firm license reissued in the legal name of the converted entity. Incomplete applications

shall not be acted upon by the Commission. Application forms for partnerships, corporations, limited liability companies, associations and other business entities required to be licensed as brokers shall be available upon request to the Commission and shall require the applicant to set forth:

- (1) the name of the entity;
- (2) the name under which the entity will do business;
- (3) the type of business entity;
- (4) the address of its principal office;
- (5) the entity's NC Secretary of State Identification Number if required to be registered with the Office of the NC Secretary of State;
- (6) the name, real estate license number and signature of the proposed qualifying broker for the proposed firm;
- (7) the address of and name of the proposed broker-in-charge for each office as defined in Rule .0110(b) of this Subchapter, along with a completed broker-in-charge declaration form for each proposed broker-in-charge;
- (8) any past criminal conviction of and any pending criminal charge against any principal

- in the company or any proposed broker-in-charge;
- (9) any past revocation, suspension or denial of a business or professional license of any principal in the company or any proposed broker-in-charge;
- (10) if a general partnership, a full description of the applicant entity, including a copy of its written partnership agreement or if no written agreement exists, a written description of the rights and duties of the several partners;
- (11) if a business entity other than a corporation, limited liability company or partnership, a full description of the organization of the applicant entity, including a copy of its organizational documents evidencing its authority to engage in real estate brokerage;
- (12) if a foreign business entity, a certificate of authority to transact business in North Carolina and an executed consent to service of process and pleadings; and
- (13) any other information required by this Rule.

When the authority of a business entity to engage in the real estate business is unclear in the application or in law, the Commission may require the applicant to declare in the license application that the applicant's organizational documents authorize the firm to engage in the real estate business and to submit organizational documents, addresses of affiliated persons and similar information. For purposes of this Rule, the term principal, when it refers to a person or entity, shall mean any person or entity owning 10 percent or more of the business entity, or who is an officer, director, manager, member, partner or who holds any other comparable position.

(b) After filing a written application with the Commission and upon a showing that at least one principal of said business entity holds a broker license on active status and in good standing and will serve as qualifying broker of the entity, the entity shall be licensed provided it appears that the applicant entity employs and is directed by personnel possessed of the requisite truthfulness, honesty, and integrity. The qualifying broker of a partnership of any kind must be a general partner of the partnership; the qualifying broker of a limited liability company must be a manager of the company; and the qualifying broker of a corporation must be an officer of the corporation. A licensed business entity may serve as the qualifying broker of another licensed business entity if the qualifying broker-entity has as its qualifying broker a natural person who is licensed as a broker. The natural person who is qualifying broker shall assure the performance of the qualifying broker's duties with regard to both entities. A provisional broker may not serve as a qualifying broker.

(c) The licensing of a business entity shall not be construed to extend to the licensing of its partners, managers, members, directors, officers, employees or other persons acting for the entity in their individual capacities regardless of whether they are engaged in furthering the business of the licensed entity.

(d) The qualifying broker of a business entity shall assume responsibility for:

- (1) designating and assuring that there is at all times a broker-in-charge for each office and branch office of the entity at which real estate brokerage activities are conducted;
- (2) renewing the real estate broker license of the entity;
- (3) retaining the firm's renewal pocket card at the firm and producing it as proof of firm licensure upon request and maintaining a photocopy of the firm license certificate and pocket card at each branch office thereof;
- (4) notifying the Commission of any change of business address or trade name of the entity and the registration of any assumed business name adopted by the entity for its use;
- (5) notifying the Commission in writing of any change of his or her status as qualifying broker within ten days following the change;
- (6) securing and preserving the transaction and trust account records of the firm whenever there is a change of broker-in-charge at the firm or any office thereof and notifying the Commission if the trust account records are out of balance or have not been reconciled as required by Rule .0107 of this Chapter;
- (7) retaining and preserving the transaction and trust account records of the firm upon termination of his or her status as qualifying broker until a new qualifying broker has been designated with the Commission or, if no new qualifying broker is designated, for the period of time for which said records are required to be retained by Rule .0108 of this Chapter; and
- (8) notifying the Commission if, upon the termination of his or her status as qualifying broker, the firm's transaction and trust account records cannot be retained or preserved or if the trust account records are out of balance or have not been reconciled as required by Rule .0107(e) of this Chapter.

(e) Every licensed business entity and every entity applying for licensure shall conform to all the requirements imposed upon it by the North Carolina General Statutes for its continued existence and authority to do business in North Carolina. Failure to conform to such requirements shall be grounds for disciplinary action or denial of the entity's application for licensure. Upon receipt of notice from an entity or agency of this state that a licensed entity has ceased to exist or that its authority to engage in business in this state has been terminated by operation of law, the Commission shall cancel the license of the entity.

History Note: Authority G.S. 55-11A-04; 93A-3(c); 93A-4(a),(b),(d);

Eff. February 1, 1976;

Readopted Eff. September 30, 1977;

Amended Eff. January 1, 2008; April 1, 2006; July 1, 2005; April 1, 2004; July 1, 2003; October 1, 2000; August 1, 1998; January 1, 1997; July 1, 1994; May 1, 1990.

21 NCAC 58A .0505 REINSTATEMENT OF EXPIRED LICENSE, REVOKED, SURRENDERED OR SUSPENDED LICENSE

(a) Licenses expired for not more than six months may be reinstated upon the submission of a complete and accurate application and payment of a fifty-five dollar (\$55.00) reinstatement fee. In order to reinstate such license on active status, the applicant shall also present clear and convincing evidence of having obtained such continuing education as is required by Rule .1703 of this Subchapter to change an inactive license to active status. A person reinstating such a license on inactive status is not required to have obtained any continuing education in order to reinstate such license; however, in order to subsequently change his or her reinstated license from inactive status to active status, the licensee must satisfy the continuing education requirement prescribed in Rule .1703 of this Subchapter, and be supervised by a broker-in-charge in compliance with the requirements of Rule .0506 of this Section.

(b) Reinstatement of licenses expired for more than six months shall be considered upon the submission of a complete and accurate application and payment of a fifty-five dollar (\$55.00) reinstatement fee. Applicants must satisfy the Commission that they possess the current knowledge, skills and competence, as well as the truthfulness, honesty and integrity, necessary to function in the real estate business in a manner that protects and serves the public interest. To demonstrate current knowledge, skills and competence, the Commission may require such applicants to complete real estate education or pass the license examination or both.

(c) Reinstatement of a revoked license shall be considered upon the submission of a complete and accurate application and payment of a thirty dollar (\$30.00) fee. Applicants must satisfy the same requirements as those prescribed in Paragraph (b) of this Rule for reinstatement of licenses expired for more than six months.

(d) Reinstatement of a license surrendered under the provisions of G.S. 93A-6(e) shall be considered upon termination of the period of surrender specified in the order approving the surrender and upon the submission of a complete and accurate application and payment of a thirty dollar (\$30.00) fee. Applicants must satisfy the same requirements as those prescribed in Paragraph (b) of this Rule for reinstatement of licenses expired for more than six months.

(e) When a license is suspended by the Commission, the suspended license shall be restored at the end of the period of active suspension provided that any applicable license renewal fees that accrued during the time of the suspension are paid by the licensee. In order for the license to be restored on active status, the licensee shall demonstrate that the licensee has satisfied the continuing education requirement for license activation prescribed by Rule .1703 of this Subchapter and that the licensee is supervised by a broker-in-charge in compliance with the requirements of Rule .0506 of this Section, if applicable.

(f) Whenever a license is reinstated by the Commission following expiration, revocation, or voluntary surrender, the date of licensure for the licensee will be the date of reinstatement and not the date of original licensure.

History Note: Authority G.S. 93A-3(c); 93A-4(c),(d); 93A-4.1;

Eff. February 1, 1976;

Readopted Eff. September 30, 1977;

Temporary Amendment Eff. April 24, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Amended Eff. January 1, 2008; April 1, 2004; July 1, 2000; August 1, 1998; July 1, 1996; August 1, 1995; July 1, 1995.

21 NCAC 58A .1711 CONTINUING EDUCATION REQUIRED OF NONRESIDENT LICENSEES

(a) To be considered a nonresident for continuing education purposes, a real estate broker licensed in North Carolina shall not have a North Carolina business address, mailing address or residence address at the time he or she applies for license renewal if he or she seeks to renew his or her license on active status. A nonresident North Carolina broker who wishes to renew his or her license on active status may fully satisfy the continuing education requirement by any one of the following means:

- (1) A nonresident licensee may, at the time of license renewal, hold a real estate license on active status in another state and certify on a form prescribed by the Commission that the licensee holds such license.
- (2) A nonresident licensee may, within one year preceding license expiration, complete the Commission-prescribed Update course plus one Commission-approved continuing education elective course, or complete two Commission-approved continuing education elective courses.
- (3) A nonresident licensee may, within one year preceding license expiration, complete eight classroom hours in courses approved for continuing education credit by the real estate licensing agency in the licensee's state of residence or in the state where the course was taken. To obtain credit for a continuing education course completed in another state and not approved by the Commission, the licensee must submit a written request for continuing education credit accompanied by a nonrefundable processing fee of twenty dollars (\$20.00) per request and evidence satisfactory to the Commission that the course was completed and that the course was approved for continuing education credit by the real estate licensing agency in the licensee's state of residence or in the state where the course was taken.
- (4) A nonresident licensee may obtain eight hours equivalent credit for a course or courses not approved by the Commission or for related educational activities as provided in Rule .1708 of this Section. The maximum amount of continuing education credit the Commission

will award a nonresident licensee for an unapproved course or educational activity is eight hours.

(b) When requesting to change an inactive license to active status, or when applying for reinstatement of a license expired for not more than six months, a nonresident broker may fully satisfy the continuing education requirements described in Rules .0505 and .1703 of this Subchapter by complying with any of the options described in Paragraph (a) of this Rule, except that the requirements in Subparagraphs (a)(2) and (a)(3) of this Rule restricting the taking of courses to one year preceding license expiration shall not be applicable.

(c) No carry-over credit to a subsequent license period shall be awarded for a course taken in another state that has not been approved by the North Carolina Real Estate Commission as an elective course.

History Note: Authority G.S. 93A-3(c); 93A-4.1; Eff. July 1, 1994; Amended Eff. January 1, 2008; April 1, 2006; October 1, 2000; March 1, 1996; July 1, 1995.

21 NCAC 58C .0206 ADMINISTRATION

(a) One person must be designated as the Director of the school. The Director is responsible for supervision of all school operations related to the conduct of real estate prelicensing and postlicensing courses and compliance with all statutory and rule requirements governing the licensing and operation of the school.

(b) The school director must be possessed of good character and reputation and must satisfy one of the following qualification standards:

- (1) hold a baccalaureate or higher degree in the field of education; or
- (2) have at least two years full-time experience within the past ten years as an instructor or school administrator; or
- (3) possess qualifications which are found by the Commission to be substantially equivalent to those described in Subparagraph (1) or (2) of this Paragraph.

History Note: Authority G.S. 93A-4; 93A-33; Eff. October 1, 1980; Amended Eff. April 1, 1987; Transferred and Recodified from 21 NCAC 58A .1306 Eff. November 27, 1989; Amended Eff. January 1, 2008; April 1, 2006.

21 NCAC 58C .0208 BULLETINS

(a) A school shall publish a single bulletin addressing prelicensing and postlicensing courses offered and this bulletin shall be used at all licensed locations where the school operates. A school may provide in its bulletin information about real estate continuing education courses for which the school is approved by the Commission as a sponsor, but any such information shall comply with the standards described in Paragraph (c) of this Rule. A school may provide in its bulletin information about courses that are not approved by the

Commission only if the bulletin states that such courses are not approved or sanctioned by the Commission. A school may not include in its bulletin any promotional information for a particular real estate broker, firm, franchise or association, even if the entity being promoted owns the school.

(b) In addition to the information required by G.S. 93A-34(c)(5), a school's bulletin shall describe the purpose of prelicensing and postlicensing courses, describe the school's policies and procedures on all other matters affecting students and include the name and address of the North Carolina Real Estate Commission along with a statement to the effect that any complaints concerning the school should be directed to the Commission.

(c) All information provided in a school bulletin shall be accurate, complete, clearly stated, internally consistent and logically organized. The bulletin shall be typed or printed and shall utilize correct spelling, grammar and punctuation.

History Note: Authority G.S. 93A-4(a),(d); 93A-33; Eff. October 1, 1980; Amended Eff. December 1, 1987; Transferred and Recodified from 21 NCAC 58A .1308 Eff. November 27, 1989; Amended Eff. January 1, 2008.

21 NCAC 58C .0209 ENROLLMENT PROCEDURES AND CONTRACTS

(a) A school shall provide to a prospective student a copy of the school's bulletin prior to the time that a student becomes committed to payment of any portion of tuition or registration deposit without the right to a full refund.

(b) A school shall execute a written enrollment contract with each student after the school's bulletin has been provided to the student but prior to the beginning of the course for which the student is enrolling. The student shall be provided a copy of the enrollment contract at the time of signing.

(c) A school's student enrollment contract shall include the student's name, the contract date, the title of the course(s) for which the student is enrolling, the course schedule (beginning date, end date and meeting days and times), the amount of tuition and other required fees, a provision incorporating by reference the school's policies as described in the school's bulletin, a provision whereby the school certifies that the school's bulletin has been provided to the student and that the student acknowledges receipt of the bulletin, any provisions needed to address special accommodations or arrangements applicable to a particular student, and the signatures of both the student and a school official. Other than the amount of tuition and fees, an enrollment contract shall not address other school policies that are addressed in the school's bulletin. The enrollment contract shall be a separate document and shall not be combined with the school's bulletin into a single document. A school may utilize the school's copy of the enrollment contract to note a record of student tuition payments.

History Note: Authority G.S. 93A-4; 93A-33; Eff. October 1, 1980; Transferred and Recodified from 21 NCAC 58A .1309 Eff. November 27, 1989;

Amended Eff. January 1, 2008; April 1, 2006.

21 NCAC 58C .0210 ADMISSIONS POLICY AND PRACTICE

Schools shall not discriminate in their admissions policy or practice against any person on the basis of age, sex, race, color, creed, national origin or religious preference. A statement to this effect shall be included in all school bulletins, catalogues or similar official publications. Schools shall not offer postlicensing courses in a manner that results in the courses being conducted only for licensees affiliated with a particular real estate broker, firm, franchise or association, even if the entity whose affiliated licensees would benefit from the closed course is the school owner.

History Note: Authority G.S. 93A-4(a),(d); 93A-33; Eff. October 1, 1980; Transferred and Recodified from 21 NCAC 58A .1310 Eff. November 21, 1989; Amended Eff. January 1, 2008.

21 NCAC 58C .0302 PROGRAM STRUCTURING AND ADMISSION REQUIREMENTS

- (a) The real estate prelicensing education program shall consist of a single course consisting of at least 75 classroom hours of instruction. Schools may establish course admission standards that require students to demonstrate to the satisfaction of the school that they possess the basic reading, writing and mathematics skills necessary to be successful in the prelicensing course, and these standards may include a requirement to complete additional instruction prior to enrollment.
- (b) The real estate postlicensing education program shall consist of three courses, prescribed by the Commission in 21 NCAC 58A .1902, each consisting of at least 30 classroom hours of instruction, which may be taken by students in any sequence.
- (c) The prerequisite for enrollment in a postlicensing course is possession of a current North Carolina broker license on provisional status; however, schools may admit an individual to a postlicensing course if the individual needs to complete the course for the purpose of qualifying for reinstatement of an expired, revoked or surrendered license not on provisional status, or if the individual is required to complete the course pursuant to a disciplinary consent order issued by the Commission. A school shall not knowingly enroll an individual in a postlicensing course while the individual is taking another postlicensing course at the same school or a different school if such enrollment would result in the individual being in class for more than 21 classroom hours in any given seven-day period.

History Note: Authority G.S. 93A-4(a1); 93A-33; Eff. September 1, 1979; Amended Eff. February 1, 1989; September 1, 1984; September 1, 1983; January 1, 1981; Transferred and Recodified from 21 NCAC 58A .1102 Eff. November 27, 1989; Temporary Amendment Eff. July 5, 1990, For a Period of 180 Days to Expire on January 1, 1991; Amended Eff. January 1, 1991; February 1, 1991;

Temporary Amendment Eff. April 5, 1991, For a Period of 180 Days to Expire on October 2, 1991; Temporary Amendment Eff. May 9, 1991, For a Period of 146 Days to Expire on October 2, 1991; Amended Eff. January 1, 2008; April 1, 2006; September 1, 2002; October 1, 2000; July 1, 1994; October 1, 1991.

21 NCAC 58C .0309 COURSE COMPLETION REPORTING

(a) Schools shall provide each student who completes a prelicensing or postlicensing course in compliance with Commission rules and school course completion standards a course completion certificate in a format prescribed by this Rule. In addition to information identifying the course, student and instructor, the certificate must include the official letterhead of the school and must have the original signature or a signature stamp in a color other than black of the director, dean or other school official responsible for supervising the conduct of the course.

(b) Schools shall prepare and submit to the Commission, along with the fee prescribed by G.S. 93A-4(a2), accurate reports verifying completion of a prelicensing or postlicensing course for each student who completes a prelicensing or postlicensing course in compliance with Commission rules and school course completion standards. Such reports shall include students' names, students' license numbers, course dates, school and course code numbers and course information presented in the format prescribed by the Commission, and shall be transmitted electronically via the Internet to the Commission within seven calendar days following the course.

History Note: Authority G.S. 93A-4(a),(d); 93A-33; Eff. September 1, 1979; Amended Eff. February 1, 1989; September 1, 1984; January 1, 1981; Transferred and Recodified from 21 NCAC 58A .1111 Eff. November 27, 1989; Amended Eff. January 1, 2008; April 1, 2006; July 1, 1994; May 1, 1990.

21 NCAC 58C .0313 NOTICE OF SCHEDULED COURSES

(a) Schools shall provide the Commission written notice of all scheduled postlicensing course offerings not later than 10 days prior to a scheduled course beginning date. The notice shall include the name and assigned number for the sponsor and, for each scheduled course, the name and assigned number for the course, the scheduled beginning and ending dates, the specific location and the name of the instructor.

(b) Schools shall notify the Commission of any schedule changes or course cancellations at least five days prior to the original scheduled course beginning date. If a last minute change or cancellation is necessary due to some unforeseen circumstance, then notice shall be provided to the Commission as soon as possible.

History Note: Authority G.S. 93A-4(a1),(d); 93A-33; Eff. January 1, 2008.

21 NCAC 58C .0603 APPLICATION AND CRITERIA FOR ORIGINAL APPROVAL

(a) An individual seeking original approval as a prelicensing and postlicensing course instructor shall make application on a form provided by the Commission. An applicant who is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings. No application fee is required. All required information regarding the applicant's qualifications shall be submitted.

(b) An instructor applicant shall demonstrate that he or she possesses good moral character as set out in G.S. 93A-4(b) and the following qualifications or other qualifications found by the Commission to be equivalent to the following qualifications: a current North Carolina real estate broker license that is not on provisional status; a current continuing education record; three years active full-time experience in general real estate brokerage, including substantial experience in real estate sales and at least one year of general brokerage experience in North Carolina, within the previous seven years; and 60 semester hours of college-level education at an institution accredited by the Southern Association of Colleges and Schools or any other college accrediting body recognized by the U.S. Department of Education. For purposes of this Rule, substantial experience is experience which is material, valuable, and worthwhile and not nominal, occasional, or intermittent. The Commission shall consider teaching experience at the secondary or post-secondary level in lieu of a portion of the brokerage experience requirement.

(c) In addition to the qualification requirements stated in Paragraph (b) of this Rule, an applicant shall also demonstrate completion of the Commission's new instructor seminar within three years prior to the date of application and shall submit a one-hour video recording which depicts the applicant teaching a real estate prelicensing or postlicensing course topic and which demonstrates that the applicant possesses the basic teaching skills described in Rule .0604 of this Section. The new instructor seminar requirement shall be waived upon a finding by the Commission that the applicant possesses comparable instructor training, three years full-time experience teaching real estate pre-licensing courses in another state within the previous five years, or other equivalent qualifications. The video recording shall comply with the requirements specified in Rule .0605(c) of this Section. An applicant who is a Commission-approved continuing education update course instructor under Subchapter E, Section .0200 of this Chapter or who holds the Distinguished Real Estate Instructor (DREI) designation granted by the Real Estate Educators Association or an equivalent real estate instructor certification shall be exempt from the requirement to demonstrate satisfactory teaching skills by submission of a digital video disc (DVD) or videotape. An applicant who is qualified under Paragraph (b) of this Rule but who has not satisfied these additional requirements at the time of application shall be approved and granted a six-month grace period to complete these requirements. The approval of any instructor who is granted such six-month period to complete the requirements shall automatically expire on the last day of the period if the instructor has failed to satisfy his or her qualification deficiencies and the period has not been extended by the Commission. The Commission shall extend the six-

month period for up to three additional months when the Commission requires more than 30 days to review and act on a submitted video recording, when the expiration date of the period occurs during a course being taught by the instructor, or when the Commission determines that such extension is otherwise warranted by exceptional circumstances which are outside the instructor's control or when failure to extend the grace period could result in harm or inconvenience to students, licensees, or other innocent persons. An individual applying for instructor approval who within the previous three years was allowed the six-month grace period to satisfy the requirements stated in this Paragraph, but did not satisfy such requirements within the allowed grace period, shall not be allowed the grace period.

History Note: Authority G.S. 93A-4; 93A-33; 93A-34;

Eff. October 1, 2000;

Amended Eff. January 1, 2008; April 1, 2006; July 1, 2005; April 1, 2004; September 1, 2002.

21 NCAC 58E .0203 APPLICATION AND CRITERIA FOR ORIGINAL APPROVAL

(a) A person seeking original approval as an update course instructor must make application on a form provided by the Commission. An applicant who is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings. No application fee is required. All required information regarding the applicant's qualifications must be submitted.

(b) The applicant must be truthful, honest and of high integrity.

(c) The applicant must be qualified under one of the following standards:

- (1) Possession of a current North Carolina real estate broker license that is not on provisional status, a current continuing education record, and three years active full-time experience in general real estate brokerage, including substantial experience in real estate sales and at least one year of general brokerage experience in North Carolina, within the previous seven years. For purposes of this Rule, substantial experience is experience which is material, valuable, and worthwhile and not nominal, occasional, or intermittent.
- (2) Possession of qualifications found by the Commission to be equivalent to the standard stated in Subparagraph (c)(1) of this Rule.

(d) The applicant must possess good teaching skills as demonstrated on a video recording portraying the instructor teaching a live audience. The applicant must submit the video recording for Commission review on either a digital video disc (DVD) or a VHS formatted videocassette. The video recording must be 45-60 minutes in length and must depict a continuous block of instruction on a single real estate or directly related topic. The video recording must be unedited, must show at least a portion of the audience, and must have visual and sound quality sufficient to enable reviewers to clearly see and hear the instructor. The video recording must have been recorded within the previous one year. The video recording must demonstrate

that the instructor possesses the teaching skills described in Rule .0509 of this Subchapter.

(e) An applicant shall be exempt from qualifying under Paragraphs (c) and (d) of this Rule if he or she is a Commission-approved real estate prelicensing instructor who has satisfied all requirements for an unconditional approval or possesses a current North Carolina real estate broker license, a current continuing education record, and a current designation as a Distinguished Real Estate Instructor (DREI) granted by the Real Estate Educators Association.

*History Note: Authority G.S. 93A-3(c); 93A-4.1;
Eff. July 1, 1994;
Amended Eff. January 1, 2008; April 1, 2004; July 1, 2003;
September 1, 2002; July 1, 1996; July 1, 1995.*

CHAPTER 65 – THERAPUTIC RECREATION CERTIFICATION BOARD

21 NCAC 65 .0301 MINIMUM LEVEL OF EDUCATION AND COMPETENCY FOR LICENSED RECREATIONAL THERAPIST

(a) In accordance with the grandfathering provision, Section 4 of G.S.90C, these educational requirements do not apply to those currently certified by the North Carolina Therapeutic Recreation Certification Board who apply for licensure prior to January 15, 2008. For the purposes of G.S. 90C-27(a), a candidate for licensure as a recreational therapist must have graduated from an accredited college or university with a baccalaureate degree or higher and with a major or specialization in recreational therapy or therapeutic recreation. An academic major is defined as a degree in recreational therapy or therapeutic recreation. A specialization in recreational therapy or therapeutic recreation is defined as a degree in recreation and leisure studies, or recreation, or health and physical education, or health and human performance with a specialization, also known as an option, emphasis or concentration, in therapeutic recreation or recreational therapy. An accredited college or university is defined as a college or university accredited by an accreditation body recognized by the United States Department of Education. The academic major or specialization must be verified by an official transcript. An academic major or specialization is defined by the following components:

- (1) Coursework for a degree or specialization in recreational therapy or therapeutic recreation must reflect a minimum of three courses (nine semester hours) and as of December 31, 2007 four courses (12 semester hours) and as of July 1, 2010 five courses (15 semester hours) in which the title, course description and course outline reflects recreational therapy or therapeutic recreation content according to the current National Council for Therapeutic Recreation Certification (NCTRC) Job Analysis Study published by the National Council for Therapeutic Recreation Certification (NCTRC), which is herein

incorporated by reference, including any subsequent amendments and changes. A copy may be obtained at no cost on the National Council for Therapeutic Recreation Certification (NCTRC) website at: <http://www.nctrc.org>. For candidates for licensure who have passed the National Council for Therapeutic Recreation Certification (NCTRC) examination and were certified by the National Council for Therapeutic Recreation Certification prior to December 31, 2002, a therapeutic recreation or recreational therapy content course taught is considered the same as a therapeutic recreation or recreational therapy content course taken.

- (2) Supportive coursework are courses, not including the recreational therapy or therapeutic recreation content courses, which provide knowledge necessary to develop the ability to safely and effectively practice recreational therapy or therapeutic recreation and are required for the major or specialization in recreational therapy or therapeutic recreation. Support content courses provide knowledge about human development, human functioning, health, health care and human services, illness and disabling conditions. Supportive coursework for a degree or specialization in recreational therapy or therapeutic recreation must include three semester hours of anatomy and physiology, three semester hours of abnormal psychology, three semester hours of human growth and development across the lifespan, and nine semester hours in the area of health and human services. Health and human services coursework may include content in the areas of education, ethics, and other supportive coursework related to the practice of recreational therapy.

- (3) In addition to the coursework required in Subparagraphs (a)(1) and (2) of this Rule, a field placement course is also required for a major or specialization in therapeutic recreation or recreational therapy. A field placement course, sometimes called an internship course, is a course taken for college or university credit and shall require clinical education in an agency providing therapeutic recreation services to clients. The field placement or internship course must meet the criteria for a field placement set forth by the National Council for Therapeutic Recreation Certification (NCTRC) in the July 2007 NCTRC Standards publication herein incorporated by reference including any subsequent changes. A copy of the NCTRC field placement requirements may be obtained at no cost on the National Council for

Therapeutic Recreation Certification (NCTRC) website at: <http://www.nctrc.org>. A university supervisor of a field placement course is defined as the university faculty assigned to supervise the student and course from the university. An agency supervisor is the recreational therapist or therapeutic recreation specialist, in an agency providing therapeutic recreation or recreational therapy services to patients or clients, assigned to provide clinical supervision to the field placement student from the agency. Supervisors of students completing field placements in North Carolina must be licensed by the North Carolina Board of Recreational Therapy Licensure (NC BRTL). Successful performance in a field placement course must be demonstrated to the NC BRTL. Successful performance in a field placement course is defined as a grade of D or Pass or higher awarded by the university field placement supervisor and an Overall Rating of "Achieves Performance Expectations" awarded by the agency supervisor on the performance appraisal form provided by the NC BRTL. The performance appraisal form includes the content and performance criteria from the ATRA Standards for Practice of Therapeutic Recreation and Self-Assessment Guide, Clinical Performance Appraisal Summary, which is herein incorporated by reference. A copy of the ATRA Standards for the Practice of Therapeutic Recreation and Self-Assessment Guide may be purchased from the American Therapeutic Recreation Association (ATRA) at: <http://www.atra-TR.org>. Candidates for licensure, who have been continuously certified as a CTRS™ by the National Council for Therapeutic Recreation Certification since 1990 and have completed all recreational therapy or therapeutic recreation content courses, all support content course requirements, but have not completed an internship or field placement course shall be issued a license to practice as a recreational therapist if they verify a minimum of one year of successful work performance as a recreational therapist or therapeutic recreation specialist during which time they were a "Certified Therapeutic Recreation Specialist" by the National Council for Therapeutic Recreation Certification. Successful work performance must be verified to the North Carolina Board of Recreational Therapy Licensure (NC BRTL) on a performance appraisal form provided by the North Carolina Board of Recreational Therapy Licensure (NC BRTL) that includes the content and performance criteria from the ATRA

Standards for the Practice of Therapeutic Recreation and Self-Assessment Guide, Clinical Performance Appraisal Summary, which is herein incorporated by reference. A copy of the ATRA Standards for the Practice of Therapeutic Recreation and Self-Assessment Guide may be purchased from the American Therapeutic Recreation Association (ATRA) at: <http://www.atra-TR.org>. Successful performance is defined as an overall rating completed by the immediate supervisor of "Achieves Expectations" on the performance appraisal form provided by the North Carolina Board of Recreational Therapy Licensure.

(b) Candidates must submit evidence of a passing score on the National Council for Therapeutic Recreation Certification (NCTRC) examination. The passing score on the National Council for Therapeutic Recreation Certification Examination is determined by the National Council for Therapeutic Recreation Certification.

History Note: Authority G.S. 90C-27(a)(2)(3); 90C-22(2)(i),(7); 90C-24;

Temporary Adoption Eff. December 1, 2005;

Eff. June 1, 2006;

Amended Eff. October 1, 2007.

21 NCAC 65 .0302 MINIMUM LEVEL OF EDUCATION AND COMPETENCY FOR LICENSED RECREATIONAL THERAPY ASSISTANTS

(a) For the purposes of G.S. 90C-27(b) an academic major is defined as an Associate of Applied Science Degree in therapeutic recreation or recreational therapy from a community college by an accrediting agency approved by the United States Department of Education.

(b) Course work for an Associate degree must reflect the following:

- (1) A minimum of nine semester hours in therapeutic recreation or recreational therapy content courses. January 15, 2008, nine hours in recreational therapy or therapeutic recreation content courses.
- (2) Ten semester hours in therapeutic recreation or recreational therapy interventions;
- (3) A minimum of 15 semester hours of supportive coursework including at least one course from three of the following areas: psychology, sociology, physical and biological science, human services and physical education courses. Beginning January 15, 2008, the degree requirements for supportive coursework must include a minimum of five semester hours of anatomy and physiology and three semester hours of abnormal psychology, three semester hours of growth and development the remaining four semester hours of supportive coursework must be in the areas of psychology, sociology, physical and

- biological science, human services and/or physical education;
- (4) A course with a minimum 380 hour field placement experience in a clinical, residential, or community-based agency under the supervision of a Licensed Recreational Therapist or Licensed Recreational Therapy Assistant. The field placement must be a minimum of 12 consecutive weeks with each week including a minimum of 20 hours. Supervisors of field placements in North Carolina must be licensed by the North Carolina Board of Recreational Therapy Licensure (NC BRTL). Successful performance in a field placement course must be demonstrated to the NC BRTL. Successful performance in a field placement course is defined as a grade of D or pass or higher awarded by the university field placement supervisor and an Overall Rating of "Achieves

Performance Expectations" awarded by the agency supervisor on the performance appraisal form provided by the NC BRTL. The performance appraisal form includes the content and performance criteria from the ATRA Standards for Practice of Therapeutic Recreation and Self-Assessment Guide, Clinical Performance Appraisal Summary, which is herein incorporated by reference. A copy of the ATRA Standards for the Practice of Therapeutic Recreation and Self-Assessment Guide may be purchased from the American Therapeutic Recreation Association (ATRA) at: <http://www.atra-TR.org>.

History Note: Authority G.S. 90C-22(2)(i),(7); 90C-24(a)(3); 90C-27(b);
Temporary Adoption Eff. December 1, 2005;
Eff. December 1, 2006;
Amended Eff. October 1, 2007.

This Section contains information for the meeting of the Rules Review Commission on Thursday October 18 & November 15, 2007, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Jim R. Funderburke - 1st Vice Chair
David Twiddy - 2nd Vice Chair
Keith O. Gregory
Jerry R. Crisp
Jeffrey P. Gray

Appointed by House

Jennie J. Hayman - Chairman
John B. Lewis
Mary Beach Shuping
Clarence E. Horton, Jr.
Daniel F. McLawhorn

RULES REVIEW COMMISSION MEETING DATES

November 15, 2007 December 20, 2007
January 17, 2008 February 21, 2008

RULES REVIEW COMMISSION

Orientation Training

October 17, 2007

MINUTES

The Rules Review Commission met on Wednesday, October 17, 2007, in the Cabinet Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. This meeting was an orientation for new Commission members. Commissioners present were: Jerry Crisp, Jeff Gray, Keith Gregory, Jennie Hayman, Dan McLawhorn, and Mary Shuping.

Chairman Hayman called the meeting to order at 1:31 p.m.

The following people made presentations:

Camille Winston discussed some administrative aspects of the commission including completion of the reimbursement requests. Jeff Gray presented his experience as a rule making coordinator who became a commissioner. Mary Shuping gave a brief history of the commission followed by Karen Cochrane-Brown who continued that history and focused on the creation and role of the legislative Administrative Procedure Oversight Committee. Molly Masich, Bobby Bryan, and Joe Deluca all participated in the presentation and discussion of the Administrative Procedures Act process and requirements, the RRC process, and the standards for the commissioners' review of the rules. There was also a brief discussion concerning the requirements of the state ethics laws.

The meeting adjourned at 5:09 p.m.

Respectfully submitted,
Dana Vojtko
Publications Coordinator

RULES REVIEW COMMISSION

October 18, 2007

MINUTES

The Rules Review Commission met on Thursday, October 18, 2007, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Jerry Crisp, Jeff Gray, Keith Gregory, Jennie Hayman, Clarence Horton, Dan McLawhorn, Mary Shuping, and David Twiddy.

Staff members present were: Joseph DeLuca and Bobby Bryan, Commission Counsel and Dana Vojtko, Publications Coordinator.

The following people were among those attending the meeting:

Felicia Williams	Office of Administrative Hearings
Molly Masich	Office of Administrative Hearings
Nancy Pate	Department of Environment and Natural Resources
Julie Edwards	Office of Administrative Hearings
Barry Gupton	NCDOI-Building Code Council
Jonathan Womer	Office of State Budget and Management
Catherine Blum	DENR/Marine Fisheries
David Taylor	DENR/Marine Fisheries
Ruth Ann Foster	
Adriene Weaver	DENR/Water Quality
Health Black	Department of Secretary of State
Kathryn Hunter	Department of Secretary of State
Suzanne Klimek	DENR/Ecosystem Enhancement Program
Kristi Nixon	Department of Environment and Natural Resources
Larry Michael	Department of Environment and Natural Resources
John Hoomani	Department of Labor
Elizabeth Kountis	DENR/Water Quality
Del Williams	DHHS/Division of Public Health
Paul Glover	DHHS/Division of Public Health
Pauline Lunbinger	Department of Secretary of State
Sheila Cromer	DHHS/Division of Public Health
Rodney Maddox	Department of Secretary of State
Elaine Marshall	Secretary of State
Ann Wall	Department of Secretary of State
Kathy Davis	Dairy Farmer
Susan Lundberg	State Ethics Commission
Perry Newson	State Ethics Commission
J. Marion Eaddy, III	DENR/Radiation Protection
Joal Broun	Department of Secretary of State
Barbara Williams	Board of Massage and Bodywork Therapy and Occupational Therapy Board
Karen Cochrane-Brown	General Assembly
Jeff Hudson	General Assembly
David McLeod	Department of Agriculture and Consumer Services
Ray Starling	Department of Agriculture and Consumer Services
Joan Troy	Wildlife Resources Commission
Nancy Warren	DHHS/Division of Aging and Adult Services
David Locklear	DHHS/Division of Social Services
Mark Prak	Brooks, Pierce, McLendon, Humphrey & Leonard, LLP
Marcus Trathen	Brooks, Pierce, McLendon, Humphrey & Leonard, LLP
Dana Simpson	Smith, Anderson
Carlotta Dixon	DHHS/Division of Social Services
Lisa Johnson	DHHS/Division of Social Services
Lisa Martin	NC Home Builders
Sandra Good	Real Estate Commission for the NC Appraisal Board
Dedra Alston	DHHS/Division of Child Development
Anna Carter	DHHS/Division of Child Development
Melynda Swindells	DHHS/Division of Child Development
Laura Hewitt	DHHS/Division of Child Development
Katherine O'Neal	DHHS/Division of Waste Management
Chris Hoke	DHHS/Division of Public Health
Glenda Artis	DHHS/Division of Aging and Adult Services
Evelyn Foust	DHHS/Division of Public Health

APPROVAL OF MINUTES

The meeting was called to order at 9:31 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 September 20, 2007 meeting. There were none and the minutes were approved as distributed.

FOLLOW-UP MATTERS

15A NCAC 07J .0703 – Coastal Resources Commission. No rewritten rules have been submitted and no action was taken.

15A NCAC 11 .0321, .0322, .0333, .0359, .1611- Radiation Protection Commission. The Commission approved the rewritten rules submitted by the agency.

21 NCAC 26 .0207, .0301 – Board of Landscape Architects. No rewritten rules have been submitted and no action was taken. Mr. DeLuca indicated that if rewritten rules or a compelling reason for not receiving rewritten rules are not received for the next meeting then he might be recommending that the RRC return the rules to the agency for failure to comply with the Administrative Procedure Act.

21 NCAC 30 .0611, .0613, .0614, .0615, .0619 – Board of Massage and Bodywork Therapy. The Commission approved the rewritten rules submitted by the agency.

R324 – Building Code Council. The Commission approved the rewritten rule submitted by the agency. The Commission has received 10 letters of objection to the rule and the rule is submitted for legislative review.

LOG OF FILINGS

Chairman Haymen presided over the review of the log of permanent rules. Chairman Haymen granted the request from Elaine Marshall, Secretary of State, for the Commission to move the rules for the Department of Secretary of State to the beginning of the log of rules.

Prior to the review of the Secretary of State's lobbying rules, Commissioner Gray recused himself and did not participate in any discussion or vote concerning these rules because he is a registered lobbyist subject to these rules. His written explanation is part of the record of the meeting.

Prior to the review of the Secretary of State's cable franchise rules, Commissioner Gray recused himself and did not participate in any discussion or vote concerning these rules because his law firm represents the City of Wilson, which has had a cable franchise agreement and he was, personally, retained by the City to monitor the legislation that enabled these rules. His written explanation is part of the record of the meeting.

Prior to the review of the rules from the Private Protective Services Board (PPSB), Commissioner Gray recused himself and did not participate in any discussion or vote concerning these rules because he teaches the Firearms Instructor Training Course for the PPSB that is the subject of rules 07D .0901, .0908, and .0909. His written explanation is part of the record of the meeting.

Prior to the review of the rules from the Department of Health and Human Services (10A NCAC 41B), the Criminal Justice Education and Training Standards Commission, and the Private Protective Services Board (PPSB), Commissioner Gregory recused himself and did not participate in any discussion or vote concerning these rules because he is a criminal defense attorney. His written explanation is part of the record of the meeting.

All rules were approved unanimously with the following exceptions:

18 NCAC 12: Secretary of State, Lobbying Rules – On a motion from Commissioner McLawhorn the Commission extended the period of review for these rules with the following stipulations: the RRC should consider these rules immediately after the follow-up matters next month rather than waiting the statutorily allowed 70 days, the agency should be allowed to rewrite their rules to address any staff concerns or recommendations to object to a rule prior to the meeting, and all rewritten rules should be presented to the Ethics Commission in sufficient time prior to the RRC meeting to allow the Ethics Commission to submit comment to the RRC Commissioners and the RRC Commissioners to have sufficient time to consider those comments.

The Secretary of State, Elaine Marshall, was not opposed to extending the period of review for these rules.

Secretary of State, Cable Rules – All rules were approved unanimously with the following exceptions:

18 NCAC 13 .0402: - The Commission objected to this rule based on ambiguity. It is not clear what is meant by "a particular location."

18 NCAC 13 .0406: Secretary of State - The Commission objected to this rule based on lack of statutory authority. There is no authority cited, or need to accomplish the responsibilities of the Secretary shown, for items (6) and (7) in this rule. Who prepared the map and the date of preparation of the map are irrelevant to understanding what the map is or accomplishing any other responsibility of the Secretary.

18 NCAC 13 .0412: Secretary of State – This rule was withdrawn by the agency.

18 NCAC 13 .0417: Secretary of State – This rule was approved by the Commission but the Commission has received 10 letters of objection to the rule and the rule is submitted for legislative review.

18 NCAC 13 .0801: Secretary of State - The Commission objected to this rule based on a lack of statutory authority. There is no authority cited for the agency to require that a separate annual service report be filed for each franchise.

Marcus W. Trathen and Mark Prak from the NC Cable Telecommunication Association spoke in opposition of the Cable Franchise rules. Elaine Marshall, Ann Wall and Rodney Maddox spoke from the Secretary of State's office.

02 NCAC 09E .0116: Board of Agriculture – This rule was approved by the Commission with Commissioner Gregory in opposition. Kathy Davis, a NC dairy farmer spoke in opposition to this rule. David McLeod spoke from the Board of Agriculture. The Commission has received 10 letters of objection to the rule and the rule is submitted for legislative review.

10A NCAC 09 .0604: Child Care Commission - The Commission objected to this rule based on ambiguity. In (o), it is not clear what would constitute an "other approved device". It is not clear what the standards for approval are. If the only standards are those in the second sentence, then the word "approved" is not necessary and possibly misleading. This objection applies to existing language in the rule.

10A NCAC 09 .0805: Child Care Commission - The Commission objected to this rule based on lack of statutory authority. The authority cited for this rule is authority for the Commission for Health Services (now Commission for Public Health) to adopt rules, not the Child Care Commission. G.S. 110-91(1) gives the Commission for Health Services authority to adopt sanitation standards for childcare centers specifically including methods of food preparation and services. This rule is a sanitation standard for serving food in a child care center. The wrong agency is therefore amending this rule. This objection applies to existing language in the rule.

10A NCAC 09 .2704: Child Care Commission - The Commission objected to this rule based on ambiguity. In (k), it is not clear what the second phrase, "or remains open for three consecutive years", has as its subject. If the subject is both the provider and the employed household member, it is not clear how an employed household member "remains open for three consecutive years."

10A NCAC 67A .0107: Social Services Commission - The Commission objected to this rule based on lack of statutory authority and lack of necessity. Paragraph (d) sets no requirements and is thus unnecessary. To the degree the manual attempts to set requirements not otherwise adopted by rule, there is no authority for it to do so. This objection applies to existing language in the rule.

12 NCAC 07D .0601: Private Protective Services Board - The Commission objected to this rule based on lack of statutory authority and ambiguity. It is not clear what standards the Board will use approving a P.S.E. (Psychological Stress Evaluation) School. There is no authority cited for the Board to set approval standards outside rulemaking.

12 NCAC 07D .0901, .0908, .0909, .0911: Private Protective Services Board – These rules were withdrawn by the agency and will be refiled for next month's RRC meeting.

12 NCAC 09A .0206: Criminal Justice Education and Training Standards Commission - The Commission objected to this Rule based on ambiguity. It is unclear what the agency is trying to prohibit in the last sentence in (d). It is not clear what is meant by "this allowance." Presumably it has something to do with persons submitting matters to the Probable Cause Committee before it acts, but it is not clear what this maximum 48 hour time frame is.

15A NCAC 02R .0101, .0201, .0203, .0401, 0402: Environmental Management Commission – These rules were approved with Commissioner Gray and Shuping in opposition. Lisa Martin from the NC Homebuilders Association spoke in opposition to these rules. The Commission has received 10 letters of objection to these rules and the rules are submitted for legislative review.

15A NCAC 03O .0503: Marine Fisheries Commission - The Commission objected to this rule based on its lack of statutory authority and its lack of necessity. If no rules have been adopted pursuant to G.S. 113-210(j), there is no authority for the Marine Fisheries Commission to require certification of completion of any training as it does in (h)(3). If no rules for training have been adopted, the Subparagraph is not necessary because nothing is required. This objection applies to existing language in the rule.

15A NCAC 07J .0701: Coastal Resources Commission - he Commission objected to this rule based on its lack of statutory authority. The Coastal Resources Commission has cited no authority for it to adopt rules determining what is the practice of law. While paragraph (g) may be a correct statement of what the law is, it is beyond the authority of the agency to adopt it as a rule.

21 NCAC 57A .0201: Appraisal Board - The Commission objected to this rule because it is unnecessary. Most of the specific course requirements in this rule are paralleled in Rule 57B .0101. It is not necessary to have them set out in both rules.

COMMISSION PROCEDURES AND OTHER BUSINESS

The Commission changed the date of the December meeting from December 20 to December 13.

The chairman noted that the rules committee should resume its meetings to discuss revising its procedural rules. Commissioner McLawhorn indicated that he would like to be a part of that committee.

The meeting adjourned at 11:38 a.m.

The next scheduled meeting of the Commission is Thursday, November 15, 2007 at 10:00 a.m.

Respectfully Submitted,
Dana Vojtko
Publications Coordinator

LIST OF APPROVED PERMANENT RULES October 18, 2007 Meeting

AGRICULTURE, BOARD OF

Unpasteurized Milk 02 NCAC 09E .0116

ALCOHOLIC BEVERAGE CONTROL COMMISSION

Keg Registration Transportation Permit 04 NCAC 02S .0237

CHILD CARE COMMISSION

Definitions 10A NCAC 09 .0102
Off Premise Activities 10A NCAC 09 .0512
Condition of Outdoor Learning Environment 10A NCAC 09 .0605
In-Service Training Approval 10A NCAC 09 .0708
Safe Procedures 10A NCAC 09 .1003
Aquatic Activities 10A NCAC 09 .1403
Staff Qualifications 10A NCAC 09 .2510
Application for Permits 10A NCAC 09 .2701
Criminal Record Check Requirements for Child Care Providers 10A NCAC 09 .2702

PUBLIC HEALTH, COMMISSION FOR

Reportable Diseases and Conditions 10A NCAC 41A .0101
Method of Reporting 10A NCAC 41A .0102
Control Measures HIV 10A NCAC 41A .0202

<u>Control Measures - Sexually Transmitted Diseases</u>	10A NCAC 41A .0204
 HEALTH AND HUMAN SERVICES, DEPARTMENT OF	
<u>Definitions</u>	10A NCAC 41B .0101
<u>Log</u>	10A NCAC 41B .0311
<u>Intoxilyzer: Model 5000</u>	10A NCAC 41B .0320
<u>Preventative Maintenance: Intoxilyzer: Model 5000</u>	10A NCAC 41B .0321
<u>Intoximeter: Model: EC/IR II</u>	10A NCAC 41B .0322
<u>Preventative Maintenance: Intoximeter: Model EC/IR II</u>	10A NCAC 41B .0323
 SOCIAL SERVICES COMMISSION	
<u>Exceptions for Notification</u>	10A NCAC 67A .0202
<u>Social Services Block Grant Funded Services</u>	10A NCAC 71R .0101
<u>Mandated and Optional Services</u>	10A NCAC 71R .0103
<u>Fiscal Management</u>	10A NCAC 71R .0201
<u>Family Services Manual and Policy Directives</u>	10A NCAC 71R .0302
<u>Recipient Service Records</u>	10A NCAC 71R .0303
<u>Application Requirement</u>	10A NCAC 71R .0401
<u>Opportunity to Apply</u>	10A NCAC 71R .0402
<u>Who May Apply</u>	10A NCAC 71R .0403
<u>Residency</u>	10A NCAC 71R .0404
<u>Application Documentation Requirements</u>	10A NCAC 71R .0405
<u>Basic Eligibility Criteria</u>	10A NCAC 71R .0501
<u>Income Maintenance Status</u>	10A NCAC 71R .0502
<u>Income Eligible Status</u>	10A NCAC 71R .0503
<u>Definition of Established</u>	10A NCAC 71R .0504
<u>Maximum Income Levels for Services</u>	10A NCAC 71R .0505
<u>Without Regard to Income Status</u>	10A NCAC 71R .0506
<u>Eligibility Determination</u>	10A NCAC 71R .0601
<u>Basis for Establishing</u>	10A NCAC 71R .0602
<u>Basis for Denial or Termination of Services</u>	10A NCAC 71R .0603
<u>Redetermination of Eligibility</u>	10A NCAC 71R .0604
<u>Documentation of Eligibility Decision</u>	10A NCAC 71R .0605
<u>Quarterly Review</u>	10A NCAC 71R .0606
<u>Methods of Eligibility Determination</u>	10A NCAC 71R .0701
<u>Verification Method</u>	10A NCAC 71R .0702
<u>Declaration Method</u>	10A NCAC 71R .0703
<u>Method of Determining Need for Services</u>	10A NCAC 71R .0704
<u>Notification Time Frames</u>	10A NCAC 71R .0801
<u>Requirements for Prompt Provision</u>	10A NCAC 71R .0803
<u>Foster Care Services for Children</u>	10A NCAC 71R .0907
<u>Health Support Services</u>	10A NCAC 71R .0908
<u>Protective Services for Children</u>	10A NCAC 71R .0916
<u>Benefit Levels</u>	10A NCAC 71V .0202

PRIVATE PROTECTIVE SERVICES BOARD

Renewal or Reissue of Licenses and Trainee Permits 12 NCAC 07D .0203

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

Responsibilities of the School Director 12 NCAC 09B .0202

Time-Distance Instructor Training Course 12 NCAC 09B .0211

Supplemental SMI Training 12 NCAC 09B .0215

Re-Certification Training for Radar Instructors 12 NCAC 09B .0218

Re-Certification Training for Time-Distance Instructors 12 NCAC 09B .0219

Re-Certification Course for Radar Operators 12 NCAC 09B .0220

Re-Certification Course for Radar/Time-Distance Operators 12 NCAC 09B .0221

Re-Certification Course for Time-Distance Operators 12 NCAC 09B .0222

Lidar Instructor Training Course 12 NCAC 09B .0237

Certification Training for Lidar Operators 12 NCAC 09B .0238

Re-Certification Training for Lidar Instructors 12 NCAC 09B .0239

Re-Certification Training Course for Lidar Operators 12 NCAC 09B .0240

Certification Training for Radar/Lidar Operators 12 NCAC 09B .0242

Re-Certification Training Course for Radar/Lidar Operators 12 NCAC 09B .0243

Certification Training for Radar/Time-Distance/Lidar Oper... 12 NCAC 09B .0244

Re-Certification Training Course for Radar/Time-Distance/... 12 NCAC 09B .0245

Terms and Conditions of General Instructor Certification 12 NCAC 09B .0303

Terms and Conditions of Specialized Instructor Certification 12 NCAC 09B .0305

Terms and Conditions - SMI Instructors 12 NCAC 09B .0310

Comprehensive Written Examination - Basic SMI Certification 12 NCAC 09B .0408

Satisfaction of Training - SMI Operators 12 NCAC 09B .0409

Satisfaction of Minimum Training - SMI Instructor 12 NCAC 09B .0416

Speed Measurement Instrument (SMI) Operators Certificatio... 12 NCAC 09C .0308

Approved Speed-Measuring Instruments 12 NCAC 09C .0601

Speed-Measuring Instrument Operating Procedures 12 NCAC 09C .0608

ENVIRONMENTAL MANAGEMENT COMMISSION

Little Tennessee River Basin and Savannah River Drainage ... 15A NCAC 02B .0303

French Broad River Basin 15A NCAC 02B .0304

Watauga River Basin 15A NCAC 02B .0305

New River Basin 15A NCAC 02B .0307

Yadkin-Pee Dee River Basin 15A NCAC 02B .0309

Lumber River Basin 15A NCAC 02B .0310

Cape Fear River Basin 15A NCAC 02B .0311

White Oak River Basin 15A NCAC 02B .0312

Roanoke River Basin 15A NCAC 02B .0313

Neuse River Basin 15A NCAC 02B .0315

Tar-Pamlico River Basin 15A NCAC 02B .0316

Pasquotank River Basin 15A NCAC 02B .0317

Purpose 15A NCAC 02R .0101

Purpose 15A NCAC 02R .0201

Public Involvement, Availability 15A NCAC 02R .0203

Wetlands Restoration Fund, Purpose 15A NCAC 02R .0401

<u>Schedule of Fees</u>	15A NCAC 02R .0402
 MARINE FISHERIES COMMISSION	
<u>Definitions</u>	15A NCAC 03I .0101
<u>Gill Nets, Seines, Identification, Restrictions</u>	15A NCAC 03J .0103
<u>Pound Net Sets</u>	15A NCAC 03J .0107
<u>Albemarle Sound/Chowan River Herring Management Areas</u>	15A NCAC 03J .0209
<u>Prohibited Trawling</u>	15A NCAC 03M .0205
<u>River Herring and Shad</u>	15A NCAC 03M .0513
<u>Scope and Purpose</u>	15A NCAC 03N .0101
<u>Nursery Areas Defined</u>	15A NCAC 03N .0102
<u>Nursery Area Boundaries</u>	15A NCAC 03N .0103
<u>Anadromous Fish Spawning Area Boundaries</u>	15A NCAC 03N .0106
<u>Procedures and Requirements to Obtain Permits</u>	15A NCAC 03O .0501
<u>Anadromous Fish Spawning Areas</u>	15A NCAC 03R .0115
 WILDLIFE RESOURCES COMMISSION	
<u>Descriptive Boundaries</u>	15A NCAC 10C .0503
<u>Cherokee County</u>	15A NCAC 10F .0359
<u>Transylvania County</u>	15A NCAC 10F .0373
 RADIATION PROTECTION COMMISSION	
<u>Specific Licenses: General Requirements for Human Use of ...</u>	15A NCAC 11 .0321
<u>Specific Licenses: Human Use of Sealed Sources</u>	15A NCAC 11 .0322
<u>Specific Licenses: Manufacture of Radiopharmaceuticals</u>	15A NCAC 11 .0333
<u>Measurements/Dosages of Unsealed Radioactive Material for...</u>	15A NCAC 11 .0359
<u>Dose Limits for Individual Members or the Public</u>	15A NCAC 11 .1611
 PUBLIC HEALTH, COMMISSION FOR	
<u>STDS Applicable to Generators of Hazardous Waste-Part 262</u>	15A NCAC 13A .0107
<u>Refrigeration Thawing and Preparation of Food</u>	15A NCAC 18A .2609
<u>Storage and Handling of Utensils and Equipment</u>	15A NCAC 18A .2620
<u>General Requirements for Pushcarts and Mobile Food Units</u>	15A NCAC 18A .2638
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<u>Scope</u>	18 NCAC 13 .0101
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<u>Form Completion Requirements</u>	18 NCAC 13 .0203
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<u>Department's Delivery of Copy to Filer</u>	18	NCAC 13	.0209
<u>General Requirements</u>	18	NCAC 13	.0301
<u>Purpose</u>	18	NCAC 13	.0401
<u>Descriptions of Service Areas</u>	18	NCAC 13	.0403
<u>Required Map Components</u>	18	NCAC 13	.0405
<u>General Requirements for Service Area</u>	18	NCAC 13	.0407
<u>Map Boundary Detail Requirements for Service Areas Coveri...</u>	18	NCAC 13	.0408
<u>Map Boundary Detail Requirements for Service Areas Coveri...</u>	18	NCAC 13	.0409
<u>Increased Map Boundary Detail Requirements for Service Ar...</u>	18	NCAC 13	.0410
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<u>Additional Map Information Permitted</u>	18	NCAC 13	.0413
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<u>Electronic Map Format Requirements</u>	18	NCAC 13	.0415
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<u>One Annual Service Report Description and Map Information</u>	18	NCAC 13	.0802
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CHIROPRACTIC EXAMINERS, BOARD OF

<u>Advertising and Publicity</u>	21	NCAC 10	.0302
<u>Designation of Specialties</u>	21	NCAC 10	.0304

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<u>Approval Process for Key Administrative and Instructional...</u>	21	NCAC 30	.0613
<u>Management of Staff</u>	21	NCAC 30	.0614
<u>School Plant and Equipment</u>	21	NCAC 30	.0615
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<u>Continuing Education</u>	21	NCAC 57A	.0204
<u>Replacement Registration, License and Certificate Fees</u>	21	NCAC 57A	.0208
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<u>Temporary Practice</u>	21	NCAC 57A	.0210
<u>Nonresident Trainee Registration, Appraiser Licensure and...</u>	21	NCAC 57A	.0211
<u>Time and Place</u>	21	NCAC 57A	.0301
<u>Use of Titles</u>	21	NCAC 57A	.0401
<u>Advertising</u>	21	NCAC 57A	.0403
<u>Appraisal Reports</u>	21	NCAC 57A	.0405
<u>Supervision of Trainees</u>	21	NCAC 57A	.0407
<u>Appraisal Standards</u>	21	NCAC 57A	.0501
<u>Registered Trainee and Licensed Residential Real Estate A...</u>	21	NCAC 57B	.0101
<u>Certified Residential Real Estate Appraiser Course Requir...</u>	21	NCAC 57B	.0102
<u>Certified General Real Estate Appraiser Course Requirements</u>	21	NCAC 57B	.0103
<u>Facilities and Equipment</u>	21	NCAC 57B	.0204
<u>Certificate of Course Completion</u>	21	NCAC 57B	.0209
<u>Course Records</u>	21	NCAC 57B	.0210
<u>Course Content</u>	21	NCAC 57B	.0302
<u>Course Scheduling</u>	21	NCAC 57B	.0304
<u>Instructor Requirements</u>	21	NCAC 57B	.0306
<u>Criteria for Course Recognition</u>	21	NCAC 57B	.0307
<u>Applicability</u>	21	NCAC 57B	.0401
<u>Original Course Approval Fee</u>	21	NCAC 57B	.0402
<u>Fee for Renewal of Course Approval</u>	21	NCAC 57B	.0403
<u>Applicability</u>	21	NCAC 57B	.0501
<u>Original Course Approval Fee</u>	21	NCAC 57B	.0502
<u>Fee for Renewal of Course Approval</u>	21	NCAC 57B	.0503
<u>Application and Fee</u>	21	NCAC 57B	.0602
<u>Criteria for Course Approval</u>	21	NCAC 57B	.0603
<u>Course Operational Requirements</u>	21	NCAC 57B	.0606
<u>Certification of Course Completion</u>	21	NCAC 57B	.0607
<u>Sponsor Reporting of Continuing Education Credit</u>	21	NCAC 57B	.0608
<u>Renewal of Approval and Fees</u>	21	NCAC 57B	.0611
<u>Withdrawal or Denial of Approval</u>	21	NCAC 57B	.0612

ADMINISTRATIVE HEARINGS, OFFICE OF

<u>Availability of the North Carolina Register</u>	26	NCAC 02C	.0303
<u>Other Notices for Publication</u>	26	NCAC 02C	.0307

BUILDING CODE COUNCIL

LIST OF APPROVED TEMPORARY RULES
October 18, 2007 Meeting**EARLY CHILDHOOD VISION CARE, GOVERNOR'S COMMISSION ON**

<u>General</u>	10A NCAC 43E .0401
<u>Covered Services</u>	10A NCAC 43E .0402
<u>Eligibility</u>	10A NCAC 43E .0403
<u>Applications for Program Services</u>	10A NCAC 43E .0404
<u>Reimbursement to Providers</u>	10A NCAC 43E .0405

AGENDA
RULES REVIEW COMMISSION
Thursday, November 15, 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. Child Care Commission – 10A NCAC 09 .0604, .0805, .2704 (Bryan)
 - B. Social Services Commission – 10A NCAC 67A .0107 (Bryan)
 - C. Private Protective Services Board – 12 NCAC 07D .0601 (Bryan)
 - D. Criminal Justice Education and Training Standards Commission – 12 NCAC 09A .0206 (Bryan)
 - E. Marine Fisheries Commission – 15A NCAC 03O .0503 (Bryan)
 - F. Coastal Resources Commission – 15A NCAC 07J .0701, .0703 (Bryan)
 - G. Secretary of State – 18 NCAC 13 .0402, .0406, .0801 (Bryan)
 - H. Board of Landscape Architects – 21 NCAC 26 .0207, .0301 (DeLuca)
 - I. Appraisal Board – 21 NCAC 57A .0201 (DeLuca)
 - IV. Review of Secretary of State's Lobbying Rules (log attached)
 - V. Review of Log of Permanent Rule filings for RRC review filed between September 21 and October 22, 2007 (attached)
 - VI. Review of Temporary Rules
 - VII. Commission Business
 - Next meeting: December 13, 2007
-

Commission Review
Log of Permanent Rule Filings
Department of Secretary of State

* Approval Recommended, ** Objection Recommended, *** Other

SECRETARY OF STATE, DEPARTMENT OF

The rules in Chapter 12 concern lobbying including general provisions (.0100); forms completion (.0200); submission, review, amendment, and correction of documents (.0300); fees (.0400); economic information confidentiality protection (.0500); registration requirements and ending of lobbyist-principal relationship (.0600); disclosure of lobbyist and principal identity (.0700); lobbyist reporting (.0800); reporting by principal (.0900); solicitors and the solicitation of others (.1000); liaison personnel (.1100); confidentiality and records (.1200); preservation of records by lobbyists, principals, solicitors and liaisons (.1300); and department provision of lists to designated individuals (.1400).

<u>Scope</u>	18	NCAC 12	.0101
Adopt/*			
<u>Calculation of Time Periods</u>	18	NCAC 12	.0102
Adopt/*			
<u>Calculation of Quarterly Reporting Period</u>	18	NCAC 12	.0103
Adopt/*			
<u>Calculation of Monthly Reporting Period</u>	18	NCAC 12	.0104
Adopt/*			
<u>Waiver</u>	18	NCAC 12	.0105
Adopt/*			
<u>Factors for Waivers</u>	18	NCAC 12	.0106
Adopt/*			
<u>Mandatory Use of Departmental Forms</u>	18	NCAC 12	.0201
Adopt/*			
<u>Filing May Be Electronic or Paper</u>	18	NCAC 12	.0202
Adopt/*			
<u>Document Completion Requirements</u>	18	NCAC 12	.0203
Adopt/*			
<u>Signature Required</u>	18	NCAC 12	.0204
Adopt/*			
<u>Legal Name of Person or Entity Required</u>	18	NCAC 12	.0205
Adopt/*			
<u>Document Signature Required</u>	18	NCAC 12	.0206
Adopt/*			
<u>Signature for Entity</u>	18	NCAC 12	.0207
Adopt/*			
<u>Electronic Signature</u>	18	NCAC 12	.0208
Adopt/*			
<u>For Preparer Signature Required</u>	18	NCAC 12	.0209
Adopt/*			
<u>When Form Preparer Signature Not Required</u>	18	NCAC 12	.0210
Adopt/*			
<u>Signing Pursuant to Power of Attorney</u>	18	NCAC 12	.0211
Adopt/*			
<u>Signing and Executing a Form Under Oath</u>	18	NCAC 12	.0212
Adopt/*			
<u>Signature Verifies Information is True</u>	18	NCAC 12	.0213
Adopt/*			
<u>Signature and Execution Under Oath of an Electronically Fi...</u>	18	NCAC 12	.0214
Adopt/*			
<u>Contents of Affidavit for Electronic Filing Without Elect...</u>	18	NCAC 12	.0215
Adopt/*			

<u>Consequence of Failure to Deliver Affidavit</u> Adopt/*	18 NCAC 12 .0216
<u>General Submission Locations and Methods</u> Adopt/*	18 NCAC 12 .0301
<u>Filing by United States Mail</u> Adopt/*	18 NCAC 12 .0302
<u>Filing by Hand-Delivery or by Designated Delivery Service</u> Adopt/*	18 NCAC 12 .0303
<u>Filing by Electronic Mail</u> Adopt/*	18 NCAC 12 .0304
<u>Filing Electronically on the Department's Website</u> Adopt/*	18 NCAC 12 .0305
<u>No Filing by Facsimile if Fee Required</u> Adopt/*	18 NCAC 12 .0306
<u>Circumstances in Which Filing by Fax Permitted</u> Adopt/*	18 NCAC 12 .0307
<u>Submission of Original After Filing by Fax</u> Adopt/*	18 NCAC 12 .0308
<u>Rejection of Incomplete Forms</u> Adopt/*	18 NCAC 12 .0309
<u>Document Submission Date and Time</u> Adopt/*	18 NCAC 12 .0310
<u>Document Received</u> Adopt/*	18 NCAC 12 .0311
<u>Proof of Submission</u> Adopt/*	18 NCAC 12 .0312
<u>Grounds for Department Rejection of Submitted Document</u> Adopt/*	18 NCAC 12 .0313
<u>Principal's Authorization Statement Omissions Requiring ...</u> Adopt/*	18 NCAC 12 .0314
<u>Omissions From Report Under Oath Requiring Correction Wit...</u> Adopt/*	18 NCAC 12 .0315
<u>Omissions Requiring Correction Within Seven Days</u> Adopt/*	18 NCAC 12 .0316
<u>Effective Date of Complete Submission or Document</u> Adopt/*	18 NCAC 12 .0317
<u>Rejected Documents</u> Adopt/*	18 NCAC 12 .0318
<u>Effective Date of Late Document</u> Adopt/*	18 NCAC 12 .0319
<u>Process for Amending a Document</u> Adopt/*	18 NCAC 12 .0320
<u>Notarization of Amended Quarterly Document</u> Adopt/*	18 NCAC 12 .0321
<u>Effect of Amended Document</u> Adopt/*	18 NCAC 12 .0322
<u>General</u> Adopt/*	18 NCAC 12 .0401
<u>Form of Payment</u> Adopt/*	18 NCAC 12 .0402
<u>Return of Fee Instrument by Issuing Institution</u> Adopt/*	18 NCAC 12 .0403

<u>Limitation on Fee Reduction or Waiver</u> Adopt/*	18	NCAC 12	.0404
<u>Non-Profits to Which No Fee Reduction or Waiver Shall be ...</u> Adopt/*	18	NCAC 12	.0405
<u>Non-Profit Fee Reduction Procedure</u> Adopt/*	18	NCAC 12	.0406
<u>Submission of Reduced Fee</u> Adopt/*	18	NCAC 12	.0407
<u>Submission of Documentation Supporting Fee Reduction Request</u> Adopt/*	18	NCAC 12	.0408
<u>Fee Reduction Applies to Both Lobbyist and Principal</u> Adopt/*	18	NCAC 12	.0409
<u>Payment of Remainder of Fee if Reduction Denied</u> Adopt/*	18	NCAC 12	.0410
<u>Consequences of Failure to Pay Remainder of Fee</u> Adopt/**	18	NCAC 12	.0411
<u>Nonprofit Fee Waiver Procedure</u> Adopt/*	18	NCAC 12	.0412
<u>Submission of Fee With Request for Waiver</u> Adopt/*	18	NCAC 12	.0413
<u>Refund of Fee if Request for Waiver Granted</u> Adopt/*	18	NCAC 12	.0414
<u>Submission of Documentation Supporting Fee Waiver Request</u> Adopt/*	18	NCAC 12	.0415
<u>Fee Waiver Applies to Both Lobbyist and Principal</u> Adopt/*	18	NCAC 12	.0416
<u>General Proof of Nonprofit Status</u> Adopt/*	18	NCAC 12	.0417
<u>Officer Authorized to Demonstrate Non-Profit Status of No...</u> Adopt/*	18	NCAC 12	.0418
<u>Officer Authorized to Sign on Behalf of Nonprofit Corpora...</u> Adopt/*	18	NCAC 12	.0419
<u>Officer Authorized to Sign on Behalf of Unincorporated As...</u> Adopt/*	18	NCAC 12	.0420
<u>Submission of Federal Tax-Exempt Determination Letter</u> Adopt/*	18	NCAC 12	.0421
<u>Documents to be Submitted by Nonprofit Principals Without...</u> Adopt/*	18	NCAC 12	.0422
<u>Additional Information for Fee Reduction for Nonprofit Wi...</u> Adopt/*	18	NCAC 12	.0423
<u>Additional Information for Fee Reduction for Nonprofit Wi...</u> Adopt/*	18	NCAC 12	.0424
<u>Contents for Fee Reduction Request for Nonprofit Without ...</u> Adopt/*	18	NCAC 12	.0425
<u>Additional Information for Fee Waiver</u> Adopt/*	18	NCAC 12	.0426
<u>Request for Protection of Confidentiality</u> Adopt/*	18	NCAC 12	.0501
<u>Timing of Submission of Request for Protection of Confide...</u> Adopt/*	18	NCAC 12	.0502
<u>Consequences of Failure to Request Protection of Confiden...</u> Adopt/*	18	NCAC 12	.0503

<u>One Designation Form per Activity</u> Adopt/*	18	NCAC 12	.0504
<u>Economic Information Protection Forms Shall be Used to Re...</u> Adopt/*	18	NCAC 12	.0505
<u>Principal's Economic Information Protection Authorizatio...</u> Adopt/*	18	NCAC 12	.0506
<u>Principal's Economic Information Protection Registration ...</u> Adopt/*	18	NCAC 12	.0507
<u>Principal's Economic Information Protection Monthly or Qu...</u> Adopt/*	18	NCAC 12	.0508
<u>Lobbyist's Economic Information Protection Monthly or Qua...</u> Adopt/*	18	NCAC 12	.0509
<u>Principal's Authorization for Lobbying Unrelated to Econo...</u> Adopt/*	18	NCAC 12	.0510
<u>Lobbyist Registration for Lobbying Unrelated to Economic ...</u> Adopt/*	18	NCAC 12	.0511
<u>Principal's Documents Unrelated to Economic Information P...</u> Adopt/*	18	NCAC 12	.0512
<u>Lobbyist's Documents Unrelated to Economic Information Pr...</u> Adopt/*	18	NCAC 12	.0513
<u>Rejection of Non-Economic Designation Information - General</u> Adopt/*	18	NCAC 12	.0514
<u>Correction Within Seven Business Days of Economic Informa...</u> Adopt/*	18	NCAC 12	.0515
<u>Method of Correcting Document Containing Information Not ...</u> Adopt/*	18	NCAC 12	.0516
<u>Rejection of Uncorrected Document Containing Information...</u> Adopt/*	18	NCAC 12	.0517
<u>Contents of Economic Information Protection Request</u> Adopt/*	18	NCAC 12	.0518
<u>Description of the Economic Development Activity Entitled...</u> Adopt/*	18	NCAC 12	.0519
<u>Identification of Authorized Individual</u> Adopt/*	18	NCAC 12	.0520
<u>Designation of Authorized State or Local Government Emplo...</u> Adopt/*	18	NCAC 12	.0521
<u>Confirmation Signature</u> Adopt/*	18	NCAC 12	.0522
<u>Verification by Government Official Signature</u> Adopt/*	18	NCAC 12	.0523
<u>Verification by Authorized Official Signature</u> Adopt/*	18	NCAC 12	.0524
<u>Department Action Upon Receipt of Release</u> Adopt/*	18	NCAC 12	.0525
<u>Department Action Upon Receipt of Information Indicating ...</u> Adopt/*	18	NCAC 12	.0526
<u>Principal and Authorized Government Official Response</u> Adopt/*	18	NCAC 12	.0527
<u>Confirmation of Announcement by Principal and Authorized ...</u> Adopt/*	18	NCAC 12	.0528
<u>Confirmation that Release is Authorized</u> Adopt/*	18	NCAC 12	.0529

<u>Conditions When Response to Department Contact Results in... Adopt/*</u>	18	NCAC 12	.0530
<u>Conditions When Response to Department Contact Results in... Adopt/*</u>	18	NCAC 12	.0531
<u>Conditions when Response to Department Contact May Result... Adopt/*</u>	18	NCAC 12	.0532
<u>Secretary of Commerce Designation by Principal Adopt/*</u>	18	NCAC 12	.0533
<u>Authorized Local Government Official May Delegate Designa... Adopt/*</u>	18	NCAC 12	.0534
<u>Secretary of Commerce Default Designation Adopt/*</u>	18	NCAC 12	.0535
<u>Continuation of Economic Information Protection from Prem... Adopt/*</u>	18	NCAC 12	.0536
<u>Release of Information to the Department of Commerce Adopt/*</u>	18	NCAC 12	.0537
<u>Certification Process Involving the Department of Commerce Adopt/*</u>	18	NCAC 12	.0538
<u>Department of Commerce Certification of Status Adopt/*</u>	18	NCAC 12	.0539
<u>Continuation Shall Include Certification Adopt/*</u>	18	NCAC 12	.0540
<u>Annual Certification of Economic Protection Designation Adopt/*</u>	18	NCAC 12	.0541
<u>Extension of Recertification Without Re-registration Adopt/*</u>	18	NCAC 12	.0542
<u>Authorized Government Official can Extend Certification Adopt/*</u>	18	NCAC 12	.0543
<u>Authorized Government Official File Release Form Adopt/*</u>	18	NCAC 12	.0544
<u>Contents of Release Adopt/*</u>	18	NCAC 12	.0545
<u>Change in Information Adopt/*</u>	18	NCAC 12	.0546
<u>Calculation of Time to Determine Registration Requirements Adopt/*</u>	18	NCAC 12	.0601
<u>Reporting Changes in Matters on Which the Registrant Expec... Adopt/*</u>	18	NCAC 12	.0602
<u>End of Lobbyist and Principal Relationship Adopt/*</u>	18	NCAC 12	.0603
<u>Termination of Registration Adopt/*</u>	18	NCAC 12	.0604
<u>Resignation Adopt/*</u>	18	NCAC 12	.0605
<u>Ending of Lobbyist-Principal Relationship Does Not End Re... Adopt/*</u>	18	NCAC 12	.0606
<u>Lobbyist Disclosure of Identity of Principal to Department Adopt/*</u>	18	NCAC 12	.0701
<u>Lobbyist Shall not Identify Intermediary Entity at Principal Adopt/*</u>	18	NCAC 12	.0702
<u>Consequences of Failure to Disclose the Principal in Fact... Adopt/*</u>	18	NCAC 12	.0703

<u>Principal Concealment of Identity</u> Adopt/**	18	NCAC 12	.0704
<u>Lobbyist Identification</u> Adopt/*	18	NCAC 12	.0705
<u>Disclosure to a Designated Individual of the Identity of ...</u> Adopt/*	18	NCAC 12	.0706
<u>Disclosure to a Designated Individual of the Identity of ...</u> Adopt/*	18	NCAC 12	.0707
<u>Contents of Disclosure of the Identity of the Specific Pr...</u> Adopt/*	18	NCAC 12	.0708
<u>Quarterly Report May Include Last Month of Quarter</u> Adopt/*	18	NCAC 12	.0801
<u>Quarterly Report may Incorporate Separately Filed Monthly...</u> Adopt/*	18	NCAC 12	.0802
<u>Quarterly Report Verification of Monthly Report Information</u> Adopt/*	18	NCAC 12	.0803
<u>Invitation not Submitted</u> Adopt/*	18	NCAC 12	.0804
<u>Reporting of Contracts in the Normal Conduct of Daily Life</u> Adopt/*	18	NCAC 12	.0805
<u>Method of Reporting Compensation</u> Adopt/*	18	NCAC 12	.0901
<u>Compensation</u> Adopt/*	18	NCAC 12	.0902
<u>Separate Lobbyist Compensation Reports may be Included on...</u> Adopt/*	18	NCAC 12	.0903
<u>Lobbyist Compensation shall be Separately Reported</u> Adopt/*	18	NCAC 12	.0904
<u>Quarterly Report May Include Last Month of Quarter Report</u> Adopt/*	18	NCAC 12	.0905
<u>Quarterly Report May Incorporate Separately Filed Monthly...</u> Adopt/*	18	NCAC 12	.0906
<u>Quarterly Report Verification of Monthly Report Information</u> Adopt/*	18	NCAC 12	.0907
<u>Attendee List Submission Not Required</u> Adopt/**	18	NCAC 12	.0908
<u>Invitations not Submitted</u> Adopt/*	18	NCAC 12	.0909
<u>Reporting of Contracts in the Normal Conduct of Daily Life</u> Adopt/*	18	NCAC 12	.0910
<u>Solicitor Registration</u> Adopt/*	18	NCAC 12	.1001
<u>When Registration with the Department is Required</u> Adopt/*	18	NCAC 12	.1002
<u>Calculation of Production Costs in Order to Determine Reg...</u> Adopt/*	18	NCAC 12	.1003
<u>Calculation of Transmission Costs in Order to Determine R...</u> Adopt/*	18	NCAC 12	.1004
<u>Calculation of Event Costs in Order to Determine Registra...</u> Adopt/*	18	NCAC 12	.1005
<u>Reporting for Remainder of Year of Registration as Solicitor</u> Adopt/*	18	NCAC 12	.1006

<u>Report Contents</u> Adopt/*	18 NCAC 12 .1007
<u>Contracts Reportable</u> Adopt/*	18 NCAC 12 .1008
<u>Reporting</u> Adopt/*	18 NCAC 12 .1101
<u>Reporting of Confidential Information</u> Adopt/*	18 NCAC 12 .1201
<u>General Requirements Relating to Protective Order Payees ...</u> Adopt/*	18 NCAC 12 .1202
<u>Confidentiality Request Contents</u> Adopt/*	18 NCAC 12 .1203
<u>Disclosure of Confidential Information for which There is...</u> Adopt/*	18 NCAC 12 .1204
<u>Confidentiality of Investigative Records</u> Adopt/*	18 NCAC 12 .1205
<u>General Requirements</u> Adopt/*	18 NCAC 12 .1301
<u>Record Retention Requirement if Investigation Open</u> Adopt/*	18 NCAC 12 .1302
<u>Three Year Time Period for Maintenance of Records Related...</u> Adopt/*	18 NCAC 12 .1303
<u>Requirement for Original or Equivalent</u> Adopt/*	18 NCAC 12 .1304
<u>Lobbyist's Compensation Records</u> Adopt/*	18 NCAC 12 .1305
<u>Principal's Records of Lobbyist's Compensation</u> Adopt/*	18 NCAC 12 .1306
<u>Maintenance of Method of Principal's Records Related to E...</u> Adopt/*	18 NCAC 12 .1307
<u>Lobbyist's Maintenance of Records Related to Expenditure ...</u> Adopt/*	18 NCAC 12 .1308
<u>Solicitor's Maintenance of Records Related to Expenditure ...</u> Adopt/*	18 NCAC 12 .1309
<u>Principal's Maintenance of Records Reallocation of Lobbyi...</u> Adopt/*	18 NCAC 12 .1310
<u>Lobbyist's Maintenance of Records Reallocation of Lobbyin...</u> Adopt/*	18 NCAC 12 .1311
<u>Liaison's Records</u> Adopt/*	18 NCAC 12 .1312
<u>Furnishing Lobbyist Lists to Designated Individuals for W...</u> Adopt/*	18 NCAC 12 .1401
<u>Furnishing of Lobbyist List to Designated Individuals by ...</u> Adopt/*	18 NCAC 12 .1402
<u>Rejection of Electronically Furnished List</u> Adopt/*	18 NCAC 12 .1403

Commission Review
Log of Permanent Rule Filings
September 21, 2007 through October 22, 2007

AGRICULTURE, COMMISSIONER OF

The rules in Chapter 58 are for the agricultural development and farmland preservation trust fund.

<u>Purpose</u>	02	NCAC 58	.0101
Adopt/*			
<u>Funding Priorities</u>	02	NCAC 58	.0102
Adopt/*			
<u>Definitions</u>	02	NCAC 58	.0103
Adopt/*			
<u>Eligible Applicants</u>	02	NCAC 58	.0104
Adopt/*			
<u>Evaluation of Applications</u>	02	NCAC 58	.0105
Adopt/*			
<u>Grant Agreement</u>	02	NCAC 58	.0106
Adopt/*			
<u>Reporting</u>	02	NCAC 58	.0107
Adopt/*			
<u>Records</u>	02	NCAC 58	.0108
Adopt/*			

CEMETERY COMMISSION

The rules in Subchapter 5C are rules dealing with the licensing of cemeteries (.0100); cemetery sales organizations, management organizations and brokers (.0200); and individual pre-need salespeople (.0300).

<u>Application and Filing Fee</u>	04	NCAC 05C	.0301
Amend/*			
<u>Renewal</u>	04	NCAC 05C	.0307
Amend/*			

HEALTH AND HUMAN SERVICES, DEPARTMENT OF

Chapter 1 contains rules from the Office of the Secretary.

Subchapter 1G concerns the North Carolina New Organizations Vision Award (NC NOVA).

<u>Process Review</u>	10A	NCAC 01G	.0103
Adopt/*			

INSURANCE, DEPARTMENT OF

The rules in Chapter 10 are from the property and casualty division and include general provisions (.0100); interpretations (.0300); fire and casualty rating organizations (.0400); consent to rate (.0600); insurance in unlicensed foreign and alien companies (.0700); licensing of rating organizations (.0800); licensing of advisory organizations (.0900); licensing of joint underwriting organizations (.1000); rate filings (.1100); forms filings (.1200); NC Joint Underwriting Association (.1300); NC Insurance Underwriting Association (.1400); prospective loss costs filings (.1600); and licensing of statistical organizations (.1700).

<u>Form F</u>	11	NCAC 10	.0711
Repeal/*			
<u>"Form F" Report</u>	11	NCAC 10	.0718
Amend/*			

The rules in Chapter 11 are from the Department of Insurance and concern financial evaluation of insurance companies. The rules in Subchapter 11F are actuarial rules including general provisions (.0100); health insurance minimum reserve standards (.0200); actuarial opinion and memorandum (.0300); commissioner's reserve valuation method (.0400); new annuity valuation mortality tables (.0500); recognition of the 2001 CSO mortality table for use in determining minimum reserve liabilities and non-forfeiture benefits (.0600); determining minimum reserve liabilities for credit life insurance (.0700); and preferred class structure mortality table (.0800).

Limited Use of Anticipated Withdrawal Rates
Adopt/*

11 NCAC 11F .0406

The rules in Chapter 16 are from the Actuarial Division and relate to fire and casualty statistical data (.0100); individual accident and health insurance (.0200); credit life, accident, and health rate deviation (.0400); credit unemployment minimum loss ratio standard (.0500); health maintenance organization filings and standards (.0600); health maintenance organization claim reserve data requirements (.0700) and small employer group health insurance actuarial certification (.0800).

Small Employer Group Health Insurance Actuarial Certifica...
Adopt/*

11 NCAC 16 .0801

PRIVATE PROTECTIVE SERVICES BOARD

The rules in Subchapter 7D cover general provisions (.0100); licenses and trainee permits (.0200); guard dog services (.0300); counterintelligence (.0400); polygraphs (.0500); psychological stress evaluators (PSE) (.0600); unarmed and armed security guards (.0700-.0800); firearms certificate (.0900); recovery funds (.1000); private investigator associates (.1100); firearms instructor trainers (.1200); and continuing education (.1300).

Requirements for a Firearms Trainer Certificate
Amend/*

12 NCAC 07D .0901

Post-Delivery Report for Firearms Training Courses
Amend/*

12 NCAC 07D .0908

Unarmed Guard Trainer Certificate
Amend/*

12 NCAC 07D .0909

Renewal of an Unarmed Guard Trainer Certificate
Amend/*

12 NCAC 07D .0911

SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION

Rules in Subchapter 10B are from the N. C. Sheriffs' Education and Training Standards Commission. These rules govern the commission organization and procedure (.0100); enforcement rules (.0200); minimum standards for employment as a justice officer (deputy or jailer) (.0300); certification of justice officers (.0400); standards and accreditation for justice officers schools, training programs, and the instructors (.0500-.0900); certificate and awards programs for sheriffs, deputies, justice officers, jailers, reserve officers, and telecommunications (.1000-.1700); in-service training (.2000); and firearms in-service training and re-qualification (.2100).

Definitions
Amend/*

12 NCAC 10B .0103

Suspension: Revocation: or Denial of Certification
Amend/*

12 NCAC 10B .0204

Period of Suspension: Revocation: or Denial
Amend/*

12 NCAC 10B .0205

Summary Suspensions: or Denials
Amend/*

12 NCAC 10B .0206

Documentation of Educational Requirements
Amend/*

12 NCAC 10B .0302

<u>Minimum Training Requirements</u>	12	NCAC 10B .2005
Amend/*		
<u>Sheriff/Agency head Responsibilities</u>	12	NCAC 10B .2007
Amend/*		

ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF

The rules in Chapter 1 are departmental rules.

The rules in Subchapter 1N concern the drinking water state revolving fund including general provisions (.0100); availability of loans (.0200); eligibility requirements (.0300); applications (.0400); review and assignment of priorities (.0500); priority criteria (.0600); award, commitment and disbursement of loans (.0700); loan repayments (.0800); and inspection and audit of projects (.0900).

<u>Purpose</u>	15A	NCAC 01N .0101
Amend/*		
<u>Definitions</u>	15A	NCAC 01N .0102
Amend/*		
<u>Applicable Procedures</u>	15A	NCAC 01N .0103
Amend/*		
<u>Availability of Loans</u>	15A	NCAC 01N .0201
Amend/*		
<u>Loan Restrictions</u>	15A	NCAC 01N .0202
Amend/*		
<u>Determination of Eligibility</u>	15A	NCAC 01N .0301
Amend/*		
<u>Eligible Project Costs</u>	15A	NCAC 01N .0303
Amend/*		
<u>Filing Deadlines</u>	15A	NCAC 01N .0401
Amend/*		
<u>Application Procedures</u>	15A	NCAC 01N .0402
Amend/*		
<u>Project Schedule and Resolution</u>	15A	NCAC 01N .0403
Repeal/*		
<u>Assignment of Priorities</u>	15A	NCAC 01N .0502
Amend/*		
<u>General Criteria</u>	15A	NCAC 01N .0601
Repeal/*		
<u>Public Health and Compliance</u>	15A	NCAC 01N .0602
Repeal/*		
<u>Consolidation</u>	15A	NCAC 01N .0603
Repeal/*		
<u>Reliability</u>	15A	NCAC 01N .0604
Repeal/*		
<u>Affordability</u>	15A	NCAC 01N .0605
Repeal/*		
<u>Source Protection and Management</u>	15A	NCAC 01N .0606
Repeal/*		
<u>Determination of Awards and Bypass Procedures</u>	15A	NCAC 01N .0701
Amend/*		
<u>Disbursement of Loans</u>	15A	NCAC 01N .0704
Amend/*		
<u>Interest Rates</u>	15A	NCAC 01N .0801

Amend/*

Audit

15A NCAC 01N .0902

Amend/*

SOIL AND WATER CONSERVATION COMMISSION

The rules in Chapter 6 are from the soil and water conservation commission

The rules in Subchapter 6I concern the community conservation assistance program for nonpoint source pollution control.

Purpose

15A NCAC 06I .0101

Adopt/*

Definitions for Subchapter 06I

15A NCAC 06I .0102

Adopt/*

Allocation Guidelines and Procedures

15A NCAC 06I .0103

Adopt/*

Best Management Practices Eligible for Cost Share Payments

15A NCAC 06I .0104

Adopt/*

Cost Share and Incentive Payments

15A NCAC 06I .0105

Adopt/*

Technical Assistance Funds

15A NCAC 06I .0106

Adopt/*

ELECTRICAL CONTRACTORS, BOARD OF EXAMINERS FOR

The rules in Chapter 18B are from the Board of Electrical Contractors including general provisions (.0100); examinations and qualifications (.0200); terms and definitions applicable to licensing (.0300); licensing requirements (.0400); reciprocal licensing agreements with other states (.0700); special restricted licenses (.0800); violations and contested case hearings (.0900); forms, certificates, and publications of the board (.1000); and continuing education courses and requirements (.1100).

Fees

21 NCAC 18B .0209

Amend/*

Definitions and Explanations of Terms Applicable to Licens...

21 NCAC 18B .0303

Amend/*

Licensing Requirements

21 NCAC 18B .0404

Amend/*

STATE PERSONNEL COMMISSION

The rules in Title 25 are from the Office of State Personnel and cover all aspects of regulation of state employment under the State Personnel Act.

The rules in Subchapter 1E cover employee benefits including general leave provisions (.0100); vacation leave (.0200); sick leave (.0300); workers compensation leave (.0700); military leave (.0800); holidays (.0900); miscellaneous leave (.1000); other types of leave without pay (.1100); community involvement (.1200); the voluntary shared leave program (.1300); family and medical leave (.1400); child involvement leave (.1500); community services leave (.1600); and administrative leave (.1700).

Separation Payment of Vacation Leave

25 NCAC 01E .0210

Amend/*

Separation

25 NCAC 01E .0311

Amend/*

Administration

25 NCAC 01E .1303

<u>Qualifying to Participate in Voluntary Shared Leave Program</u>	25	NCAC 01E .1304
Amend/*		
<u>Donor Guidelines</u>	25	NCAC 01E .1305
Amend/*		
<u>Leave Accounting Procedures</u>	25	NCAC 01E .1306
Amend/*		
<u>Purpose and Scope</u>	25	NCAC 01E .1401
Amend/*		
<u>Other Contagious Disease</u>	25	NCAC 01E .1702
Repeal/*		

The rules in Subchapter 1N are workplace environment and health rules including State Employees Workplace Requirements Program for Safety and Health (.0100); personal protective equipment (.0200); AIDS in the workplace (.0300) and communicable disease emergency (.0400).

<u>Purpose</u>	25	NCAC 01N .0401
Adopt/*		
<u>Reporting Communicable Diseases</u>	25	NCAC 01N .0402
Adopt/*		
<u>Actions During a Pandemic</u>	25	NCAC 01N .0403
Adopt/*		
<u>Mandatory Employees</u>	25	NCAC 01N .0404
Adopt/*		
<u>Compensation of Mandatory Employees</u>	25	NCAC 01N .0405
Adopt/*		
<u>Leave</u>	25	NCAC 01N .0406
Adopt/*		
<u>Verification</u>	25	NCAC 01N .0407
Adopt/*		
<u>Review of Policy</u>	25	NCAC 01N .0408
Adopt/*		
<u>Emergency Lay-Off</u>	25	NCAC 01N .0409
Adopt/*		
<u>Waiver of Policies</u>	25	NCAC 01N .0410
Adopt/*		

BUILDING CODE COUNCIL

<u>NC Fire Code - Installation standards, standpipe systems</u>	905.2
Adopt/*	

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
Shannon Joseph

<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. Agustin Zeferino Hernandez, T/A El Pujido	06 ABC 2275	Chess	10/09/07	
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	
ABC Commission v. 703 Jonestown, Inc., T/A Red Rooster	07 ABC 0305	Webster	10/04/07	
ABC Commission v. Donna Darlene Johnston, T/A Wagon Wheel	07 ABC 0738	Webster	09/20/07	
ABC Commission v. Jamal Kamel Hajeh, T/A Pleasant Grove Grocery	07 ABC 0883	Morrison	09/11/07	
A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions .				
<u>CRIME VICTIMS COMPENSATION</u>				
Robert White, Jr., v. Crime Victims Compensation Commission	07 CPS 0497	Webster	09/12/07	
Pricilla McAllister v. Crime Victims Compensation Commission	06 CPS 1166	Webster	06/14/07	
<u>DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES</u>				
DAG, Food and Drug Protection Division, Pesticide Section v. Jeffrey A. Oxley	06 DAG 0636	Webster	10/04/07	
<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	
Mary Elizabeth Matthews v. DHHS, Division of Medical Assistance	06 DHR 0485	Mann	10/01/07	
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	
Egusta Ford v. DMA, Third Party Recovery	06 DHR 2364	Gray	05/14/07	
Stacey M Saylor v. Health Care Personnel Registry	06 DHR 2413	Gray	09/24/07	
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	

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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
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
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
Stacey M. Saylon v. Health Care Personnel Registry	07 DHR 0662	Gray	09/24/07
Carmalitta M. Taylor v. DHHS	07 DHR 0832	Lassiter	08/22/07
Carolyn Tolson v. DHHS	07 DHR 0850	Lassiter	08/22/07
Dorothy Rose, Willie Rose, v. DHHS	07 DHR 0859	Lassiter	10/08/07
Linda Thompson v. DHHS	07 DHR 0862	Lassiter	08/29/07
Keith Beddingfield c/o Thyllis Smith ATFTH Staff, Value Options, Inc.	07 DHR 1059	Overby	10/04/07
Tonya Thompson v. DHHS	07 DHR 1062	Gray	09/07/07
Gina Fuller v. Value Options	07 DHR 1137	Overby	10/04/07
Heavenly Healthcare, AD Fulton v. NC DHHS/Division of Medical Asst.	07 DHR 1262	Overby	10/04/07
Michael J. Graves v. DHHS, DFS, Mental Health Licensure and Certification Section	07 DHR 1468	Overby	10/10/07
Beacon Child Care Center, DHHS, Division of Public Health, Child and Adult Care Food Program	07 DHR 1470	Elkins	10/16/07

DEPARTMENT OF JUSTICE

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
Larry Talbert v. Private Protective Services Board	07 DOJ 0036	Morrison	04/05/07
Patricia Ann Davis v. Criminal Justice Education and Training Standards Commission			
Patricia Ann Davis v. Criminal Justice Education and Training Standards Commission	07 DOJ 0045	Gray	04/03/07
Antonio Jose Coles v. Sheriffs' Education and Training Standards Comm.	07 DOJ 0142	Overby	04/03/07
Joseph Lester Early II v. Sheriffs' Education and Training Standards Comm.	07 DOJ 0143	Lassiter	09/28/07
Jeffrey S. Moore v. Private Protective Services Board	07 DOJ 0468	Morrison	06/08/07
Roy Lee Burgess v. DOJ, Campus Police Program	07 DOJ 0540	Gray	09/25/07
Norman Jerome Turner v. Criminal Justice Education and Training Standards Commission	07 DOJ 0599	Overby	09/19/07
Paul James Dunn v. Sheriffs' Education and Training Standards Commission	07 DOJ 0729	Overby	09/19/07
Frank Burton Scofield v. DOJ, Company Police Program	07 DOJ 0814	Chess	10/10/07
William Brian Martin v. Alarm Systems Licensing Board	07 DOJ 0929	Gray	10/16/07

DEPARTMENT OF TRANSPORTATION

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

Sparkle Nicole Jones v. DST and Denise Virginia Lee and Arthur E. Seay, III	05 DST 1612	Gray	05/23/07
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Charles R. Franklin, Jr. v. DST, Retirement Systems Division	06 DST 1672	Overby	05/14/07	22:01 NCR	85
Elaine Scarlett v. DST, Retirement Systems Division	07 DST 0452	Webster	10/12/07		

EDUCATION, STATE BOARD OF

Billy Ray Brown v. Department of Public Instruction	02 EDC 1272	Webster	06/14/07		
Lynn C. Sasser v. Board of Education	06 EDC 0044	Elkins	05/04/07		
Karen Stallings v. Board of Education	06 EDC 1725	Elkins	05/08/07	22:01 NCR	90
Phyllis Simms v. Board of Education	06 EDC 1780	Elkins	04/02/07		
April Williams Compton v. National Board Certification Committee Public Schools of NC	06 EDC 1816	Webster	05/18/07		
John M. Radford, Jr., v. Dept. of Public Instruction	06 EDC 1841	Webster	08/17/07		
Vonnita Hart Taylor v Department of Public Instruction	06 EDC 2203	Webster	09/20/07		
Ms. Victoria L. Ruffin v. Board of Education	06 EDC 2218	Overby	06/01/07		
Connie R. Austin v. Dept. of Public Instruction	06 EDC 2270	Elkins	04/02/07		
Merredith Page v. Board of Education	07 EDC 0056	Webster	04/19/07		
Jane H. Layton v. Department of Public Instruction	07 EDC 0182	Webster	09/18/07		
Olga Patricia Cancino v. Public Schools of NC et al.	07 EDC 0904	Chess	10/10/07		

DEPT. OF ENVIRONMENT AND NATURAL RESOURCES

George A. Jenkins, Jr, d/b/a Lake Juno Park, Inc., v. Dept. of Environmental	05 EHR 1161	Lassiter	02/16/07		
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CONTESTED CASE DECISIONS

Health			
Wayne Smith, Jack in the Box, Inc. v. DENR	05 EHR 1237	Hunter	10/02/07
Robert D. Bryant v. DENR, Division of Coastal Management and Stanley L. McCauley	05 EHR 2185	Chess	02/16/07
Franklin Grading Co., Inc. v. DENR, Division of Air Quality	06 EHR 0239	Lassiter	10/01/07
Wildcat Investments LLC, James Cook v. Cherokee County Health Depart.	06 EHR 0631	Gray	04/23/07
Randy Dockery v. Cherokee County Health Department	06 EHR 0728	Gray	04/23/07
Alan Raper v. Cherokee Health Department	06 EHR 0873	Gray	04/23/07
Christopher Perry v. Caldwell County Health Department	06 EHR 1010	Elkins	06/05/07
Franklin Grading Co., Inc. v. DENR, Division Air Quality	06 EHR 1525	Lassiter	10/01/07
Robert Don Foster v. DENR, Div. of Coastal Management	06 EHR 1833	Morrison	05/11/07 22:01 NCR 95
Andrew Price v. DENR, Div. of Coastal Management and William F. Canady	06 EHR 1834	Morrison	05/11/07 22:01 NCR 95
Conrad McLean v. DENR/Division of Air Quality	06 EHR 2243	Gray	05/03/07
Terry Collins v. DENR, Division of Waste Management	06 EHR 2414	Gray	05/01/07
Riverwalk, LLC v. Town of Highlands	06 EHR 2420	Gray	10/01/07
Paul A. Stennett v. DENR, Public Water Supply Section	07 EHR 0170	Overby	05/04/07
Daniel R. Wroblewski v. DENR and Coastal Management	07 EHR 0217	Overby	05/08/07
James Wallace v. DENR	07 EHR 0600	Elkins	09/18/07
Max Plowman v. DENR, Division of Air Quality	07 EHR 0828	Webster	09/25/07
<u>BOARD OF EXAMINERS FOR ENGINEERS AND SURVEYORS</u>			
Board of Examiners for Engineers and Surveyors v. C. Phil Wagoner, PLS No. L-2416	07 EHR 0141	Morrison	08/21/07
<u>GOVERNOR'S OFFICE</u>			
Jerry W. Conner (NCDOC#0085045) and James A. Campbell (NCDOC# 0063592) v. Council of State	07 GOV 0238	Morrison	08/09/07 22:04 NCR 280
James Edwards Thomas and Marcus Robinson and Archie Lee Billings v. Council of State	07 GOV 0264	Morrison	08/09/07 22:04 NCR 280
<u>DEPARTMENT OF INSURANCE</u>			
Toni W. Goodwin v. Teachers and State Employees Comprehensive Major Medical Plan	06 INS 1016	Overby	05/07/07
Larry Miller v. Teachers' and State Employees' Comprehensive Major Medical Plan	06 INS 1236	Overby	04/11/07
Randall A. Meder v. Teachers' and State Employees' Comprehensive Major Medical Plan	06 INS 1413	Overby	07/16/07 22:04 NCR 264
Barbara Smith Pearce v. State Health Plan	07 INS 0008	Overby	07/12/07 22:04 NCR 273
<u>MISCELLANEOUS</u>			
Sylvia Oliver v. Superior Court Judges, Clerk of Court Judges	07 MIS 1603	Lassiter	10/18/07
<u>OFFICE OF ADMINISTRATIVE HEARINGS</u>			
Senora Kemp v. OAH	07 OAH 0776	Lassiter	09/06/07
<u>OFFICE OF STATE PERSONNEL</u>			
Willie G. Shaw v. Division of Forest Resources	05 OSP 0414	Overby	04/13/07
Deona R. Hooper v. NCCU	06 OSP 1071	Lassiter	04/25/07
Franklin Leaven v. DHHS, DDH	06 OSP 1132	Lassiter	10/17/07
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
Keith Dial v. Dept. of Juvenile Justice and Delinquency Prevention	06 OSP 2346	Gray	04/20/07
Larry L. Deyton v. Mitchell County Commission Board	06 OSP 2415	Gray	04/19/07
Rose M. Baltezare v. City of Brevard	07 OSP 0009	Gray	04/03/07
Dorothy H. Williams v. John Umstead Hospital	07 OSP 0265	Lassiter	04/24/07
Pei Wang v. UNC-Chapel Hill	07 OSP 0273	Lassiter	04/19/07
Candace R. Berguson v. Caswell County DSS and Mr. Jeff Earp, County Manager	07 OSP 0294	Lassiter	04/20/07
Shannon Harris Tadlock v. Wilson County, Department of Public Health	07 OSP 0491	Lassiter	05/07/07
Patricia G. Flanigan v. Fayetteville State University	07 OSP 0503	Overby	05/10/07
Tobias M. Guillaume v. FSU Police & Public Safety	07 OSP 0565	Overby	05/10/07
Archie Andrew Copeland v. Dept. of Juvenile Justice & Delinquency Prevention	07 OSP 0976	Lassiter	08/29/07
Patricia Bethea Williams v. NC A&T State University	07 OSP 1053	Overby	08/28/07
<u>SECRETARY OF STATE</u>			
Mary C. Brandon v. Department of the Secretary of State	06 SOS 1839	Elkins	04/02/07
Samuel Abraham , pro-se v. SOS, General Counsel Ann Wall	07 SOS 0224	Overby	04/27/07
Mr. Tim Rhodes, President, Event Marketing Services, Inc. v. SOS	07 SOS 0374	Overby	06/14/07
Angela Dozier v. SOS	07 SOS 0912	Gray	08/30/07

UNC HOSPITALS

CONTESTED CASE DECISIONS

Kenneth Trivette v. UNC Hospitals	06 UNC 2014	Elkins	04/02/07
Mark A. Parrish v. UNC Hospitals	06 UNC 2406	Elkins	06/15/07
Carolyn Parker v. UNC Hospitals	07 UNC 0924	Lassiter	09/06/07
Debra B. Davis v. UNC Hospitals	07 UNC 1169	Brooks	10/01/07

2007 OCT -1

06 DOJ 1528

~~Office of
Administrative Hearings~~

V.

DECISION

APPEARANCES

Respondent: Joseph B. Chambliss, Jr., Esq.

883

2. The basis for Respondent's denial of Petitioner's claim was that Petitioner violated policy conditions by (a) failing to give prompt notice, (b) failing to make reasonable and necessary repairs, and (c) failing to otherwise protect the property from further damage.
3. Causation and damages are not issues for hearing before this Court.
4. On September 11, 2003, Petitioner provided notice of a claim to Respondent for damage to Petitioner's beach house located at 2613 North Lumina in Wrightsville Beach (the property) that he contended was likely caused by windstorm in the spring of 2002 (the claim).
5. Petitioner made this claim under Respondent's policy issued to Petitioner for the property (DP 00 02 0788) that was in effect and provided coverage on the property at all times relevant to the issues before this Court (the policy).
6. As a result of an inspection of the property made in August of 2003 incident to Petitioner's pending sale of the property, Petitioner discovered damage to the property, including water damage, mold, and mildew that he in good faith believed may have been caused by a windstorm in the spring of 2002.
7. Policy DP 00 02 0788 provided coverage for Petitioner's house for damage caused by windstorm.
8. The policy was in effect during the time that Petitioner contended the windstorm occurred in the spring of 2002.
9. Petitioner provided notice to his local insurance agent, Jay Wickham, on September 11, 2003.
10. Respondent opened a claim file on September 24, 2003.
11. Through Linda Dixon, its in-house adjuster in Cary, North Carolina, Respondent contacted Jay Wickham and Petitioner by telephone on September 25, 2003.
12. Adjuster Dixon took Petitioner's recorded statement by telephone on September 26, 2003.
13. On October 07, 2003, Respondent denied Petitioner's claim and confirmed that denial by mailing and faxing a letter to Petitioner.
14. At the time that Respondent denied Petitioner's claim, it had not sent an in-house adjuster, an independent adjuster, any experts, or any other individual to inspect the property even though Petitioner had requested such inspection as the property was under a contract for sale and repairs were about to be made.

15. The information Respondent relied upon in denying Petitioner's claim was that obtained from Adjuster Dixon's phone call with Petitioner's agent, Jay Wickham, one phone call to a roofer identified by Petitioner as having made roof repairs in the spring of 2002, and a statement taken from Petitioner, all of which were recorded in Respondent's claim file and were before the Court as exhibits in this hearing.

16. Since October 07, 2003, the parties have engaged in a series of appeals and hearings under Respondent's Plan of Operation and controlling statutes.

17. Evidence of facts or events occurring after October 07, 2003 are not relevant to this Court's determination of the appeal and issues before this Court.

18. The procedural history of this case and the passage of time since October 07, 2003 are irrelevant to this Court's determination of the appeal and issues before this Court. The Court does not construe it in favor of or against either party.

19. No evidence was presented in this hearing that Petitioner acted in bad faith in filing this claim for property damage.

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings under authority of the Order of Remand issued by the Honorable Robert H. Hobgood, Superior Court Judge, on or about August 08, 2006.

2. This hearing involves a de novo factual determination by this Court of the validity of Respondent's denial of Petitioner's claim, limited to the reasons asserted and relied upon by Respondent on October 07, 2003, as set forth above.

3. Had Respondent caused an inspection to be made of Petitioner's beach house in the Fall of 2003 by a qualified adjuster or other expert, it could have had a factual basis for asserting that Petitioner violated policy conditions by failing to give prompt notice, failing to make reasonable and necessary repairs, and otherwise protecting the property from further damage. In the absence of a timely, on-site evaluation by a person qualified in residential construction with specific knowledge in water and mold and mildew damage caused by current or latent events, Respondent has no factual basis to deny Petitioner's claim on the basis of his failing to give prompt notice, failing to make reasonable and necessary repairs, and otherwise protecting the property from further damage.

4. No evidence was presented in this hearing that Petitioner acted in bad faith in filing this claim for property damage.

DECISION

Respondent's denial of Petitioner's claim under these circumstances where it did not inspect the property, did not investigate or adjust Petitioner's claim, and did not have a reasonable factual basis to assert Petitioner's violation of the policy conditions set forth in its claim denial is not supported by the evidence, is erroneous, and should be, and the same hereby is, REVERSED.

ORDER

It hereby is ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714, in accordance with North Carolina General Statute 150B-36(b).

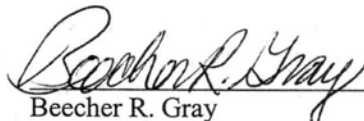
NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions and proposed findings of fact and to present oral and written arguments to the agency. G.S. 150B-40(e).

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to his attorney of record. G.S. 150B-42(a). It is requested that the agency furnish a copy to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the Department of Insurance.

This the 28 day of SEPTEMBER, 2007.


Beecher R. Gray
Administrative Law Judge

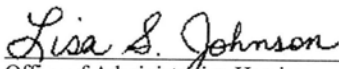
A copy of the foregoing was mailed to:

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ATTORNEY FOR RESPONDENT

This the 1st day of October, 2007.



Office of Administrative Hearings
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STATE OF NORTH CAROLINA

COUNTY OF CHEROKEE

Jason Forrister,
Petitioner,
v.

North Carolina Department of Public
Instruction,
Respondent.

Filed

2007 JUN 22 AM 9: 25

Office of
Administrative Hearings

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
07 EDC 0054

DECISION

This cause came on to be heard on May 9, 2007, before Beecher R. Gray, Administrative Law Judge. Having heard and considered the testimony and other evidence presented, the undersigned makes the following Findings of Fact and Conclusions of Law:

APPEARANCES

For the Petitioner: Jason Forrister, pro se
330 Sunny Point Road
Murphy, NC 28906
(828) 644-0768

For the Respondent: Laura E. Crumpler
Assistant Attorney General
NC Department of Justice
PO Box 629
Raleigh, NC 27602

ISSUE

Whether Petitioner met his burden to show that Respondent erroneously denied his request for graduate pay.

STATUTE TO BE CONSTRUED

N.C. Gen Stat. § 150B-23; 115C-296; and State Board of Education Policy QP-A-006.

FINDINGS OF FACT

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing and each stipulated on the record that notice was proper.

2. N.C. General Statute §115C-296(a) provides, in pertinent part, as follows:

The State Board of Education shall have entire control of certifying all applicants for teaching positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all certificates and shall determine and fix the salary for each grade and type of certificate which it authorizes. . . .

3. Under its statutory authority to “determine and fix the salary for each grade and type of certificate which it authorizes,” the State Board of Education (hereinafter the “SBE”) has adopted a policy, QP-A-006, entitled “Policies related to Experience/Degree Credit for Salary Purposes.” (R-Exhibit 1) Policy QP-A-006 has not been promulgated and adopted as a rule under Chapter 150B.

4. The policy recognizes that educators employed in the public schools may be awarded salary credit for past employment experience as well as for certain graduate degrees. Generally, the salary credit falls into three main categories: prior experience as a teacher; prior work experience that is non-teaching in nature; and possession of a graduate degree. (R-Exhibit 1)

5. In order to be eligible to receive credit for a graduate degree, the degree must meet several criteria. Those criteria include: (1) the degree must be from an accredited institution; (2) fifty (50) percent or more of the educator’s assignment for the school day must be in the area for which the master’s or higher degree applies; and (3) the master’s or higher degree is in an education or subject area directly related to an existing area of licensure and current teaching assignment or instructional support responsibilities. (R-Exhibit 1)

6. Petitioner currently is employed as a teacher with the Cherokee County Schools. He teaches high school English. Petitioner is licensed in secondary English.

7. Petitioner, through his school system, made a request to Respondent to recognize his Masters in Marriage and Family Counseling for purposes of placing him on the graduate pay scale. Petitioner’s request is fully supported by his principal and superintendent.

8. Petitioner’s request initially was denied by staff at the Department of Public Instruction Licensure Section on the grounds that Petitioner’s master’s degree is not directly related to his area of licensure or assignment. Licensure Section Staff are trained in analysis of applications for experience and graduate credit. Staff determined that Petitioner’s Master’s degree was not “directly related” to his area of licensure and teaching assignment.

9. Petitioner's master's degree is from New Orleans Baptist Seminary, an institution accredited by the Southern Association of Colleges and Schools. Respondent does not dispute this fact. Neither Respondent nor the evidence produced in this contested case hearing contest the fact that Petitioner's assignment for 50 percent or more of the school day is in the area for which the master's degree applies.

10. Respondent disagrees with Petitioner's contention that his master's degree is directly related to his area of licensure and teaching assignment. Respondent agrees with Petitioner's contention that the Licensure Section staff reviews and considers coursework taken for the master's degree rather than the skills, knowledge, or aptitude gained by the applicant who has completed the master's degree requirements.

11. Department of Public Instruction Teacher Licensure Section Program Specialist Shelia White testified in this hearing for Respondent. When asked to define the phrase directly related and compare it to the word relevant, she stated that they were one and the same for purposes of teacher licensure.

12. Program Specialist Shelia White testified that Petitioner's master's degree in marriage and family counseling was helpful to his responsibilities in teaching secondary English. Petitioner also testified that his master's degree was helpful in his teaching of secondary English. It is found as fact that Petitioner's master's degree in marriage and family counseling is helpful to his duties and responsibilities in teaching secondary English.

13. Respondent's exhibit number five (5) is a memorandum dated May 3, 2006 from Respondent to the personnel administrator of the Cherokee County Schools denying Petitioner's request to be granted graduate pay. The stated reason for the denial is as follows:

[w]e regret that we are unable to grant Mr. Forrister graduate pay because his master's degree in family counseling is not RELEVANT to teaching secondary English. (emphasis added).

Petitioner, again through his school system, appealed the decision of staff to the Appeals Panel for Graduate Pay Approval. The Appeals Panel is established by State Board Policy QP-A-006 and consists of independent professional educators appointed by the State Board of Education to consider appeals of requests for non-teaching work experience or graduate salary. Members include local school system personnel administrators, faculty from institutions of higher education, and representatives from the professional teacher organization.

14. The Panel in this case considered Petitioner's appeal, including all documentation submitted by him. The Panel compared Petitioner's area of licensure and teaching assignment with the coursework that led to his Master's degree. The Panel voted unanimously to deny the graduate pay credit appeal on grounds that Petitioner's Master's was not "directly related" to his area of licensure and current teaching assignment.

15. Petitioner was notified of the denial by letter dated November 29, 2006, from Dr. Kathy Sullivan, Director, Division of Human Resource Management, DPI. (R-Exhibit 7)

16. The word rule is defined in the General Statutes of North Carolina under section 150B-2 (8a) as follows:

“Rule” means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee the and the amendment or repeal of a prior rule. The term does not include the following:

- a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.
- b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, by an occupational licensing board, as defined by G.S. 93B-1, or by the State Board of Elections.
- c. Nonbinding interpretive statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.
- d. A form, the contents or substantive requirements of which are prescribed by rule or statute.
- e. Statements of agency policy made in the context of another proceeding, including:
 1. Declaratory rulings under G.S. 150B-4.
 2. Orders establishing or fixing rates or tariffs.
- f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.
- g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.

- h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.
- i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Personnel Commission.
- j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.1 and the variable component of the excise tax on motor fuel under G.S. 105-449.80.
- k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed by the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings.
2. Petitioner bears the burden of proving the claims alleged in the Petition by a preponderance of evidence. Peace v. Employment Sec. Comm'n., 349 N.C. 315, 507 S.E.2d 272 (1998).
3. The State Board of Education has the constitutional power "to supervise and administer the free public school system and the educational funds provided for its support." N.C. Const. art IX, § 5. This power includes the power to "regulate the grade [and] salary . . . of teachers." Guthrie v. Taylor, 279 N.C. 703, 709, 185 S.E. 2nd 193, 198 (1971), cert. denied, 406 U.S. 920, 32 L.Ed.2d 119 (1972). The State Board has the specific duty "to certify and regulate the grade and salary of teachers and other school employees." N.C. Gen. Stat. § 115C-12(9)a.; Guthrie at 711. The Department of Public Instruction is not exempt from the rulemaking requirements of Chapter 150B of the General Statutes of North Carolina.
4. Petitioner has met his burden of demonstrating that Respondent has deprived him of property or has otherwise substantially prejudged his rights and that Respondent has:
 - a. Exceeded its authority;
 - b. Acted erroneously;
 - c. Failed to use proper procedure;
 - d. Acted arbitrarily or capriciously; or
 - e. Failed to act as required by law.
5. Petitioner's evidence and Respondent's witness Shelia White established as fact that Petitioner's master's degree is helpful to his teaching of secondary English. From the fact that

Petitioner's master's degree is helpful to his teaching of secondary English it follows that his master's degree is relevant to his teaching of secondary English.

6. None of the exemptions from rulemaking contained in G.S. 150B-2 (8a) a-k apply to grant Respondent relief from the necessity of rulemaking for policy QP-A-006. Policy QP-A-006 is generally applicable to members of the teaching profession and implements and interprets G.S. 115C-296. Under the facts and circumstances of this case, Respondent erroneously applied policy QP-A-006 to deny Petitioner's application to be paid for his graduate degree. Respondent cannot enforce Policy QP-A-006 against members of the North Carolina teaching profession in the absence of promulgation as a rule under Chapter 150B of the General Statutes of North Carolina.

DECISION

Respondent's decision to deny Petitioner's application to be granted approval for pay at the graduate level for his master's degree is not supported by the evidence and is REVERSED. Respondent's application of its Policy QP-A-006 to Petitioner in this contested case, without having promulgated the policy as a rule under Chapter 150B of the General Statutes of North Carolina is erroneous as a matter of law.

ORDER

It hereby is ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, in accordance with North Carolina General Statute 150B-36(b).

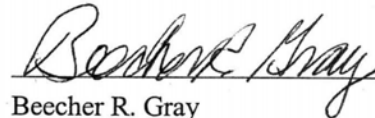
NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina State Board of Education.

This the 22 day of June, 2007

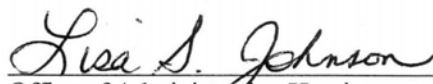

Beecher R. Gray
Administrative Law Judge

A copy of the foregoing was mailed to:

Jason Forrister
330 Sunny Point Road
Murphy, Nc 28906
PETITIONER

Laura E. Crumpler
Assistant Attorney General
Nc Department Of Justice
9001 Mail Service Center
Raleigh, Nc 27699-9001
ATTORNEY FOR RESPONDENT

This the 22nd day of June, 2007.



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