

# ***NORTH CAROLINA REGISTER***

**VOLUME 22 • ISSUE 15 • Pages 1360 - 1455**

**February 1, 2008**

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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.

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**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2008 – December 2008

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 31st legislative day of the session beginning:	270 <sup>th</sup> day from publication in the Register
22:13	01/02/08	12/06/07	01/17/08	03/03/08	03/20/08	05/01/08	05/13/08	09/28/08
22:14	01/15/08	12/19/07	01/30/08	03/17/08	03/20/08	05/01/08	05/13/08	10/11/08
22:15	02/01/08	01/10/08	02/16/08	04/01/08	04/21/08	06/01/08	01/2009	10/28/08
22:16	02/15/08	01/25/08	03/01/08	04/15/08	04/21/08	06/01/08	01/2009	11/11/08
22:17	03/03/08	02/11/08	03/18/08	05/02/08	05/20/08	07/01/08	01/2009	11/28/08
22:18	03/17/08	02/25/08	04/01/08	05/16/08	05/20/08	07/01/08	01/2009	12/12/08
22:19	04/01/08	03/10/08	04/16/08	06/02/08	06/20/08	08/01/08	01/2009	12/27/08
22:20	04/15/08	03/25/08	04/30/08	06/16/08	06/20/08	08/01/08	01/2009	01/10/09
22:21	05/01/08	04/10/08	05/16/08	06/30/08	07/21/08	09/01/08	01/2009	01/26/09
22:22	05/15/08	04/24/08	05/30/08	07/14/08	07/21/08	09/01/08	01/2009	02/09/09
22:23	06/02/08	05/09/08	06/17/08	08/01/08	08/20/08	10/01/08	01/2009	02/27/09
22:24	06/16/08	05/23/08	07/01/08	08/15/08	08/20/08	10/01/08	01/2009	03/13/09
23:01	07/01/08	06/10/08	07/16/08	09/02/08	09/22/08	11/01/08	01/2009	03/28/09
23:02	07/15/08	06/23/08	07/30/08	09/15/08	09/22/08	11/01/08	01/2009	04/11/09
23:03	08/01/08	07/11/08	08/16/08	09/30/08	10/20/08	12/01/08	01/2009	04/28/09
23:04	08/15/08	07/25/08	08/30/08	10/14/08	10/20/08	12/01/08	01/2009	05/12/09
23:05	09/02/08	08/11/08	09/17/08	11/03/08	11/20/08	01/01/09	01/2009	05/30/09
23:06	09/15/08	08/22/08	09/30/08	11/14/08	11/20/08	01/01/09	01/2009	06/12/09
23:07	10/01/08	09/10/08	10/16/08	12/01/08	12/22/08	02/01/09	05/2010	06/28/09
23:08	10/15/08	09/24/08	10/30/08	12/15/08	12/22/08	02/01/09	05/2010	07/12/09
23:09	11/03/08	10/13/08	11/18/08	01/02/09	01/20/09	03/01/09	05/2010	07/31/09
23:10	11/17/08	10/24/08	12/02/08	01/16/09	01/20/09	03/01/09	05/2010	08/14/09
23:11	12/01/08	11/05/08	12/16/08	01/30/09	02/20/09	04/01/09	05/2010	08/28/09
23:12	12/15/08	11/20/08	12/30/08	02/13/09	02/20/09	04/01/09	05/2010	09/11/09

## **EXPLANATION OF THE PUBLICATION SCHEDULE**

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

### **GENERAL**

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

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

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

### **FILING DEADLINES**

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

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

### **NOTICE OF TEXT**

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

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

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

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



MICHAEL F. EASLEY  
GOVERNOR

EXECUTIVE ORDER NO. 134  
EXTENDING EXECUTIVE ORDER NO. 123  
EMERGENCY RELIEF FOR DAMAGE CAUSED BY DROUGHT

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

Executive Order No. 123, regarding emergency relief for damage caused by the drought, is hereby extended until January 31, 2008, based on a review of current market and weather conditions and on the recommendation of the Commissioner of the North Carolina Department of Agriculture and Consumer Services.

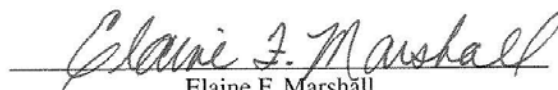
This order is effective immediately and shall remain in affect for 30 days or the duration of the emergency whichever is less.

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



  
Michael F. Easley  
Governor

ATTEST:

  
Elaine F. Marshall  
Secretary of State

**Note from the Codifier:** This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.

### *Note from the Codifier*

North Carolina Register  
Volume 22, Issue 14  
January 15, 2008

The print copy of the NC Register, Volume 22, Issue 14 January 15, 2008, distributed by Lexis-Nexis included formatting errors to proposed rules. The formatting errors for some rules did not include strike through and underlining of text. No words or text were omitted.

The proposed rules, as published by the Office of Administrative Hearings in the official on the internet NC Register as required by G.S. 150B-21.24, were correctly formatted.

<http://www.ncoah.com/rules/register/Volume22Issue14January152008.pdf>

For the convenience of the print copy recipients, the text of the proposed rules contained in the notices published in the January 15 issue are reprinted below.

## **TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

### **CHAPTER 42 - GASOLINE AND OIL INSPECTION BOARD**

#### **SECTION .0100 - PURPOSE AND DEFINITIONS**

#### **02 NCAC 42 .0102 DEFINITIONS**

Except as otherwise defined in Chapter 119, North Carolina General Statutes, the definitions applicable in this Chapter are as follows:

- (1) "ASTM" means ~~the American Society for Testing and Materials-~~ASTM International.
- (2) "Approved lead substitute" means an EPA registered gasoline additive formulated to reduce valve seat recession in engines designed to operate on leaded gasoline.
- (3) ~~"Biodiesel" means a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, and meeting the requirements of ASTM D 6751.~~
- (4) ~~"Biodiesel Blend" means a blend of biodiesel meeting ASTM D 6751 with petroleum-based diesel fuel meeting ASTM D 975 or fuel oil meeting ASTM D 396 and designated BXX, where XX represents the volume percentage of biodiesel in the blend.~~
- ~~(3)(5)~~ (5) "Board" means the Gasoline and Oil Inspection Board.
- ~~(4)(6)~~ (6) "Cetane number" means the relative ignition quality of diesel fuels by the ASTM Cetane Method ~~D-613-~~D 613.

~~(5) "Control area" means an area of the state designated by the Environmental Management Commission pursuant to Title 2 of the Clean Air Act Amendments of 1990 in which the oxygen content of gasoline is regulated for the purpose of reducing carbon monoxide levels.~~

~~(6) "Control area oxygenate blending facility" means any facility at which the oxygen content of gasoline is altered, excluding retail outlets and wholesale purchaser-consumer facilities.~~

~~(7) "Control area terminal" means a terminal which is capable of receiving gasoline in bulk, e.g., by pipeline, marine vessel, tank truck, or barge, or at which gasoline is altered either in quantity or quality, excluding the addition of deposit control additives.~~

~~(8) "Control period" means the period during which the oxygen content of gasoline is regulated in any control area.~~

~~(9)(7)~~ (7) "Denatured fuel ethanol" means ethanol meeting the provisions of ASTM ~~D-4806-~~D 4806, "Standard Specification for Denatured Fuel Ethanol to be Blended with Gasolines for Use as an Automotive Spark-Ignition Engine Fuel."

~~(10)(8)~~ (8) "Director" means the ~~director-~~Director of the Standards Division of the North Carolina Department of ~~Agriculture-~~Agriculture and Consumer Services.

~~(11)(9)~~ (9) "Distributor" means any person who transports or stores or causes the transportation or storage of gasoline at any point between any gasoline refinery or importer's facility and any retail outlet or wholesale purchaser-consumer's facility.

- (10) "E85" means a petroleum product that is a blend of denatured ethanol and gasoline or natural gasoline of which the ethanol portion is nominally 70 to 85 percent ethanol by volume and meeting the requirements of ASTM D 5798.
- ~~(12)~~(11) "EPA" means the United States Environmental Protection Agency.
- ~~(13)~~(12) "Leaded" means any gasoline or gasoline-oxygenate blend which contains more than 0.05 gram lead per U.S. gallon (0.013 gram lead per liter) or contains an approved lead substitute which provides a lead equivalency of at least 0.10 gram lead per U.S. gallon (0.026 gram per liter).
- ~~(14)~~(13) "Liquefied petroleum gas" means any material which is composed predominantly of any of the following hydrocarbons or mixtures of same: propane, propylene, butanes (normal or iso-butane), and butylenes.
- ~~(15)~~(14) "Motor Octane Number" means the number describing the relative anti-knock characteristic of a motor fuel determined by ASTM Motor Method ~~(D-2700)~~; (D 2700).
- ~~(16) "Non-oxygenated gasoline" means any gasoline which does not meet the definition of oxygenated gasoline.~~
- (15) "NCWM" means the National Conference on Weights and Measures.
- (16) "NIST" means the National Institute of Standards and Technology.
- (17) "Octane Index" means the number obtained by adding the research octane number and the motor octane number and dividing the sum by two.
- ~~(18) "Oxygen content of gasoline" means the percentage of oxygen by weight contained in a gasoline, based upon its percentage oxygenate by volume, excluding denaturants and other non-oxygen-containing components with all measurements adjusted to 60 degrees Fahrenheit.~~
- ~~(19)~~(18) "Oxygenate" means any substance which, when added to gasoline, increases the amount of oxygen in that gasoline, and which has been approved by EPA for use in gasoline.
- ~~(20) "Oxygenated gasoline" means any gasoline containing a substance which adds oxygen to that gasoline.~~
- (19) "Premium Diesel" means a refined middle distillate petroleum product that meets the specifications of ASTM D 975 and NIST Handbook 130, Uniform Engine Fuels, Petroleum Products and Automotive Lubricants Regulation, section 2.2.1.
- ~~(21)~~(20) "Qualitative word or term" means any word or term used in a brand name which by definition or customary usage indicates a level of quality, classification, grade, or designation.
- ~~(22)~~(21) "Regular" when used as part of a brand name or as a grade designation for gasoline or gasoline-oxygenate blend shall be construed to mean ~~a leaded-an unleaded~~ regular grade commercial automotive gasoline or gasoline-oxygenate blend ~~unless the brand name or grade designation also contains the word "Unleaded" or a word or term of equivalent meaning-blend.~~
- (22) "Renewable Diesel Fuel" means a fuel which is not a mono-alkyl ester; meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 7545 of the Clean Air Act; is intended for use in engines that are designed to run on conventional, petroleum derived diesel fuel; is derived from nonpetroleum renewable resources including, but not limited to, vegetable oil, animal wastes, including poultry fats and poultry wastes, and other waste materials, or municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater; and meets the latest version of ASTM specification D 975.
- (23) "Research Octane Number" means the number describing the relative anti-knock characteristic of a motor fuel determined by ASTM Research Method ~~(D-2699)~~; (D 2699).
- ~~(24) "Reseller" means any person who purchases gasoline and resells or transfers it to a retailer or a wholesale purchaser-consumer.~~
- ~~(25)~~(24) "Retail outlet" means any establishment at which gasoline is sold or offered for sale "Retail" means the sale or offering for sale of gasoline to the ultimate consumer for use in a motor vehicle.
- ~~(26) "Retailer" means any person who owns, leases, operates, controls or supervises a retail outlet.~~
- ~~(27)~~(25) "Substantially Similar" rule means the U.S. United States Environmental Protection Agency's "Substantially Similar" rule, Section 211 (f) (1) of the Clean Air Act [42 U.S.C. 7545 (f) (1)].
- ~~(28)~~(26) "Terminal" means a facility at which gasoline is dispensed into trucks for transportation to retail outlets or wholesale purchaser-consumer facilities.
- ~~(29) "Total alcohol" means the aggregate total in volume percent of all alcohol contained in any fuel defined in this Chapter.~~
- ~~(30) "Total oxygenate" means the aggregate total in volume percent of all oxygenates contained in any fuel defined in this Chapter.~~
- ~~(31)~~(27) "Unleaded" means any gasoline or gasoline-oxygenate blend to which no lead or phosphorus compounds have been intentionally added and which contains not more than 0.05 gram lead per U.S. gallon

(0.013 gram lead per liter) and not more than 0.005 gram phosphorus per U.S. gallon (0.0013 gram phosphorus per liter).

(32) ~~"Wholesale purchaser consumer" means any organization that is an ultimate consumer of gasoline and which purchases or obtains gasoline from a supplier for use in motor vehicles and receives delivery of that product into a storage tank of at least 550-gallon capacity substantially under the control of that organization.~~

ASTM documents referred to in this Rule are hereby adopted by reference, including subsequent amendments and editions, and are available for inspection in the Office of the Director of the Standards Division. Copies of these documents may be obtained from the ASTM, 1916 Race Street, Philadelphia, PA 19103, at a cost determined by ASTM.

Authority G.S. 119-26; 119-26.1.

## SECTION .0200 - QUALITY OF LIQUID FUEL PRODUCTS

### 02 NCAC 42 .0201 STANDARD SPECIFICATIONS

(a) The Board hereby adopts by reference, including subsequent amendments and editions, ASTM ~~D 4814, D 4814~~, "Standard Specification for Automotive Spark-Ignition Engine Fuel" as standard specification for gasoline with the following modifications:

- (1) Applications for temporary exceptions to vapor pressure and vapor/liquid ratio specifications as provided in this Subparagraph may be made to the ~~director-Director~~. Said applications shall contain evidence ~~satisfactory to the director~~ that outlets marketing gasoline in North Carolina cannot ~~feasibly~~ be supplied from bulk terminals furnishing specified volatility level gasoline or that customary sources of supply have been temporarily interrupted by product shortage and alternate sources furnishing specified volatility level gasoline are not available. Such temporary exceptions granted shall apply only until the next meeting of the ~~board-Board~~ at which time the ~~board-Board~~ shall establish the duration of the exception;
- (2) The minimum lead content for gasoline registered or labeled as "leaded" ~~or "regular"~~ shall be as defined in ~~Rule .0102 of this Chapter; 02 NCAC 42 .0102;~~
- (3) Vapor pressure and vapor/liquid ratio seasonal specifications as listed in this Subparagraph may be extended for a maximum period of 15 days to allow for the disbursement of old stocks. However, new stocks of a higher volatility classification shall not be offered for retail sale prior to the effective date of the higher volatility classification.

(b) The Board hereby adopts by reference, including subsequent amendments and editions, ASTM ~~D 4814, D 4814~~, "Standard Specification for Automotive Spark-Ignition Engine Fuel" as standard specification for alcohol blends with the following modifications:

- (1) A vapor pressure tolerance not exceeding one pound per square ~~inch; inch~~ for ethanol blends of up to 10 percent;
- (2) Vapor pressure ~~and vapor/liquid ratio~~ seasonal specifications as listed in this Subparagraph may be extended for a maximum period of 15 days to allow for the disbursement of old stocks. However, new stocks of a higher volatility classification shall not be offered for retail sale prior to the effective date of the higher volatility classification;
- (3) Applications for temporary exceptions to vapor pressure ~~and vapor/liquid ratio~~ specifications as provided in this Subparagraph may be made to the ~~director-Director~~. Said applications shall contain evidence satisfactory to the ~~director-Director~~ that outlets marketing gasoline in North Carolina cannot feasibly be supplied from bulk terminals furnishing specified volatility level gasoline or that customary sources of supply have been temporarily interrupted by product shortage and alternate sources furnishing specified volatility level gasoline are not available. Such temporary exceptions granted shall apply only until the next meeting of the ~~board-Board~~ at which time the ~~board-Board~~ shall establish the duration of the exception;
- (4) The minimum temperature at 50 percent evaporated shall be ~~158 degrees F. (70 degrees C.)~~ 150 degrees F (66 degrees C) as determined by ASTM Test Method ~~D 86; D 86~~ for ethanol blends of up to 10 percent;
- (5) The minimum lead content for ~~gasoline/oxygenate~~ gasoline and alcohol blends registered or labeled as "leaded" ~~or "regular"~~ shall be as defined in ~~Rule .0102 of this Chapter; 02 NCAC 42 .0102;~~
- (6) Octane rating shall not be less than the octane index certified on the brand name registration as required by ~~2~~ 02 NCAC 42 .0500;
- (7) All blends, both leaded and unleaded, shall be blended according to the EPA "Substantially Similar" rule or an EPA waiver for unleaded fuel;
- (8) Water tolerance shall be such that no phase separation occurs when subjected to a temperature equal to the temperatures specified in Table 4, ASTM ~~D 4814, the table for "Maximum Temperature for Phase Separation, °C,"~~ ASTM D 4814;
- (9) The vapor/liquid ratio specification shall be waived for ethanol blends of up to 10 percent.



(c) The Board hereby adopts by reference, including subsequent amendments and editions, ASTM ~~D 975, D 975~~, "Standard Specification for Diesel Fuel Oils" as standard specification for diesel motor fuels and renewable diesel fuels with the following modification: For diesel motor fuel grade 2-D, the minimum flash point as determined by ASTM Test Method ~~D 56-D 56~~ shall be 115 degrees F. ~~(46 degrees C.)~~ F (46 degrees C).

(d) The Board hereby adopts by reference, including subsequent amendments and editions, ASTM ~~D 396, D 396~~, "Standard Specification for Fuel Oils" as standard specification for fuel ~~oils, oils and blends of biodiesel and fuel oil~~.

(e) The Board hereby adopts by reference, including subsequent amendments and editions, ASTM ~~D 3699, D 3699~~, "Standard Specification for Kerosene" as standard specification for kerosenes with the following modification: For grade 2-K, the presence or absence of coloring matter shall in no way be determinative of whether a substance meets the requirements of this grade of kerosene.

~~(f) The Board hereby adopts by reference, including subsequent amendments and editions, ASTM D 6751, "Standard Specification for Biodiesel (B100) Blend Stock for Distillate Fuels" as standard specification for biodiesel (B100) and for B99 (a blend of 99 percent biodiesel and one percent petroleum diesel).~~

~~(g) The Board hereby adopts by reference, including subsequent amendments and editions, ASTM D 5798, "Standard Specification for Fuel Ethanol (Ed75-Ed85) for Automotive Spark-Ignition Engines" as standard specification for E85 fuel ethanol.~~

~~(h) The Board hereby adopts by reference, including subsequent amendments and editions, NIST Handbook 130, "Uniform Engine Fuels, Petroleum Products and Automotive Lubricants Regulation," section 2.2.1 "Premium Diesel Fuel" as the standard specification of premium diesel fuels in addition to ASTM D 975. Copies of this document may be obtained at no cost from the NIST Web site - <http://ts.nist.gov/WeightsandMeasures/>.~~

~~(i) In addition to meeting all specification requirements as set forth in this Rule, each fuel must be suitable for the intended use. Motor fuels shall not contain concentrations of methyl tertiary butyl ether (MTBE) in violation of G.S. 119-26.3.~~

~~(j) ASTM documents adopted by reference herein are available for inspection in the Office of the Director of the Standards Division and may be obtained from ASTM, 1916 Race Street, Philadelphia, PA 19103, at a cost determined by ASTM - ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959 or their Web site - [www.astm.org](http://www.astm.org), at the following cost for each document: D 396, thirty-five dollars (\$35.00); D 975, forty-one dollars (\$41.00); D 3699, thirty dollars (\$30.00); D 4814, forty-seven dollars (\$47.00); D 5798, thirty-five dollars (\$35.00); and D 6571, thirty-five dollars (\$35.00).~~

*Authority G.S. 119-26; 119-26.1; 119-26.3; 150B-14.*

### **SECTION .0300 - SALE OF GASOLINE**

### **02 NCAC 42 .0301 GASOLINE SOLD UNDER LABEL NAME OR BRAND**

(a) All gasoline sold at wholesale or retail in North Carolina shall be sold under the label, name, or brand name under which the gasoline was first purchased for resale in North Carolina, except as provided in Paragraph (b) of this Rule.

(b) The owner of any gasoline purchased for ~~sale or resale~~ in North Carolina may sell such gasoline under a label, name, or brand other than that under which the gasoline was purchased provided that a notice of intention to change the label, name, or brand-Motor Fuel Brand Name Registration form is filed with the ~~director~~ Director.

*Authority G.S. 119-26.*

### **SECTION .0400 - DISPENSING DEVICES AND PUMPS**

### **02 NCAC 42 .0401 LABELING OF DISPENSING DEVICES**

(a) For the purpose of product identity, each dispensing device used in the retailing of any motor fuel shall be plainly and conspicuously labeled with the following:

- (1) ~~for gasoline, For gasoline and gasoline-oxygenate blends of up to 10 percent ethanol, the registered brand name;~~
- (2) ~~for For diesel fuel, the registered brand name plus a descriptive or generic label if the registered brand name does not adequately identify the type and/or grade of product;~~
- (3) ~~For biodiesel and biodiesel blends, the registered brand name plus a descriptive or generic label if the registered brand name does not adequately identify the type or grade of product;~~
- ~~(3)(4) for For gasoline-oxygenate blends containing at least one percent by volume of methanol, the registered brand name plus an additional label which states that the blend "contains methanol." The label shall be composed of letters at least one inch in height, minimum one-eighth inch stroke, which contrast distinctly with the label background and shall be affixed to the dispenser front panel in a position clear and conspicuous from the driver's position. Exceptions to this Rule are:~~
  - (A) ~~for For~~ fuels not covered by an EPA waiver, the additional label shall identify the percent by volume of ethanol or methanol in the blend; and
  - (B) ~~for For~~ fuels meeting the EPA's "Substantially Similar" rule and which do not contain methanol, no additional label is ~~required~~ required;
- (5) For E85 fuel ethanol, the registered brand name.

(b) Each dispensing device used in the retailing of products other than motor fuel shall be plainly and conspicuously labeled as follows:

- (1) Kerosene shall be labeled as either 1-K Kerosene or 2-K Kerosene. In addition, each dispenser shall contain one of the following legends as appropriate:
  - (A) On 1-K kerosene dispensers, the legend "Suitable For Use In Unvented Heaters"; or
  - (B) On 2-K kerosene dispensers, the legend "May Not Be Suitable For Use In Unvented Heaters";
- (2) Other products shall be labeled with either the applicable generic name or a brand name which identifies the type of product.

(c) Whenever a motor fuel or other product provided for in this Section is offered for sale, sold, or delivered at retail in barrels, casks, cans, or other containers, each container shall be labeled in accordance with this Section and in accordance with 15 U.S.C. 1451 et. seq., the Fair Packaging and Labeling Act.

(d) If a dispenser is so designed that ~~two~~one or more ~~hose/nozzles which are hoses~~ connected to a common housing dispense more than one type or grade of product, means shall be provided to clearly indicate the identity of the product being dispensed from each ~~hose/nozzle~~hose.

*Authority G.S. 119-27.*

## **SECTION .0500 - REGISTRATION AND BRANDING**

### **02 NCAC 42 .0501      BRANDING AND REGISTRATION OF MOTOR FUELS**

(a) All motor fuels offered for sale, sold, or delivered to a purchaser in this State shall be branded, and each and every brand name shall be ~~registered, together with quality specifications, registered~~ with the ~~director~~Director on forms provided by the ~~director~~. ~~In his discretion, the director:~~Director.  
The Director:

- (1) may require ~~written certification or other satisfactory evidence proof~~ of compliance for any motor fuel which is subject to federal waiver requirements or other applicable laws or regulations; and
- (2) may require any person desiring to register a motor fuel for which there exists no generally recognized classification, basic quality standards, or performance record, to submit, in writing, the following:
  - (A) certified test data and performance evaluations; and
  - (B) detailed chemical and physical characteristics.

This information shall be from independent sources of recognized qualification or otherwise satisfactory to the ~~director~~Director, and shall be submitted before an application for registration will be considered.

(b) Any brand name registration under this Section shall in no way supersede ~~federal Trademark Law~~Federal or state trademark law or state ~~Brandname Law~~brand name law.

*Authority G.S. 119-26.*

## **SECTION .0800 - OXYGENATED GASOLINE**

### **02 NCAC 42 .0801      PURPOSE AND APPLICABILITY**

~~(a) This Section sets forth oxygenated gasoline standards for areas designated by the Environmental Management Commission as carbon monoxide nonattainment areas pursuant to Title II of the 1990 Amendments to the Federal Clean Air Act and regulations promulgated by the United States Environmental Protection Agency. The requirements of this Section apply to all gasoline offered for sale, sold, exchanged, or dispensed as a fuel for use in a spark ignition engine in a control area during a control period, except for gasoline intended for use in aircraft.~~  
~~(b) The requirements of this Section apply to the following control areas:~~

- ~~(1) The Raleigh/Durham Metropolitan Statistical Area consisting of Durham, Franklin, Orange, and Wake Counties;~~
- ~~(2) The Greensboro/Winston-Salem/High Point Metropolitan Statistical Area consisting of Davie, Davidson, Forsyth, Guilford, Randolph, Stokes, and Yadkin Counties;~~
- ~~(3) Any other areas designated by the Environmental Management Commission, in accordance with the Administrative Procedure Act.~~

~~The requirements of this Section do not apply to areas which have been removed from designation as carbon monoxide nonattainment areas by the Environmental Management Commission and the Environmental Protection Agency.~~

~~(c) The control period is a four month period beginning November 1 and running through the last day of February of the following year.~~

~~(d) Gasoline in storage within the counties identified in Paragraph (b) of this Rule prior to November 1 at a retail outlet or wholesale purchaser consumer dispensing facility having total gasoline tank capacity of less than 550 gallons or a total weekly dispensing rate of less than 550 gallons is exempt from the requirements of this Section. However, any gasoline supplied to the retail outlet or wholesale purchaser consumer facility during the control period shall comply with the requirements of this Section.~~

~~(e) If the Administrator of the U.S. Environmental Protection Agency delays the effective date of the oxygenated gasoline requirements then the provisions of this Section do not apply during such period.~~

*Authority G.S. 119-26; 119-26.1; 143-215.107.*

### **02 NCAC 42 .0802      OXYGEN CONTENT**

~~In addition to the requirements in Section .0200 of this Chapter, the gasoline identified in Rule .0801 of this Section shall have an oxygen content of not less than 2.7 percent by weight.~~

*Authority G.S. 119-26; 119-26.1; 143-215.107.*

### **02 NCAC 42 .0803      RECORD KEEPING AND TRANSFER REQUIREMENTS**

~~(a) All parties in the gasoline distribution network, as described in this Rule, shall maintain records containing compliance~~

information enumerated or described in this Rule. These records shall be retained by the regulated parties for at least one year.

- (1) ~~Control area terminal operators. Persons who own, lease, operate or control gasoline terminals which serve control areas shall maintain records containing the following information:~~
  - (A) ~~The owner(s) of each batch of gasoline;~~
  - (B) ~~For all batches or truckloads of gasoline leaving the terminal, the volume of gasoline, the type of oxygenate(s), and minimum oxygen content of the batch or truckload;~~
  - (C) ~~Destination of each tank truck sale or batch of gasoline, that is, whether it was within a control area or not;~~
  - (D) ~~The name and address of the party to whom the gasoline was sold or transferred and the date of the sale or transfer.~~
- (2) ~~Control area oxygenate blenders. Persons who own, lease, operate or control facilities at which the oxygen content of gasoline is altered and which serve control areas shall maintain records containing the following information:~~
  - (A) ~~The owner(s) of each batch of gasoline;~~
  - (B) ~~For all batches or truckloads of oxygenated gasoline leaving the terminal, the volume of oxygenated gasoline, the type of oxygenate(s), and minimum oxygen content of the batch or truckload;~~
  - (C) ~~Destination of each tank truck sale or batch of gasoline, that is, whether it was within a control area or not;~~
  - (D) ~~The name and address of the party to whom the oxygenated gasoline or oxygenate(s) was sold or transferred and the date of the sale or transfer.~~
- (3) ~~Retailers and wholesale purchaser-consumers within a control area must maintain the following records:~~
  - (A) ~~The names and addresses of the parties from whom all shipments of gasoline were purchased or received, and the dates when they were received;~~
  - (B) ~~Data on every shipment of gasoline bought, sold or transported, including:~~
    - (i) ~~Volume of each shipment;~~
    - (ii) ~~Type of oxygenate(s) and oxygen content;~~
    - (iii) ~~Destination of each sale or shipment of gasoline, that is, whether it is intended for use within a control area.~~

(b) Each time that physical custody or title of gasoline destined for a control area changes hands other than when gasoline is sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser-consumer facility, the transferor shall provide to the transferee, in addition to, or as part of, normal bills of lading, invoices, etc., document(s) which clearly and conspicuously contains the following information on that shipment:

- (1) ~~The date of the transfer;~~
- (2) ~~The name and address of the transferor;~~
- (3) ~~The name and address of the transferee;~~
- (4) ~~The volume of gasoline which is being transferred;~~
- (5) ~~The proper identification of the gasoline as non-oxygenated or oxygenated;~~
- (6) ~~Type of oxygenate(s) and minimum oxygen content.~~

Such document(s) shall accompany every shipment of gasoline to a control area after it has been dispensed by a terminal or control area oxygenate blending facility, or the information shall be included in the normal paperwork which is generated subsequent to the shipment of gasoline from a terminal or control area oxygenate blending facility.

Authority G.S. 119-26; 119-26.1; 143-215.107.

## 02 NCAC 42 .0804 GASOLINE DISPENSER LABELING

(a) Each gasoline dispenser stand from which oxygenated gasoline is dispensed at a retail outlet in the control area shall be affixed during the control period with a legible and conspicuous label which contains the following statement:

"The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide emissions from motor vehicles."

(b) The posting of the statement in Paragraph (a) of this Rule shall be in block letters of no less than 20-point bold type; in a color contrasting with the intended background. The label shall be placed in the vertical surface of the dispenser front panel in a position clear and conspicuous from the driver's position.

(c) The retailer shall be responsible for compliance with the labeling requirements of this Section.

(d) The label may remain on the dispenser even when oxygenated gasoline is not being sold provided the oxygenated control period is identified.

Authority G.S. 119-26.1; 119-27; 143-215.107.

## 02 NCAC 42 .0805 SAMPLING, TESTING AND OXYGEN CONTENT CALCULATIONS

(a) Sampling methodologies used to determine compliance with this Section shall be those set forth in Appendix D of Title 40, Part 80 of the Code of Federal Regulations, which is adopted by reference, including subsequent amendments and editions. Copies of the Code of Federal Regulations may be obtained from the Government Printing Office, Washington, D.C. at a cost determined by that office.

(b) Determination of the oxygenate(s) and their volume in gasoline shall be in accordance with test method ASTM D 4815 as set forth in ASTM specification D 4814.

(c) ~~Oxygen content shall be calculated by multiplying the mass concentration of each oxygenate in gasoline by the oxygen molecular weight contribution of the oxygenate. All volume~~

~~measurements shall be adjusted to 60 degrees Fahrenheit. For the purpose of calculating oxygen content, the following oxygen molecular weight contributions shall be used:~~

<del>Oxygenate</del>	<del>Oxygen molecular weight contribution</del>	<del>Specific gravity at 60 degrees F</del>
<del>Methyl Alcohol</del>	<del>0.4993</del>	<del>0.7963</del>
<del>Ethyl Alcohol</del>	<del>0.3473</del>	<del>0.7939</del>
<del>n-Propyl Alcohol</del>	<del>0.2662</del>	<del>0.8080</del>
<del>Isopropyl Alcohol</del>	<del>0.2662</del>	<del>0.7899</del>
<del>n-Butyl Alcohol</del>	<del>0.2158</del>	<del>0.8137</del>
<del>Isobutyl Alcohol</del>	<del>0.2158</del>	<del>0.8058</del>
<del>sec-Butyl Alcohol</del>	<del>0.2158</del>	<del>0.8114</del>
<del>tertiary-Butyl Alcohol</del>	<del>0.2158</del>	<del>0.7922<sup>A</sup></del>
<del>Methyl tertiary-Butyl Ether</del>	<del>0.1815</del>	<del>0.7460</del>
<del>Ethyl tertiary-Butyl Ether</del>	<del>0.1566</del>	<del>0.7452</del>
<del>tertiary-Amyl Methyl Ether</del>	<del>0.1566</del>	<del>0.7752</del>
<del>tertiary-Hexyl Methyl Ether</del>	<del>0.1377</del>	<del>0.7860</del>

<sup>A</sup>~~Extrapolated, below freezing temperature.~~

*Authority G.S. 119-26; 119-26.1; 143-215.107.*

## **02 NCAC 42 .0806 COMPLIANCE AND ENFORCEMENT**

(a) ~~During the first 10 days of the control period, gasoline at retail and wholesale purchaser-consumer facilities will be deemed in compliance provided documentation on all deliveries during the five days preceding the control period indicates that all gasoline delivered to said facilities complied with Rule .0802 of this Section.~~

(b) ~~Gasoline found not to be in compliance with the requirements of this Section will be ordered off sale or removed from use.~~

- (1) ~~The gasoline may be returned to sale or use once the owner has blended the gasoline with additional oxygenates sufficient to comply with the oxygen content standard of this Section, provided this procedure is supervised by the director and is in accordance with G.S. 119-27.~~
- (2) ~~The gasoline may be transferred for use outside a control area, provided the record keeping requirements of Rule .0803 of this Section are followed and the transfer procedure is supervised by the director in accordance with G.S. 119-27.~~

*Authority G.S. 119-26; 119-26.1; 119-27; 143-215.107.*

## **10A NCAC 09 .0705 SPECIAL TRAINING REQUIREMENTS**

(a) At least one staff member shall be knowledgeable of and able to recognize common symptoms of illness.

(b) Staff who have completed ~~within the last three years~~ a course in basic first aid ~~aid~~, shall be present at all times children are present. First aid training shall be renewed on or before expiration of the certification or every three years, whichever is less. The number of staff required to complete the course shall be based on the number of children present as shown in the following chart:

Number of children present	Number of staff trained in first aid required
1-29	1 staff
30-79	2 staff
80 and above	3 staff

Verification of each required staff person's completion of this course shall be maintained in the person's individual personnel file in the center. The basic first aid course shall address principles for responding to emergencies, ~~rescue breathing~~, and techniques for handling common childhood injuries, accidents and illnesses such as: choking, burns, fractures, bites and stings, wounds, scrapes, bruises, cuts and lacerations, poisoning, seizures, bleeding, allergic reactions, eye and nose injuries and sudden changes in body temperature.

(c) A first aid information sheet shall be posted in a prominent place for quick referral. An acceptable form may be requested free of charge from the North Carolina Child Care Health and Safety Resource Center.

(d) Each child care center shall have at least one person on the premises at all times, and at least one person who accompanies the children whenever they are off the premises, who has current certification in successfully completed within the last 12 months a cardiopulmonary resuscitation (CPR) course provided by either

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

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

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

the American Heart Association or the American Red Cross or other organizations approved by the Division. Other organizations shall be approved if the Division determines that the courses offered are substantially equivalent to those offered by the American Red Cross. Successfully completed is defined as demonstrating competency, as evaluated by the instructor, in performing CPR. The course shall provide training in CPR appropriate for the ages of children in care. Documentation of successful completion of the course from the American Heart Association, the American Red Cross, or other organization approved by the Division shall be on file in the center.

(e) Staff shall complete at least four clock hours of training in safety. This training shall address playground safety hazards, playground supervision, maintenance and general upkeep of the outdoor area, and age and developmentally appropriate playground equipment. Staff counted to comply with this Rule shall have six months from the date of employment, or from the date a vacancy occurs, to complete the required safety training. The number of staff required to complete this training shall be as follows:

- (1) In centers with a licensed capacity of less than 30 children, at least one staff person shall complete this training.
- (2) In centers with a licensed capacity of 30 or more children, at least two staff, including the administrator, shall complete this training.

(f) In centers that are licensed to care for infants ages 12 months and younger:

- (1) the center director and any child care provider scheduled to work in the infant room, including volunteers counted in staff/child ratios, shall complete ITS-SIDS training;
- (2) ITS-SIDS training shall be completed within four months of the individual assuming responsibilities in the infant room or as an administrator, or within four months of these rules becoming effective, whichever is later, and shall be completed again every three years from the completion of previous ITS-SIDS training;
- (3) Completion of ITS-SIDS training may be included once every three years in the number of hours needed to meet annual in-service training requirements in Section .0700 of this Chapter;
- (4) Individuals who have completed initial ITS-SIDS training prior to this Rule becoming effective shall not be required to repeat the training until three years from the completion of initial ITS-SIDS training; and
- (5) Prior to an individual assuming responsibility for the care of an infant, the center's safe sleep policy for infants shall be reviewed with the individual as required by Rule .0707(a) of this Section.

*Authority G.S. 110-85; 110-91(1),(8); 143B-168.3.*

## SECTION .1700 –FAMILY CHILD CARE HOME REQUIREMENTS

### 10A NCAC 09 .1705 HEALTH AND TRAINING REQUIREMENTS FOR FAMILY CHILD CARE HOME OPERATORS

(a) Prior to receiving a license, each family child care home operator shall:

- (1) Complete and keep on file a health questionnaire which attests to the operator's physical and emotional ability to care for children. The Division may require a written statement or medical examination report signed by a licensed physician or other authorized health professional if there is reason to believe that the operator's health may adversely affect the care of the children.
- (2) Obtain written proof that he or she is free of active tuberculosis. The results indicating the individual is free of active tuberculosis shall be obtained within 12 months prior to applying for a license.
- (3) Complete within 12 months prior to applying for a license a basic first aid course that at a minimum, shall address principles for responding to emergencies, ~~techniques for rescue breathing,~~ and techniques for handling common childhood injuries, accidents and illnesses such as: choking, burns, fractures, bites and stings, wounds, scrapes, bruises, cuts and lacerations, poisoning, seizures, bleeding, allergic reactions, eye and nose injuries and sudden changes in body temperature.
- (4) Successfully complete within 12 months prior to applying for a license a course by the American Heart Association or the American Red Cross or other organizations approved by the Division, in cardiopulmonary resuscitation (CPR) appropriate for the ages of children in care. Other organizations will be approved if the Division determines that the courses offered are substantially equivalent to those offered by the American Red Cross. Successfully completed is defined as demonstrating competency, as evaluated by the instructor, in performing CPR. Documentation of successful completion of the course from the American Heart Association, the American Red Cross, or other organization approved by the Division shall be on file in the home.

(b) After receiving a license, an operator shall:

- (1) Update the health questionnaire referenced in Paragraph (a) of this Rule annually. The Division may require the operator to obtain written proof that he or she is free of active tuberculosis.
- (2) Complete a first aid course as referenced in Paragraph (a) of this Rule every three years.

- First aid training shall be renewed on or before expiration of the certification or every three years, whichever is less.
- (3) ~~Successfully complete a~~ Have current certification in CPR course annually as referenced in Paragraph (a) of this Rule.
  - (4) If licensed to care for infants ages 12 months and younger, complete ITS-SIDS training within four months of receiving the license, or within four months of this rule becoming effective, whichever is later, and complete it again every three years from the completion of previous ITS-SIDS training. Completion of ITS-SIDS training may be included once every three years in the number of hours needed to meet the annual in-service training requirement in Paragraph (b) (5) of this Rule. Individuals who have completed initial ITS-SIDS training prior to this rule becoming effective shall not be required to repeat the training until three years from the completion of initial ITS-SIDS training.
  - (5) Complete 12 clock hours of annual in-service training in the topic areas required by G.S. 110-91(11), except that persons with at least 10 years work experience as a caregiver in a regulated child care arrangement shall complete eight clock hours of annual in-service training.
    - (A) Only training which has been approved by the Division as referenced in Rule .0708 of this ~~Subchapter~~ Chapter shall count toward the required hours of annual in-service training.
    - (B) The operator shall maintain a record of annual in-service training activities in which he or she has participated. The record shall include the subject matter, the topic area in G.S. 110-91(11) covered, the name of the training provider or organization, the date training was provided and the number of hours of training completed. First aid training may be counted no more than once every three years.
- (3) a health and emergency information form provided by the Division that is completed and signed by a child's parent. The completed form shall be on file the first day the child attends. An operator may use another form other than the one provided by the Division, as long as the form includes the following information:
    - (A) the child's name, address, and date of birth;
    - (B) the names of individuals to whom the child may be released;
    - (C) the general status of the child's health;
    - (D) any allergies or restrictions on the child's participation in activities with specific instructions from the child's parent or physician;
    - (E) the names and phone numbers of persons to be contacted in an emergency situation;
    - (F) the name and phone number of the child's physician and preferred hospital; and
    - (G) authorization for the operator to seek emergency medical care in the parent's absence;
  - (4) when medication is administered, authorization for the operator to administer the specific medication according to the parent's or physician's instructions.
- (b) The operator shall complete and maintain other records which shall include:
- (1) documentation for the operator's procedures in emergency situations, on a form which shall be provided by the Division;
  - (2) documentation that monthly fire drills are practiced. The documentation shall include the date each drill is held, the time of day, the length of time taken to evacuate the home, and the operator's signature;
  - (3) incident reports that are completed each time a child receives medical treatment by a physician, nurse, physician's assistant, nurse practitioner, community clinic, or local health department, as a result of an incident occurring while the child is in the family child care home. Each incident shall be reported on a form provided by the Division, signed by the operator and the parent, and maintained in the child's file. A copy shall be mailed to a representative of the Division within seven calendar days after the incident occurs;
  - (4) an incident log which is filled out any time an incident report is completed. This log shall be cumulative and maintained in a separate file and shall be available for review by a representative of the Division. This log shall be completed on a form supplied by the Division;

Authority G.S. 110-85; 110-88; 110-91; 143B-168.3.

#### 10A NCAC 09 .1721 REQUIREMENTS FOR RECORDS

(a) The operator shall maintain the following health records for each child who attends on a regular basis, including his or her own preschool child(ren):

- (1) a copy of the child's health assessment as required by G.S. 110-91(1);
- (2) a copy of the child's immunization record;

- (5) documentation that a monthly check for hazards on the outdoor play area is completed. This form shall be supplied by the Division and shall be maintained in the family child care home for review by a representative of the Division; and
- (6) Accurate daily attendance records for all children in care, including the operator's own preschool children. The attendance record shall indicate the date and time of arrival and departure for each child.

(c) Written records shall be ~~available for review, upon request, by a representative of the Division and shall be maintained as follows:~~

- ~~(1) Records required in Paragraph (b)(2) (b)(6) of this Rule shall be maintained for a minimum of three years, or during the length of time the program has operated, whichever is less.~~
- ~~(2) Children's records shall be maintained while the child is enrolled, and for a minimum of three years after the child is no longer enrolled.~~
- ~~(3) All other records shall be maintained for as long as the license to which they pertain remains valid.~~
- (1) All children's records as required in this Chapter, except medication permission slips as required in Rule .1720(c)(13) of this Section, must be kept on file one year from the date the child is no longer enrolled.
- (2) Additional caregiver records as required in this Chapter shall be maintained on file one year from the employee's last date of employment.
- (3) Current program records as required in this Chapter shall be maintained on file for as long as the license remains. Prior versions shall be maintained based on the time frame in the following charts:
  - (A) A minimum of 30 days from the revision or replacement date:

Record	Rule
Daily Schedule	.1718(13)
Infant Feeding Schedule	.1718(6)
SIDS Sleep Chart/Visual Check	.1724(8)

- (B) A minimum of one year from the revision or replacement date:

Record	Rule
Attendance	.1721 (b)(6)
Emergency Numbers	.1720(a)(8)
Emergency Procedures Form	.1721(b)(1)

Field Trip/Transportation Permission	.1723(1)
Fire Drill Log	.1721(b)(2)
Incident Log	.1721(b)(4)
Playground Inspection	.1721(b)(5)
Pet Vaccinations	.1720(d)(10)

- (4) Well-water analysis, pool inspection and inspections for local ordinances as referenced in Rules .1720(d)(1), .1719(7), and .1702(d) of this Section shall remain on file at the family child care home for as long as the license remains valid.
- (5) Records may be maintained in a paper format or electronically, except that records that require a signature of a staff person or parent shall be maintained in a paper format.
- (6) All records required in this Chapter shall be available for review by a representative of the Division.

Authority G.S. 110-85; 110-88; 110-91(1),(9).

## SECTION .2300 - FORMS

### 10A NCAC 09 .2318 RETENTION OF FORMS AND REPORTS BY AN OPERATOR

~~Each operator must keep on file in the center, copies of all forms, inspection reports, letters and other correspondence which serve as documentation of compliance or non-compliance for as long as the license to which they pertain remains valid.~~

- (a) All children's records as required in this Chapter, except the Medication Permission Slip as referenced in Rule .0803(13) of this Chapter, shall be maintained on file for at least one year from the date the child is no longer enrolled in the center.
- (b) All personnel records as required in this Chapter shall be maintained on file at least one year from the date the employee is no longer employed.

(c) Current program records shall be maintained on file for as long as the license remains valid. Prior versions shall be maintained based on the time frame in the following charts:

- (1) A minimum of 30 days from the revision or replacement date:

Record	Rule
Activity Plan	.0508 (a)
Allergy Postings	.0901(e)
Feeding Schedule	.0902
Menu	.0901(b)
SIDS Sleep Chart/Visual Check	.0606(a)(7)

- (2) A minimum of one year from the revision or replacement date:

Record	Rule
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Attendance	G.S. 110-91(9)
Daily Schedule	.0508(a)
Emergency Medical Care Plan	.0802(a)
Fire Drill Log	.0302(d)(4)
Incident Log	.0802(e)
Playground Inspection	.0604(q)
Safe Arrival and Departure Procedures	.1003(b)

(d) All building, fire, sanitation and pool inspections as referenced in G.S. 110-91; Rules .0302 and .1403 of this Chapter shall remain on file at the center for as long as the license remains valid.

(e) Records may be maintained in a paper format or electronically, except that records that require a signature of a staff person or parent shall be maintained in a paper format.

(f) All records required in this Chapter shall be available for review by a representative of the Division.

Authority G.S. 110-85; 110-91(9); 143B-168.3.

## SECTION .2500 - CARE FOR SCHOOL-AGE CHILDREN

### 10A NCAC 09 .2511 OTHER STAFF REQUIREMENTS

(a) ~~The staff/child ratios required in this Subchapter for school-age children shall always be maintained. The required lifeguards shall not be counted in the number of staff required to meet the staff/child ratio.~~

(b) ~~In addition to the requirements of Rule .2510(k) of this Subchapter, the staff/child ratio shall be one adult to each 12 children in bodies of water other than swimming pools.~~

Authority G.S. 110-91(8),(11); 143B-168.3.

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## CHAPTER 13 – NC MEDICAL CARE COMMISSION

### SUBCHAPTER 13D – RULES FOR THE LICENSING OF NURSING HOMES

#### SECTION .2200 - GENERAL STANDARDS OF ADMINISTRATION

### 10A NCAC 13D .2210 REPORTING AND INVESTIGATING ABUSE, NEGLECT OR MISAPPROPRIATION

(a) ~~The A facility shall take reasonable measures to prevent patient abuse, patient neglect, or misappropriation of patient property, including but not limited to orientation and instruction of facility staff on patients' rights, and the screening of and requesting of references for all prospective employees.~~

(b) The administrator shall ensure that the Health Care Personnel Registry Section of the Division of Health Service Regulation is notified within 24 hours ~~or as soon as practicable~~

~~of all allegations which appear to a reasonable person to be related to patient abuse, neglect or misappropriation of patient property of the health care facility becoming aware of all allegations against health care personnel as defined in G.S. 131E-256(a)(1), which includes abuse, neglect, misappropriation of resident property, misappropriation of the property of the facility, diversion of drugs belonging to a health care facility or a resident, fraud against a health care facility or a resident, and injuries of unknown source in accordance with 42 CFR subsection 483.13 which is incorporated by reference.~~

(c) The facility shall ~~thoroughly~~ investigate allegations of patient abuse, patient neglect, or misappropriation of patient property in accordance with 42 CFR subsection 483.13 which is incorporated by reference, including subsequent amendments, and shall document all relevant information pertaining to such investigation and shall take whatever steps are necessary to prevent further incidents of abuse, neglect or misappropriation of patient property while the investigation is in progress. ~~Copies of the The Code of Federal Regulations Regulations, Title 42, Public Health, Part 430 to the end, revised as of October 1, 2005, Description Item 572-B, may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, PA 15202-7954 979050, St. Louis, MO 63197-9000, for thirty eight dollars (\$38.00) and may be purchased with a credit card by a direct telephone call to the G.P.O. at (202) 512-1800-(866) 512-1800 or online at <http://bookstore.gpo.gov/> or accessed electronically at <http://ecfr.gpoaccess.gov/>.~~

(d) The administrator shall ensure that the report of investigation is printed or typed and postmarked to the Health Care Personnel Registry Section of the Division of Health Service Regulation within five working days of the allegation. The report shall include the date and time of the alleged incident of abuse, neglect or misappropriation of property; the patient's full name and room number; details of the allegation and any injury; names of the accused and any witnesses; names of the facility staff who investigated the allegation; results of the investigation; and any corrective action that may have been taken by the facility.

(e) The facility shall not employ any person with a substantiated finding on the North Carolina Health Care Personnel Registry.

Authority G.S. 131E-104; 131E-131; 131E-255; 131E-256.

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## CHAPTER 28 – MENTAL HEALTH: STATE OPERATED FACILITIES AND SERVICES

### SUBCHAPTER 28C - DIGNITY AND RESPECT

#### SECTION .0200 - ESTHETIC AND HUMANE ENVIRONMENT

### 10A NCAC 28C .0201 STATE FACILITY ENVIRONMENT

(a) The State Facility Director shall assure the provision of an esthetic and humane environment which enhances the positive



self-image of the client and preserves human dignity. This includes:

- (1) providing warm and cheerful furnishings;
- (2) providing flexible and humane schedules; and
- (3) directing state facility employees to address clients in a respectful ~~manner; and manner.~~
- (4) ~~providing adequate areas accessible to clients who wish to smoke tobacco and areas for non-smokers as requested.~~

(b) The State Facility Director shall also, to the extent possible, make every effort to:

- (1) provide a quiet atmosphere for uninterrupted sleep during scheduled sleeping hours; and
- (2) provide areas accessible to the client for personal privacy, for at least limited periods of time, unless determined inappropriate by the treatment team.

*Authority G.S. 122C-51; 131E-67; 143B-147.*

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## **CHAPTER 46 - LOCAL STANDARDS**

### **SECTION .0300 - LOCAL HEALTH DEPARTMENT STAFF**

#### **10A NCAC 46 .0301 MINIMUM STANDARD HEALTH DEPARTMENT: STAFFING**

(a) A minimum standard health department shall consist of at least a full-time health director, a full-time public health nurse, a full-time registered sanitarian, and a full-time secretary.

(b) Full-time means that the employee's full time occupation is in public health. The employee is not necessarily employed full time in one department.

(c) All local health department nurses shall either:

- (1) Have a nursing degree from a baccalaureate school accredited by the National League for ~~Nursing; Nursing or the Commission on Collegiate Nursing Education;~~ or
- (2) Complete within one year of employment with the health department an introductory course in principles and practices of public health and public health nursing sponsored by the Department. The curriculum for the course will be developed by the Department with input from local health departments and schools of nursing.

*Authority G.S. 130A-5(3); 130A-9.*

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## **CHAPTER 67 – SOCIAL SERVICES - PROCEDURES**

### **SUBCHAPTER 67A – GENERAL ADMINISTRATION**

#### **SECTION .0100 - ADMINISTRATION**

#### **10A NCAC 67A .0107 FORMS**

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

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

(c) The form, worker daily report of services to clients, shall be completed by the county services workers and division of services for the blind services workers. This form provides information to meet reporting requirements at the federal, state and local levels and will provide the basis for county reimbursement. All required fields must be completed and required fields not properly completed shall be considered an error and returned to the worker. The ~~social security numbers or alternate unique identifiers as assigned by county departments of social services or the North Carolina Division of Social Services~~ worker identification numbers of service workers are required in order to allocate costs for federal financial participation.

*Authority G.S. 75-62; 143B-153; 45 CFR 228.17; 5 USC 552a.*

## **TITLE 13 – DEPARTMENT OF LABOR**

### **CHAPTER 07 - OFFICE OF OCCUPATIONAL SAFETY AND HEALTH**

#### **13 NCAC 07F.0104 PERSONAL PROTECTIVE EQUIPMENT**

~~Subpart I – Personal Protective Equipment – 29 CFR 1910.132, General requirements, is amended at 29 CFR 1910.132(b) to read:~~

~~"(b) – Equipment. (1) Employer provided equipment. It is the responsibility of the employer to provide, at no cost to the employee, all personal protective equipment which the employee does not wear off the jobsite for use off the job.~~

~~(2) Employee owned equipment. Where employees provide their own protective equipment, the employer shall be responsible to assure its adequacy, including proper maintenance, and sanitation of such equipment."~~

*Authority G.S. 95-131; 95-133; 150B-21.6.*

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

**CHAPTER 16 – DENTAL EXAMINERS**

**SUBCHAPTER 16G – DENTAL HYGIENISTS**

**SECTION .0100 – DENTAL HYGIENISTS**

**21 NCAC 16G .0101 FUNCTIONS WHICH MAY BE DELEGATED**

A dental hygienist may be delegated appropriate functions to be performed under the direct control and supervision of a dentist who shall be personally and professionally responsible and liable for any and all consequences or results arising from performance of such acts and functions. In addition to the functions set out in G.S. 90-221(a) and 21 NCAC 16H .0201, functions which may be delegated to a dental hygienist include:

- (1) Take impressions for study models and opposing casts which will not be used for construction of permanent dental appliances, but which may be used for the fabrication of adjustable orthodontic ~~appliances~~, appliances, nightguards and the repair of dentures or partials;
- (2) Apply sealants to teeth that do not require mechanical alteration prior to the application of such sealants, provided that a dentist has examined the patient and prescribed the procedure;
- (3) Insert matrix bands and wedges;
- (4) Place cavity bases and liners;
- (5) Place and/or remove rubber dams;
- (6) Cement temporary restorations using temporary cement;
- (7) Apply acid etch materials/rinses;
- (8) Apply bonding agents;
- (9) Remove periodontal dressings;
- (10) Remove sutures;
- (11) Place gingival retraction cord;
- (12) Remove excess cement;
- (13) Flush, dry and temporarily close root canals;
- (14) Place and remove temporary restorations;
- (15) Place and tie in or untie and remove orthodontic arch wires;
- (16) Insert interdental spacers;
- (17) Fit (size) orthodontic bands or brackets;
- (18) Apply dentin desensitizing solutions;
- (19) Perform periodontal screening;
- (20) Perform periodontal probing;
- (21) Perform subgingival exploration for or removal of hard or soft deposits;
- (22) Perform sulcular irrigation;
- (23) Apply sulcular antimicrobial or antibiotic agents which are resorbable;
- (24) Perform extra-oral adjustments which affect function, fit, or occlusion of any temporary restoration or appliance; and

- (25) Initially form and size orthodontic arch wires and place arch wires after final adjustment and approval by the dentist.

*Authority G.S. 90-221; 90-223(b).*

**21 NCAC 16G .0103 PROCEDURES PROHIBITED**

Those procedures which require the professional education and skill of a dentist and may not be delegated to a dental hygienist shall include, but shall not be limited to:

- (1) Comprehensive examination, diagnosis and treatment planning;
- (2) Surgical or cutting procedures on hard or soft tissues, including laser, air abrasion or micro-abrasion procedures;
- (3) Placement or removal of sulcular nonresorbable agents;
- (4) The issuance of prescription drugs, medications or work authorizations;
- (5) Taking of impressions for final fixed or removable restorations or ~~prostheses~~, protheses, except as provided for in Rule .0101(1) of this Chapter;
- (6) Final placement or intraoral adjustment of a fixed or removable appliance;
- (7) Intraoral occlusal adjustments which affect function, fit, or occlusion of any temporary or permanent restoration or appliance;
- (8) Extra-oral occlusal adjustments which affect function, fit, or occlusion of any permanent restoration or appliance;
- (9) Performance of direct pulp capping or pulpotomy;
- (10) Placement of sutures;
- (11) Final placement or cementation of orthodontic bands or brackets;
- (12) Placement or cementation of final restorations;
- (13) Administration of any anesthetic by any route except the administration of topically-applied agents intended to anesthetize only cutaneous tissue; and
- (14) Intraoral use of a high speed handpiece.

*Authority G.S. 90-221(a); 90-223(b).*

**SUBCHAPTER 16H - DENTAL ASSISTANTS**

**SECTION .0100 - CLASSIFICATION AND TRAINING**

**21 NCAC 16H .0203 PERMITTED FUNCTIONS OF DENTAL ASSISTANT II**

A Dental Assistant II may perform any and all acts or procedures which may be performed by a Dental Assistant I. In addition, a Dental Assistant II may be delegated the following functions to be performed under the direct control and supervision of a dentist who shall be personally and professionally responsible and liable for any and all consequences or results arising from the performance of such acts and functions:

- (1) Take impressions for study models and opposing casts which will not be used for construction of dental appliances, but which may be used for the fabrication of adjustable orthodontic ~~appliances; —appliances,~~ nightguards and the repair of dentures or partials;
- (2) Apply sealants to teeth that do not require mechanical alteration prior to the application of such sealants, provided a dentist has examined the patient and prescribed the procedure;
- (3) Insert matrix bands and wedges;
- (4) Place cavity bases and liners;
- (5) Place and/or remove rubber dams;
- (6) Cement temporary restorations using temporary cement;
- (7) Apply acid etch materials/rinses;
- (8) Apply bonding agents;
- (9) Remove periodontal dressings;
- (10) Remove sutures;
- (11) Place gingival retraction cord;
- (12) Remove excess cement;
- (13) Flush, dry and temporarily close root canals;
- (14) Place and remove temporary restorations;
- (15) Place and tie in or untie and remove orthodontic arch wires;
- (16) Insert interdental spacers;
- (17) Fit (size) orthodontic bands or brackets;
- (18) Apply dentin desensitizing solutions;
- (19) Perform extra-oral adjustments which affect function, fit or occlusion of any temporary restoration or appliance;
- (20) Initially form and size orthodontic arch wires and place arch wires after final adjustment and approval by the dentist;
- (21) Polish the clinical crown using only;
  - (a) a hand-held brush and appropriate polishing agents; or
  - (b) a combination of a slow speed handpiece (not to exceed 10,000 rpm) with attached rubber cup or bristle brush, and appropriate polishing agents.

Before a Dental Assistant II can utilize a slow speed handpiece with rubber cup or bristle brush attachment, a formal educational course in coronal polishing consisting of at least 7 hours shall be completed. A polishing procedure shall in no way be represented to the patient as a prophylaxis and no specific charge shall be made for such unless the dentist has performed an evaluation for calculus, deposits, or accretions and a dentist or dental hygienist has removed any substances detected.

*Authority G.S. 90-29(c)(9); 90-48.*

## **SUBCHAPTER 16I - ANNUAL RENEWAL OF DENTAL HYGIENIST LICENSE**

## **SECTION .0100 – ANNUAL RENEWAL**

### **21 NCAC 16I .0104      REPORTING CONTINUING EDUCATION**

(a) The number of hours completed to satisfy the continuing education requirement shall be indicated on the renewal application form submitted to the Board and certified by the hygienist. Upon request by the Board or its authorized agent, the hygienist shall provide official documentation of attendance at courses indicated. Such documentation shall be provided by the organization offering or sponsoring the course. Documentation must include:

- (1) the title;
- (2) the number of hours of instruction;
- (3) the date of the course attended;
- (4) the name(s) of the course instructor(s); and
- (5) the name of the organization offering or sponsoring the course.

(b) All records, reports and certificates relative to continuing education hours must be maintained by the licensee for at least two years and shall be produced upon request of the Board or its authorized agent.

(c) Dental hygienists shall receive four hours credit per year for continuing education when engaged in the following:

- (1) service on a full-time basis on the faculty of an educational institution with direct involvement in education, training, or research in dental or dental auxiliary programs; or
- (2) affiliation with a federal, state or county government agency whose operation is directly related to dentistry or dental auxiliaries.

Verification of credit hours shall be maintained in the manner specified in this Rule.

(d) Evidence of service or affiliation with an agency as specified in Paragraph (c) of this Rule shall be in the form of verification of affiliation or employment which is documented by a director or an official acting in a supervisory capacity.

(e) Hygienists who work at least 20 hours per week in an institution or entity described in Subparagraph (c)(1) or (2) of this Rule shall receive two hours credit per year for continuing education.

*Authority G.S. 90-225.1.*

## **SUBCHAPTER 16R - CONTINUING EDUCATION REQUIREMENTS: DENTISTS**

### **SECTION .0100 – CONTINUING EDUCATION**

#### **21 NCAC 16R .0106      EXEMPTION FROM AND CREDIT FOR CONTINUING EDUCATION**

(a) Dentists may request exemption from continuing education requirements by submitting evidence in writing to the Board of retirement or semi-retirement from the practice of dentistry. A retired dentist is a dentist who never practices dentistry. A semi-retired dentist is a dentist who practices on an occasional basis not to exceed 100 clock hours in a calendar year. A dentist who

can demonstrate a disabling condition may request a variance in continuing education hours during a particular period. Written documentation of a disabling condition that interferes with the dentist's ability to complete the required hours shall be provided to the Board. The Board may grant or deny requests for variance in continuing education hours based on a disabling condition on a case by case basis, taking into consideration the particular disabling condition involved and its affect on the dentist's ability to complete the required hours. In considering the request, the Board may require additional documentation substantiating any specified disability.

(b) In those instances where continuing education is waived and the exempt individual wishes to resume practice, the Board shall require continuing education courses in accordance with Rule .0103 of this Section when reclassifying the licensee. The Board may require those licensees who have not practiced dentistry for a year or more to undergo a bench test prior to allowing the licensee to resume practice when there is indication of inability to practice dentistry.

(c) Dentists shall receive 10 hours credit per year for continuing education when engaged in any of the following:

- (1) service on a full-time basis on the faculty of an educational institution with direct involvement in education, training, or research in dental or dental auxiliary programs; or
- (2) affiliation with a federal, state or county government agency whose operation is directly related to dentistry or dental auxiliaries. Verification of credit hours shall be maintained in the manner specified in Rule .0105 of this Section.

(d) Dentists who work at least 20 hours per week in an institution or entity described in Subparagraph (c)(1) or (2) of this Rule shall receive five hours credit per year for continuing education.

*Authority G.S. 90-31.1; 90-38.*

## TITLE 25 – STATE PERSONNEL

### CHAPTER 1 - OFFICE OF STATE PERSONNEL

#### SUBCHAPTER 1C - PERSONNEL ADMINISTRATION

#### SECTION .0200 - GENERAL EMPLOYMENT POLICIES

##### 25 NCAC 01C .0215 EMPLOYMENT CONTRACTS

(a) Except as to apprenticeship agreements executed according to the provisions of N.C.G.S. Chapter 94 and except as to provisions of Paragraph (b) below, the following provisions apply to employment contracts:

- (1) No ~~person~~ employee shall be required, as a condition of employment subject to N.C.G.S. Chapter 126 to enter into a contractual arrangement with any state agency as defined in 25 NCAC 01A .0103 ~~or university~~ for employment with that agency ~~or university~~.

~~However, this shall not prohibit apprenticeship agreements for training purposes when executed according to the provisions of N. C. G. S. Chapter 94.~~

- (2) No state agency ~~or university~~ may require, as a condition of employment, that a ~~person~~ employee agree, in writing or otherwise, to a minimum specified length of employment; ~~except for the minimum training period specified in an apprenticeship agreement duly executed under G.S. Chapter 94.~~
- (3) No state agency may prohibit, as a condition of initial or continued employment, any ~~person~~ employee from transferring to another state agency or university.
- (4) No state agency ~~or university~~ may require, as a condition of employment, that a ~~person~~ employee agree, in writing or otherwise, that a payment be made to the employing agency if a minimum specified period of employment is not met.
- (5) No agency may require the repayment of the cost of job training required by the employing agency as a condition of continued employment.

(b) An agency that provides all or part of the cost of professional development seminars or other educational opportunities to employees that are not a requirement for the job and that are in excess of \$5000 may condition the provision of agency funds upon agreement of the employee to repay the funds subject to the following conditions:

- (1) The employee is informed about the repayment provisions in advance.
- (2) The amount of time that the agency expects the employee to remain employed is clearly specified and does not exceed one year.
- (3) The prorated amount that the employee will have to repay for each month the employee leaves prior to the end of the term is clearly specified in the agreement, and
- (4) The terms of the agreement are reduced to writing and the employee and the human resources director both sign the agreement.

*Authority G.S. 94; 126-4.*

#### SECTION .0400 - APPOINTMENT

##### 25 NCAC 01C .0414 CONTRACTUAL WORKER

(a) Notwithstanding 25 NCAC 1C .0215, an agency may employ individuals pursuant to a contract if the individuals are engaged to perform on-going professional or technical services in the areas of medicine or health care, engineering, information technology, or other highly specialized or difficult to recruit areas. Agency contracts with independent contractors under the applicable IRS regulations are not subject to this rule.

(b) Contracts for persons hired under this appointment type may be for any period of time up to three years. Such contracts shall include, as a minimum, the duration of the contract, the amount

of compensation to be received under the contract, and other matters necessary for the parties to have an accurate understanding of the respective obligations of the contract. The contract shall include a provision that the individual is subject, at a minimum, to Articles 6 and 7 of Chapter 126 of the General Statutes. If the agency is providing any benefits to the individual, e.g., health insurance, retirement, the contract must so state; otherwise, the contract must contain a provision whereby both parties agree and acknowledge that no benefits are being provided or received under the contract. The contract may also contain a renewal provision but such a provision must be contingent upon the written agreement of both parties.

(c) An individual working pursuant to a contract is subject to the terms of the contract and is not entitled to any benefits except as expressly stated in the contract. The provisions of Chapter 126 of the North Carolina General Statutes, the State Personnel Manual, and Title 25 of the Administrative Code are only deemed to be terms of the contract insofar as they are specifically incorporated by reference in the contract.

*Authority G.S. 126-4.*

## **SUBCHAPTER 1H - RECRUITMENT AND SELECTION**

### **SECTION .0700 - PRIORITY CONSIDERATION: GENERAL PROVISIONS**

#### **25 NCAC 01H .0701 GENERAL PROVISIONS**

(a) It is recognized that certain applicants for positions of State employment may receive a priority over other applicants for the position. Priority consideration in certain situations may be accorded to the following applicants:

- (1) Career State employees applying for a position that is a higher salary grade (or salary grade equivalency) as provided in 25 NCAC 01H .0800;
- (2) Career State employees who have received written notification of imminent separation due to a reduction in force;
- (3) Eligible employees in positions which are designated as exempt policymaking and who have less than 10 years of cumulative State service in subject positions as provided in 25 NCAC 01H .1000;
- (4) Eligible employees in positions which are designated as exempt managerial and who have less than 10 years of cumulative State service in subject positions and who have been removed from the exempt position for reasons other than cause but not because the employee's selection violated G.S. 126-14.2, as provided in 25 NCAC 01H .1000;
- (5) Eligible employees in positions which are designated as exempt managerial and who have less than 10 years of cumulative State service and who have been removed from the exempt managerial position because the employee's selection violated G.S. 126-14.2, as provided in 25 NCAC 01H .1000; and

- (6) Eligible veterans applying for initial employment or subsequent employment ~~an initial position~~ in State government, as provided in 25 NCAC 01H .1100.

(b) The priority consideration listed in Subparagraph (a)(6) of this Rule may only be asserted against substantially equal or less qualified non-veteran outside applicants or other State employees who do not fall into any of the categories listed in Subparagraphs (a)(1) – (a)(5) of this Rule.

(c) The priority consideration listed in Subparagraphs (a)(3), (a)(4) and (a)(5) of this Rule may be defeated by an employee with the priority listed in Subparagraph (a)(2) of this Rule or by a current State employee who has greater cumulative State service in positions subject to the State Personnel Act. The selected applicant must meet the minimum qualifications, including training, experience, competencies and knowledge, skills and abilities.

*Authority G.S. 126-4.*

## **SECTION .1100 – VETERANS' PREFERENCE**

### **25 NCAC 01H .1102 CLAIMING VETERANS' PREFERENCE**

In order to claim veterans' preference, all eligible persons shall submit a DD Form 214, Certificate of Release or Discharge from Active Duty, along with a State Application for Employment (PD-107 or its equivalent) to the appointing authority. Appointing authorities are responsible for verifying eligibility and may request additional documentation as is necessary to ascertain eligibility. Eligible veterans shall meet the minimum qualifications, as defined in 25 NCAC 01H .0635, for the position.

*Authority G.S. 126-4(4); 126-4(10); 128-15.*

### **25 NCAC 01H .1103 ALLEGATION OF DENIAL OF VETERANS' PREFERENCE**

Any claim or allegation that veterans' preference has not been accorded to an eligible veteran shall be filed with the State Personnel Commission through the established contested case procedures of the Office of Administrative Hearings. Such claims shall be filed in a manner consistent with the requirements of G.S. 150B-23 and G.S. 126-38. Such claims shall be heard as contested cases pursuant to G.S. 150B, Article 3. The State Personnel Commission may, upon a finding that veterans' preference was denied in violation of these Rules, order the hiring or reinstatement, employment, subsequent employment, promotion, reassignment or horizontal transfer of any affected person, as well as any other remedy necessary to correct the violation.

*Authority G.S. 126-4(10); 126-4(11); 126-34.1(b)(4); 126-37; 126-38; 150B-2(2); 150B, Article 3.*

### **25 NCAC 01H .1104 APPLICATION OF THE VETERANS' PREFERENCE**

(a) ~~The Veterans' preference to shall be accorded eligible veterans, as defined in 25 NCAC 01H .1105, shall apply in initial selection and reduction in force situations only by giving additional credit as follows:~~

~~(b)(1) In initial selection, employment, subsequent employment, promotion, reassignment, and horizontal transfer procedures, where numerically scored examinations are used in determining the relative ranking of candidates, 10 points shall be awarded to eligible veterans.~~

~~(e)(2) In initial selection, employment, subsequent employment, promotion, reassignment, and horizontal transfer procedures where structured interview, assessment center, in-basket, or any other procedure, not numerically scored, is used to qualitatively assess the relative ranking of candidates, the veteran who has met the minimum qualification requirements for the vacancy, and who has less than four years of related military experience beyond that necessary to minimally qualify, shall also receive additional experience credit for up to four years of unrelated military service. The spouse or dependent shall not receive additional experience credit for the veteran's unrelated military service. To determine the amount of additional experience credit to be granted for unrelated military service, first determine the amount of related military service possessed by the eligible veteran beyond that required to meet the minimum qualifications, then apply the following:~~  
~~(d) The amount of additional experience credit to be granted for unrelated military service in individual cases shall be determined as follows. First, determine the amount of related military service possessed by the eligible veteran beyond that required to meet the minimum qualifications.~~

~~(A) If the total of such experience equals or exceeds four years, the additional credit for unrelated military service does not apply.~~

~~(B) If the total of such experience is less than four years, the veteran shall receive direct experience credit for unrelated military service in an amount not to exceed the difference between the eligible veteran's related military service and the four-year maximum credit that may be granted.~~

~~(3) In reduction-in-force situations, when calculating length of service, the eligible veteran shall be accorded one year of State service for each year or fraction thereof of military service, up to a maximum of five years credit. This additional credit does not count as total state service.~~

~~(e)(b) After applying the preference, preference to candidates from outside the State government structure, upon initial employment or subsequent employment as outlined in Paragraph (a)(1) or (2) above, the qualified-eligible veteran shall be hired when the veteran's overall qualifications are substantially equal to the non-veterans in the applicant pool as provided in 25 NCAC 01H .0701(b). Substantially equal qualifications occur when the employing agency cannot make a reasonable determination that the qualifications held by one or more applicants are significantly better suited for the position than the qualifications held by another applicant.~~

~~(f) In reduction in force situations, when calculating length of service, the eligible veteran shall be accorded one year of State service for each year or fraction thereof of military service, up to a maximum of five years credit.~~

~~(g)(c) Spouses of disabled veterans, the surviving spouse or dependent of a veteran who died on active duty during periods of war either directly or indirectly as a result of such service, the spouses of veterans who suffer disabling injuries through service related reasons during peacetime, and the surviving spouse or dependent of a veteran who died through service related reasons during peacetime shall be eligible for preference in state employment if the spouse meets the minimum qualifications. The spouse or dependent shall not receive additional experience credit for the veteran's unrelated military service. The preference to be given is that the qualified spouse or dependent shall be hired when the spouse or dependent's overall qualifications are substantially equal to the non-veterans in the applicant pool. The spouse, surviving spouse or surviving dependent of that veteran may claim such employment- veterans' preference without regard to whether such preference has been claimed previously by the veteran.~~

~~(d) For promotion, reassignment and horizontal transfer, after applying the preference to veterans who are current State employees as explained under "Determining Military Service Credit," the eligible veteran competes with all other applicants who have substantially equal qualifications.~~

*Authority G.S. 126-4(4); 126-4(10); 128-15.*

## **SUBCHAPTER 11 - SERVICE TO LOCAL GOVERNMENT**

### **SECTION .2000 - APPOINTMENT AND SEPARATION**

#### **25 NCAC 011 .2002 TYPES OF APPOINTMENTS AND DURATION**

(a) Probationary Appointment:

(1) Individuals receiving original appointments to permanent positions must serve a probationary period. ~~Persons being hired after leaving employment in a subject position, and employees voluntarily accepting promotions, transfers or demotions in another county, social services department, mental health program, district health program or emergency management program may be required to serve a probationary period by their new employer.~~ This period is an essential extension of the selection process, and provides the time for

effective adjustment of the new employee or elimination of those whose performance will not meet acceptable standards. Persons being rehired after leaving employment in a position subject to G. S. 126 who have achieved career status and have not experienced a break in service, and employees voluntarily accepting promotions, transfers or demotions in another county, in a department of social services, mental health program, county or district public health program or emergency management program who have achieved career status and have not experienced a break in service shall not be required to serve a new probationary period, except for the purpose of determining eligibility for benefits or compensation under local government policy.

- (2) The length of the probationary period shall not be less than three nor more than nine months of either full-time or part-time employment. The length is dependant upon the complexity of the position and the rapidity of progress made by the particular individual in the position. When the employee's performance meets the required standard of work, after at least three months and not more than nine months in the position, the employee shall be given permanent status unless in a trainee appointment. If the desired level of performance is not achieved within nine months after initial appointment, the employee shall be separated from service unless in trainee status; an employee with a trainee appointment is expected to make a satisfactory progress, but is not permanent until he has completed the training period.

~~(3) At any time during a probationary period an employee may be separated from service for causes related to performance of duties or for personal conduct detrimental to the agency without right of appeal or hearing. The employee must be given notice of dismissal, including reasons.~~

- ~~(4)~~(3) Employment in a temporary appointment may be toward the probationary period at the discretion of the appointing authority. Employment in an intermittent or emergency appointment shall not be credited toward the probationary period.

(b) Trainee Appointment:

- (1) A trainee appointment may be made to a position in any class for which the specification includes special provisions for a trainee progression leading to a regular appointment. An individual may not be appointed as a trainee if he/she possesses the acceptable training and experience for the class.

- (2) The specification for each class in which a trainee appointment is authorized will define the minimum qualifications for the trainee appointment and the minimum qualifications for a regular probationary appointment. It is, of course, expected that the individual will progress through supervised experience to a minimum level of satisfactory performance in the position during a period of time indicated by the difference between the amounts of experience required for the two types of appointments. This limit does not include time spent on educational leave or additional time required to participate in a work-study program designed to meet educational requirements for the class. An employee may not remain on a trainee appointment beyond the time he meets the educational and experience requirements for the class. After the employee has successfully completed all educational and experience requirements he shall be given probationary or permanent status in the position or shall be separated. If the period of the trainee appointment equals or exceeds nine months, the employee must be given permanent status or be separated at the completion of the trainee period.

- (3) If an employee with permanent status in another class accepts a trainee appointment, the permanent status will be waived for the duration of the trainee appointment. The employee can regain permanent status either through successful completion of the trainee appointment, by reinstatement to the class in which he previously held status, or by transfer to a position in a class for which he/she would have been eligible based on previous permanent status.

- (4) A former employee who does not meet the minimum requirements of the class to which he is being appointed shall be given a trainee appointment. All requirements for the trainee appointment must be satisfied prior to attaining permanent status.

(c) Permanent Appointment. A permanent appointment is an appointment to a permanently established position when the incumbent is expected to be retained on a permanent basis. Permanent appointments follow the satisfactory completion of a probationary and/or trainee appointment, or may be made upon reinstatement of a qualified employee.

(d) Time-Limited Appointment. A time-limited appointment may be made to:

- (1) a permanent position that is vacant due to the incumbent's leave of absence and when the replacement employee's services will be needed for a period of one year or less; or
- (2) to a permanent position that has an established duration of no more than two years. Such appointment shall not be made for less than six

months. If at the end of the two year time-limited appointment, the work is expected to continue and the position becomes permanent, the employee should be given a permanent appointment. A time-limited appointment is distinguished from a temporary appointment by the greater length of time, and from the regular permanent appointment by its limited duration.

(e) Temporary Appointment. A temporary appointment may be made to a permanent or temporary position. The appointment shall be limited to a maximum duration of 12 months.

(f) Pre-Vocational Student Appointment. This appointment is to be used to enable students to gain practical knowledge of their particular occupational area of interest. A suitable plan for training under close supervision must be developed for the individual. In the case of a co-operative, work study, internship, or similar appointment, the time schedule for work must be determined. The basis of eligibility and selection for such an appointment shall be outlined in a formal plan developed by the participating agencies for each type and level of student involvement. Upon successful completion of their training, individuals may be considered for any vacant position for which qualified.

(g) Emergency Appointment:

- (1) An emergency appointment may be made when an emergency situation exists requiring the services of an employee before it is possible to identify a qualified applicant through the regular selection process. When it is determined that an emergency appointment is necessary, all other requirements for appointments will be waived.
- (2) An emergency appointment may be made for a period of up to 60 work days (consecutive or non-consecutive), or a total of 480 hours "in pay status". Any one individual may not receive successive emergency appointments with the same department or agency. At least three calendar months must elapse before that department or agency can give the same individual another emergency appointment.

(h) Appointment of Incumbents in Newly-Covered Programs:

- (1) Upon extension of State Personnel Act requirements to a program, position, or group of positions, the incumbent(s) may be appointed with permanent status in his classifications under any of the following circumstances:
  - (A) The employee is qualified for reinstatement on the basis of previous permanent status in a comparable position; or
  - (B) The employee has at least three months of satisfactory service in the program or agency, as certified by the appointing authority, and the appointing authority recommends that

the employee be granted permanent status.

- (2) If the agency fails to grant permanent status within nine months from the initial coverage then the incumbent must be terminated. Employees given trainee appointments will be given permanent status consistent with other trainee appointments.
- (3) Incumbents who have less than three months of service with the agency shall be continued with no status until they are granted permanent status or terminated as required in this Rule. Employees with more than three months but less than nine months services in the agency may be continued without status until nine months have elapsed. At the end of nine months, however, the incumbent must be granted permanent status or terminated.

(i) Work Against Appointment. When qualified applicants are unavailable and there is no trainee provision for the classification of the vacancy, the appointing authority may appoint an employee below the level of the regular classification in a work-against situation. A work-against appointment is for the purpose of allowing the employee to gain the qualifications needed for the full class through on-the-job experience. The appointee must meet the minimum training and experience standard of the class to which initially appointed. A work-against appointment may not be made when applicants are available who meet the training and experience requirements for the full class, and for the position in question.

*Authority G.S. 126-4.*

#### **25 NCAC 011 .2006 BREAK IN SERVICE**

(a) A break in service occurs when an employee is in non-pay status for more than 31 calendar days. (An employee is in pay status when working, when on paid leave or when on workers' compensation leave. An employee is not in pay status after the last day of work when separated because of resignation, dismissal, death, retirement or reduction in force.) Periods of leave without pay do not constitute a break in service.

(b) A break in service does not occur when an employee moves from one local government agency subject to G. S. 126 to another local government agency subject to G. S. 126 without being in non-pay status for more than 31 calendar days.

(c) A break in service does not occur when an employee moves from a local government agency subject to G. S. 126 to a state agency or university without being in non-pay status for more than 31 calendar days.

(d) A break in service does not occur when an employee moves from a state agency or university from a position subject to G. S. 126 to a local government agency subject to G. S. 126 without being in non-pay status for more than 31 calendar days.

*Authority G.S. 126-4.*

#### **SECTION .2300 - DISCIPLINARY ACTION: SUSPENSION, DISMISSAL AND APPEALS**



**25 NCAC 01I .2301 JUST CAUSE FOR DISCIPLINARY ACTION**

(a) Any employee, regardless of occupation, position, or profession may be warned, demoted, suspended or dismissed by the appointing authority. Such actions may be taken against employees with ~~permanent status, as defined in 25 NCAC 1I .2002(a)(2),~~ career status as defined in G. S. 126-1.1 only for just cause. The degree and type of action taken shall be based upon the sound and considered judgment of the appointing authority in accordance with the provisions of this Rule. When just cause exists the only disciplinary actions provided for under this Section are:

- (1) Written warning;
- (2) Disciplinary suspension without pay;
- (3) Demotion; and
- (4) Dismissal.

(b) At any time during the period prior to achieving career status, including during the probationary period, an employee may be separated from service for causes related to performance of duties or for personal conduct detrimental to the agency without right of appeal or hearing. The employee must be given notice of dismissal, including reasons. Such notice may be, but is not required to be, in writing.

~~(b)(c)~~ There are two bases for the discipline or dismissal of employees under the statutory standard of "just cause" as set out in G.S. 126-35. These two bases are:

- (1) Discipline or dismissal imposed on the basis of unsatisfactory job performance, including grossly inefficient job performance.
- (2) Discipline or dismissal imposed on the basis of unacceptable personal conduct.

~~(e)(d)~~ Either unsatisfactory or grossly inefficient job performance or unacceptable personal conduct, as defined in 25 NCAC 1I .2302(a); .2303(a); and .2304(b), constitutes just cause for discipline or dismissal. The categories are not mutually exclusive, as certain actions by employees may fall into both categories, depending upon the facts of each case. No disciplinary action shall be invalid solely because the disciplinary action is labeled incorrectly.

~~(e)(e)~~ The imposition of any disciplinary action shall comply with the procedural requirements of this Section.

*Authority G.S. 126-35.*

**NOTICE OF CORRECTION FOR NOTICE OF INTENT TO REDEVELOP A BROWNFIELDS PROPERTY  
M.H.O.C., LLC**

Please take notice that the address of the property subject to the Summary of Notice of Intent to Redevelop a Brownfields Property published by M.H.O.C., LLC in the January 15, 2008 edition of the NC Register is not 3600 North Graham Street, Charlotte, North Carolina, but 3606 North Graham Street.

**SUMMARY OF NOTICE OF  
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY  
Edgemont Realty, LLC**

Pursuant to N.C.G.S. § 130A-310.34, Edgemont Realty, LLC has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Durham, Durham County, North Carolina. The Property, the former site of the Golden Belt Manufacturing Co., consists of 5.478 acres and is located at 807 East Main Street. Environmental contamination exists on the Property in soil and groundwater. Edgemont Realty, LLC has committed itself to redevelopment of the Property for no uses other than mixed use that may include office, high-density residential, retail, light manufacturing, institutional and, with prior written DENR approval, other commercial use. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Edgemont Realty, LLC, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35.

The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Durham County Library, 300 N. Roxboro Street, Durham, NC 27701 by contacting Lynn Richardson at that address or at (919) 560-0171; or at the offices of the N.C. Brownfields Program (where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents), 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 508-8411.

Written public comments may be submitted to DENR within 30 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 21 days after the period for written public comments begins. Thus, if Edgemont Realty, LLC, as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the brownfields property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods for submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on February 2, 2008. All such comments and requests should be addressed as follows:

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

Notice of Application for Innovative Approval of a Wastewater System for On-site Subsurface Use

Pursuant to NCGS 130A-343(g), the North Carolina Department of Environment and Natural Resources (DENR) shall publish a Notice in the NC Register that a manufacturer has submitted a request for approval of a wastewater system, component, or device for on-site subsurface use. The following applications have been submitted to DENR:

Application by: Mike Price  
Norweco, Inc  
220 Republic St  
Norwalk, OH 44857

For: Revised Innovative Approval for "Singular<sup>®</sup> ATU/Sand Filter" advanced wastewater pretreatment system

And

Application by: Mike Hoover  
North Carolina State University, Dept of Soil Science  
Box 7619  
Raleigh, NC 27695-7619

For: Revised Innovative Approval for "Pressure Dosed Sand Filter" advanced wastewater pretreatment system

And

Application by: Bord na Mona  
Environmental Products US, Inc  
PO Box 77457  
Greensboro, NC 27417

For: Revised Innovative Approval for "Peat Filter" advanced wastewater pretreatment system

And

Application by: Mark Lubbers  
Aquapoint, Inc  
241 Duchaine Blvd  
New Bedford, MA 02745

For: Revised Innovative Approval for "Bioclere" advanced wastewater pretreatment system

And

Application by: Eric Valentine  
American Manufacturing Company  
PO Box 97  
Elkwood, VA 22718-0097

For: Revised Innovative Approval for "American Perc-Rite<sup>®</sup>" Subsurface drip wastewater dispersal system

DENR Contact: Ted Lyon  
1-919-715-3274  
Fax: 919-715-3227  
ted.lyon@ncmail.net

These applications may be reviewed by contacting the applicant or at 2728 Capital Blvd., Raleigh, NC, On-Site Water Protection Section, Division of Environmental Health. Draft proposed innovative approvals and proposed final action on the application by DENR can be viewed on the On-Site Water Protection Section web site: [http://www.deh.enr.state.nc.us/osww\\_new/new1/index.htm](http://www.deh.enr.state.nc.us/osww_new/new1/index.htm).

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***IN ADDITION***

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Written public comments may be submitted to DENR within 30 days of the date of the Notice publication in the North Carolina Register. All written comments should be submitted to Mr. Ted Lyon, Chief, On-site Water Protection Section, 1642 Mail Service Center, Raleigh, NC 27699-1642, or [ted.lyon@ncmail.net](mailto:ted.lyon@ncmail.net), or fax 919.715.3227. Written comments received by DENR in accordance with this Notice will be taken into consideration before a final agency decision is made on the innovative subsurface wastewater system application.



U.S. Department of Justice  
Civil Rights Division

RECEIVED JAN 02 2008

CC:MSR:RT:par  
DJ 166-012-3  
2007-5565

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

December 28, 2007

FILED  
2008 JAN -3 A 10:13  
OFFICE OF  
ADMINISTRATIVE  
HEARINGS

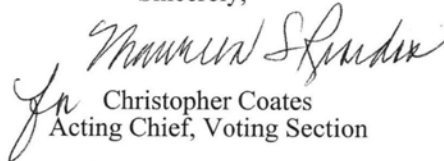
Adam Mitchell, Esq.  
Tharrington Smith  
P.O. Box 1151  
Raleigh, North Carolina 27605-1151

Dear Mr. Mitchell:

This refers to the Session Law 2007-272 (H.B. 922) which changes the general election date, filing dates, and ballot language for the Bertie County Board of Education in Bertie 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 November 1, 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).

Sincerely,

  
Christopher Coates  
Acting Chief, Voting Section

## STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARDCOUNTY OF WAKE  
IN THE MATTER OF:

The Proposed Assessment of Additional )  
 Sales and Use Tax for the period of January )  
 1, 2000 through January 31, 2005 by the )  
 Secretary of Revenue of North Carolina )

## ADMINISTRATIVE DECISION

NUMBER: 511

Docket Number 2005-416

vs. )

Robert C. Grindstaff d/b/a BTJ Cabinet )  
 Door Company, )  
 Appellant )

This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Wednesday, September 5, 2007 pursuant to the petition of Robert C. Grindstaff d/b/a BTJ Cabinet Door Company (hereinafter "Appellant") for administrative review of the final decision entered by the Assistant Secretary of Revenue on July 24, 2006 affirming the proposed assessment and declaring that the assessment was immediately due and collectible.

Pursuant to N.C. Gen. Stat. § 105-241.1, an assessment was proposed for additional sales and use tax for the period of January 1, 2000 through January 31, 2005. The Appellant contested the assessment and requested a hearing before the Secretary of Revenue. After conducting a hearing, the Assistant Secretary of Revenue affirmed the proposed assessment but waived penalties. From the Assistant Secretary's final decision, Appellant filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2. Prior to review the record in the matter and Appellant's petition, the Board ruled upon the Department's of Revenue's motion to strike.

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

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

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

It appearing to the Board, after conducting an administrative hearing in this matter, during which counsel appeared and presented oral argument on appellant's behalf, and reviewing the petition, documents and records from the hearing before the Assistant Secretary, that the appellant did offer evidence to rebut the presumption. Thus, the Board orders that the Department recalculate taxes and statutory interest due and exclude all amounts related to "Gaston Custom Woodworks."

**IT IS THEREFORE ORDERED** that the additional sales and use tax assessment for the period of January 1, 2000 through January 31, 2005 is reduced as indicated by excluding transactions with Gaston Custom Woodworks.

**TAX REVIEW BOARD**



*Stacey A. Phipps*

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

*Ed S. Finley, Jr.*

Edward S. Finley, Jr. Chair  
North Carolina Utilities Commission

*George W. Boylan*

George W. Boylan, Esquire  
Appointed Member



**STATE OF NORTH CAROLINA**

**BEFORE THE  
TAX REVIEW BOARD**

**COUNTY OF WAKE  
IN THE MATTER OF:**

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

**ADMINISTRATIVE DECISION**

**NUMBER: 512**  
Docket Number 2006-316

vs. )  
)  
Susan M. Johnson, )  
Appellant )

---

This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Thursday, October 25, 2007 pursuant to the petition of Susan M. Johnson (hereinafter "Appellant") for administrative review of the final decision entered by the Assistant Secretary of Revenue on June 11, 2007 affirming the proposed assessment of additional income tax for the taxable years of 2001 and 2002.

Pursuant to N.C. Gen. Stat. § 105-241.1, an assessment proposing additional income tax for taxable years 2001 and 2002 was mailed to Appellant. Appellant protested the assessment and requested a hearing before the Secretary of Revenue. After conducting a hearing, the Assistant Secretary of Revenue sustained the proposed assessment. From the Assistant Secretary's final decision, Appellant filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2.

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

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

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

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

Secretary's conclusions of law were fully supported by the findings of fact, and that the final decision of the Assistant Secretary was supported by the conclusions of law;

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

**TAX REVIEW BOARD**



*Stacey A. Phipps*

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

*Ed S. Finley, Jr.*

Edward S. Finley, Jr., Chair  
North Carolina Utilities Commission

*George W. Boylan*

George W. Boylan, Esquire  
Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessment of Gift Tax )  
For the Taxable Year 2003 by the Secretary )  
Of Revenue of North Carolina )

ADMINISTRATIVE DECISION

NUMBER: 513

Docket Number 2006-63

vs. )

Cale S. Lewis, )

Appellant )

This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Thursday, October 25, 2007 pursuant to the petition of Cale S. Lewis (hereinafter "Appellant") for administrative review of the final decision entered by the Assistant Secretary of Revenue on September 21, 2007 holding that the proposed assessment of gift tax, penalties, and interest was lawful and proper, and sustaining the assessment in the entirety.

On November 23, 2005, a Notice of Gift Tax Assessment for the 2003 tax year was mailed to Appellant, proposing an assessment of gift tax, penalties, and interest. Appellant protested the proposed assessment and requested a hearing before the Secretary of Revenue. After conducting a hearing, the Assistant Secretary of Revenue sustained the proposed assessment. From the Assistant Secretary's final decision, Appellant filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2.

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

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

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

It appearing to the Board, after conducting an administrative hearing in this matter, during which appellant and counsel appeared and presented oral argument, and reviewing the Assistant Secretary's final decision, that the findings of fact made by the

Assistant Secretary were supported by competent evidence in the record that a gift was made in this matter, that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact, and that the final decision of the Assistant Secretary was supported by the conclusions of law that a gift was made by Appellant; however, the Board finds that the market value of the property subject to the gift was \$200,000.00 as of the taxable year of the gift tax assessment. Therefore, the gift tax assessment shall be reduced accordingly, and the penalty imposed against Appellant is waived.

**IT IS THEREFORE ORDERED** that the Assistant Secretary's final decision is affirmed as to a gift made by Appellant in this matter; but the amount of the gift tax assessment is reduced, and the penalty imposed against Appellant is waived.

**TAX REVIEW BOARD**



*Stacey A. Phipps*

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

*Ed S. Finley, Jr.*

Edward S. Finley, Jr., Chair  
North Carolina Utilities Commission

*George W. Boylan*

George W. Boylan, Esquire  
Appointed Member

**STATE OF NORTH CAROLINA**

**BEFORE THE  
TAX REVIEW BOARD**

**COUNTY OF WAKE  
IN THE MATTER OF:**

The Proposed Denial of Refunds on Motor )  
Fuels Tax Division's Highway Use of Dyed )  
Diesel Fuel and Dispensing Non-Tax-Paid )  
Motor Fuel into Highway Vehicle Civil )  
Penalty Assessments, dated December 28, )  
2004, )

And )

The Proposed Denial of Refund on Motor )  
Fuels Tax Division's Proposed Bulk User )  
Audit Tax Assessment Issued on February 1, )  
2005, by the Secretary of Revenue of the )  
State of North Carolina, )

vs. )

Donald Grady Ward, )  
Appellant )

**Administrative Decision**

**Number:** 514  
**Docket Number** 2005-61

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This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Thursday, October 25, 2007 pursuant to the petition of Donald Grady Ward (hereinafter "Appellant") for administrative review of the final decision entered by the Honorable Eugene J. Cella, Assistant Secretary of Revenue on July 26, 2006. In the final decision, the Assistant Secretary affirmed in its entirety the civil penalty assessment for unlawful use of off-road fuel for non-highway purposes.

On November 30, 2004, a North Carolina Highway Patrol officer observed Appellant, a tractor dealer, at an Exxon station pumping off-road fuel into the supply tank of his Ford truck, which is a licensed highway vehicle. Signs were prominently located above the two diesel pumps, which are located beside a kerosene pump at the Exxon station. A sign at the pump on the left states "Highway Diesel" (i.e., on-road fuel), while the sign over the middle pumps states "Off Road Diesel" (i.e., off-road fuel). In addition to the large signs displayed above the pumps, each diesel pump displays additional information, which explains the type of fuel dispensed by each pump. The signs above the pumps are easily distinguishable at night because of lights.

On December 28, 2004, the North Carolina Department of Revenue, Motor Fuels Tax Division ("Division") issued a civil penalty against Appellant pursuant to N.C. Gen. Stat. § 105-449.117(a). Appellant paid the assessment under protest. In addition to the penalty for use of off-road fuel in a highway vehicle under N.C. Gen. Stat. § 105-449.117(a), the Division issued Appellant a civil penalty assessment as provided in N.C. Gen. Stat. § 105-449.118.

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

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

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

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

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

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

Made and entered into the 20th day of December 2007.

TAX REVIEW BOARD



*Stacey A. Phipps*

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

*Ed S. Finley, Jr.*

Edward S. Finley, jr., Chair  
North Carolina Utilities Commission

*George W. Boylan*

George W. Boylan, Esquire  
Appointed Member

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

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

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

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Marine Fisheries Commission intends to adopt the rule cited as 15A NCAC 03O .0112 and amend the rules cited as 15A NCAC 03J .0304; 03M .0202; 03O .0101, .0402, .0404, .0501, .0503; 03Q .0107.

**Proposed Effective Date:** July 1, 2008

**Public Hearing:**

**Date:** February 19, 2008, Tuesday

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

**Location:** DENR Regional Office, 942 Washington Square Mall, Washington, NC 27889

**Public Hearing:**

**Date:** February 21, 2008, Thursday

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

**Location:** UNCW Center for Marine Science, 5600 Marvin K. Moss Lane, Wilmington, NC 28409

**Reason for Proposed Action:**

**15A NCAC 03J .0304** – Amendments to this rule are proposed to create a season for the use of electrical fishing devices in joint waters of the Cape Fear River, in order to protect sunfish populations.

**15A NCAC 03M .0202** – The 2004 Estuarine Striped Bass Fishery Management Plan was approved by the Marine Fisheries Commission and the Wildlife Resources Commission, with an allowance for additional data collection for determining measures to address two specific management actions in the Central Southern Management Area. These management actions are to reduce mortality in the recreational fishery and to reduce discards in the commercial large mesh gill net fishery. In response to the results of the additional data collected, amendments to this rule are proposed to help conserve available spawning stock of striped bass to rebuild the population of the species.

**15A NCAC 03O .0101** – General Statute 113-174.3, regarding the For Hire Blanket Coastal Recreational Fishing License, was modified. This modification requires a change in the current rule in order to clarify certifications that for-hire boat captains must possess and documentation requirements that for-hire boat captains must meet when applying for a For Hire Blanket Coastal Recreational Fishing License.

**15A NCAC 03O .0112** – General Statute 113-174.3, regarding the For Hire Blanket Coastal Recreational Fishing License, was modified. In response, this rule is proposed for adoption in

order to clarify all license requirements that a for-hire vessel operator must meet and all conditions that a for-hire vessel operator must abide when engaged in for-hire recreational fishing activities.

**15A NCAC 03O .0402, .0404** – The Fisheries Reform Act (FRA) of 1997 placed a cap on the number of Standard Commercial Fishing Licenses (SCFLs) available to new entrants. In response, the Marine Fisheries Commission (MFC) created a License Eligibility Board. The Board may approve an application for a SCFL if certain criteria are met by the applicant that demonstrate participation in the commercial fishing industry. Since there is a limited number of SCFLs they have acquired a monetary value. Often when individuals transfer a SCFL they are financially compensated by the person receiving the license. Over the last two years there has been an increase in the number of short-term transfers of SCFLs. The majority of these licenses are acquired for the purpose of sale and thus do not meet the spirit of the FRA or the intent of the MFC. Amendments to these rules are needed to address the transfer of SCFLs obtained through the License Eligibility Board.

**15A NCAC 03O .0501** – Proclamation M-12-2006 mandates a For Hire Fishing Permit for vessels that do not possess a For Hire Blanket Coastal Recreational Fishing License for the number of persons on the vessel engaged in for-hire fishing. The proclamation outlines the requirements to obtain the For Hire Fishing Permit. This rule is proposed for amendment to move the For Hire Fishing Permit from proclamation to permanent rule.

**15A NCAC 03O .0503** – Proclamation M-12-2006 mandates a For Hire Fishing Permit for vessels that do not possess a For Hire Blanket Coastal Recreational Fishing License for the number of persons on the vessel engaged in for-hire fishing. The proclamation outlines the specific conditions permitted persons must abide. This rule is proposed for amendment to move the For Hire Fishing Permit specific conditions from proclamation to permanent rule.

**15A NCAC 03Q .0107** – The 2004 Estuarine Striped Bass Fishery Management Plan was approved by the Marine Fisheries Commission and the Wildlife Resources Commission, with an allowance for additional data collection for determining measures to address two specific management actions in the Central Southern Management Area. These management actions are to reduce mortality in the recreational fishery and to reduce discards in the commercial large mesh gill net fishery. In response to the results of the additional data collected, amendments to this rule are proposed to help conserve available spawning stock of striped bass to rebuild the population of the species. Amendments are also proposed to create an area closure for the use of electrical fishing devices downstream of



*the three locks and dams on the Cape Fear River, to address user conflicts.*

**Procedure by which a person can object to the agency on a proposed rule:** *If you have any objections to the proposed rules, please forward a typed or handwritten letter indicating your specific reasons for your objections to the following address: NC Division of Marine Fisheries, Catherine Blum, Rulemaking Coordinator, P.O. Box 769, Morehead City, NC 28557*

**Comments may be submitted to:** *Catherine Blum, P.O. Box 769, Morehead City, NC 28557, phone (252) 808-8013, fax (252) 726-0254, email catherine.blum@ncmail.net*

**Comment period ends:** *April 1, 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

**CHAPTER 03 - MARINE FISHERIES**

**SUBCHAPTER 03J - NETS, POTS, DREDGES, AND OTHER FISHING DEVICES**

**SECTION .0300 – POTS, DREDGES, AND OTHER FISHING DEVICES**

**15A NCAC 03J .0304 ELECTRICAL FISHING DEVICE**  
It is ~~lawful~~ unlawful to take catfish by the use of a hand-operated device generating pulsating electrical current in the Cape Fear River ~~between except from 800 feet downstream of Lock and Dam No. 1 in Bladen County downstream to where the Black River joins the Cape Fear River.~~ from July 1 to March 1.

*Authority G.S. 113-134; 113-182; 143B-289.52.*

**SUBCHAPTER 03M - FINFISH**

**SECTION .0200 - STRIPED BASS**

**15A NCAC 03M .0202 SEASON, SIZE AND HARVEST LIMIT: INTERNAL COASTAL WATERS**

~~(a) The Fisheries Director may, by proclamation, impose any or all the following restrictions on the taking of striped bass in a commercial fishing operation or for recreational purposes in internal coastal waters: waters during the period from October 1 through April 30:~~

- (1) Specify ~~season or seasons: fishing days and times,~~  
  - (A) ~~for recreational purposes;~~
  - (B) ~~for commercial fishing operations from October 1 through April 30;~~
- (2) Specify areas, but shall not include coastal waters of the Cape Fear River.
- (3) Specify quantity, except possession shall not exceed:  
  - (a) more than three fish in any one day in the Albemarle Sound Management Area as designated in 15A NCAC 03R .0201, and
  - (b) more than two fish in any one day in the joint and coastal fishing waters of the Central Southern Management Area as designated in 15A NCAC 03R .0201.
- (4) Specify means/methods,
- (5) Specify size, but the minimum size specified shall not be less than 18 inches total length, and
- (6) Require submission of statistical and biological data.

Fish that do not meet the minimum size limit specified by proclamation shall immediately be returned to the waters from which taken regardless of condition.

~~(b) The Fisheries Director may, by proclamation, impose any or all the following restrictions on the taking of striped bass by hook and line or for recreational purposes in internal coastal waters in order to comply with the management requirements incorporated in the North Carolina Estuarine Striped Bass Plan:~~

- (1) ~~Specify quantity, but shall not exceed possession of more than three fish in any one day, and~~
- (2) ~~Specify size, but the minimum size specified shall not be less than 18 inches total length.~~

*Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.*

**SUBCHAPTER 03O – LICENSES, LEASES AND FRANCHISES**

**SECTION .0100 – LICENSES**

**15A NCAC 03O .0101 PROCEDURES AND REQUIREMENTS TO OBTAIN LICENSES, ENDORSEMENTS AND COMMERCIAL FISHING VESSEL REGISTRATIONS**

(a) To obtain any Marine Fisheries licenses, endorsements, commercial fishing vessel registrations except Recreational Fishing Tournament Licenses to Sell Fish and Land or Sell

Licenses, the following information is required for the application by the licensee, a responsible party or person holding a power of attorney:

- (1) Full name, physical address, mailing address, date of birth, and signature of the licensee on the application. If the licensee is not appearing before a license agent or a representative of the Division, the licensee's signature on the application shall be notarized;
- (2) Current picture identification of licensee or responsible party; acceptable forms of picture identification are driver's license, state identification card, military identification card, resident alien card (green card) or passport or if purchased by mail, a copy thereof;
- (3) Certification that the applicant does not have four or more marine or estuarine resource violations during the previous three years, except Blanket Coastal Recreational Fishing Licenses;
- (4) Valid documentation papers or current motor boat registration or copy thereof when purchasing a commercial fishing vessel registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted;
- (5) Current articles of incorporation and a current list of corporate officers when purchasing a license or commercial fishing vessel registration in a corporate name. In the case of incorporation of an individual fishing vessel, the name of the master of that vessel shall also be specified. It is unlawful to fail to notify the Morehead City Office of the Division of Marine Fisheries within five days of change of the master specified for that vessel;
- (6) If a partnership is established by a written partnership agreement, a current copy of such agreement shall be provided when purchasing a license, endorsement or commercial fishing vessel registration in a partnership name;
- (7) For nonresidents, certification of the state of residency;
- (8) In addition to the information required in G.S. 113-169.4, linear length of pier when purchasing an Ocean Fishing Pier License;
- (9) In addition to the information required in G.S. 113-171.1, current aircraft registration and list of operator(s) when purchasing a Spotter Plane License;
- (10) In addition, for fish dealers licenses, the physical address of the established location where business is conducted and, if different, the address where records are kept;
- (11) When purchasing a Fish Dealer License with clam or oyster categories or a consolidated license, the applicant shall provide valid

certification as a North Carolina certified shellfish dealer;

- (12) In addition, for the Ocean Fishing Pier Blanket Coastal Recreation Fishing License, a valid Ocean Fishing Pier License issued in the name of the applicant or copy thereof.

- (13) In addition, for the For Hire Blanket Coastal Recreational Fishing License, the applicant shall provide:

(A) A valid certification from the United States Coast Guard (USCG) that allows carrying six or fewer passengers or a certification from the USCG that allows carrying more than six passengers; and

(B) Valid documentation papers or current motor boat registration or copies thereof for the vessel engaged as for-hire. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.

- (b) License to Land Flounder from the Atlantic Ocean.

- (1) To qualify for a License to Land Flounder from the Atlantic Ocean, the applicant shall:

(A) have landed in North Carolina at least 1,000 pounds of flounder from a single vessel each year from the Atlantic Ocean during any two of the 1992-93, 1993-94, 1994-95 license years for which the person had a vessel that was licensed to land in North Carolina; and

(B) have been licensed under G.S. 113-152 or 113-153 during any two of the 1992-93, 1993-94, or 1994-95 license years; and

(C) hold a valid Standard or Retired Standard Commercial Fishing License or valid Land or Sell License.

- (2) It is lawful for a person to hold Licenses to Land Flounder from the Atlantic Ocean equal to the number of vessels that he owns that individually met the eligibility requirements of Parts (b)(1)(A) and (b)(1)(B) of this Rule.

- (3) The License to Land Flounder from the Atlantic Ocean is only valid when used on the vessel specified at the time of license issuance.

- (4) At the time of issuance, the applicant for the License to Land Flounder from the Atlantic Ocean shall specify the name of the master of the vessel for each License to Land Flounder from the Atlantic Ocean issued.

- (5) Applicants for a License to Land Flounder from the Atlantic Ocean shall complete an application form provided by the Division of Marine Fisheries and submit it to the

Morehead City Office of the Division of Marine Fisheries for processing.

- (6) It is unlawful for the holder of the License to Land Flounder from the Atlantic Ocean to fail to notify the Morehead Office of the Division of Marine Fisheries within five days of change as to the master identified on the license.

- (7) Licenses to Land Flounder from the Atlantic Ocean are issued for the current license year and expire on June 30.

(c) To obtain a Recreational Fishing Tournament License to Sell Fish, the tournament organizer shall apply with the Division of Marine Fisheries at least 30 days prior to the starting date of the tournament with the following required information:

- (1) Full name, physical address, mailing address, date of birth, signature of the tournament organizer, name of tournament, and dates of tournament on the license application. If the licensee is not appearing before a representative of the Division, the licensee's signature shall be notarized on the application.
- (2) Current picture identification of tournament organizer; acceptable forms of picture identification are driver's license, state identification card, military identification card, or passport, or if purchased by mail, a copy thereof.

(d) To obtain a Land or Sell License, the following information is required for a proper application:

- (1) Full name, physical address, mailing address, date of birth, and signature of the responsible party or master for the vessel on the license application. If the licensee is not appearing before a representative of the Division, the licensee's signature on the application shall be notarized on the application;
- (2) Current picture identification of responsible party or master; acceptable forms of picture identification are driver's license, state identification card, military identification card, or passport or if applying by mail, a copy thereof;
- (3) Valid documentation papers or current motor boat registration or copy thereof when purchasing a commercial fishing vessel registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.

Fees shall be based on the vessel's homeport as it appears on the U.S. Coast Guard documentation papers or the State in which the vessel is registered.

(e) Proof of residency in North Carolina for:

- (1) Standard Commercial Fishing License or Retired Standard Commercial Fishing License shall require a notarized certification from the applicant that the applicant is a resident of the State of North Carolina as defined by G.S. 113-130(4); and

- (A) a notarized certification from the applicant that a North Carolina State Income Tax Return was filed for the previous calendar or tax year as a North Carolina resident; or

- (B) a notarized certification that the applicant was not required to file a North Carolina State Income Tax Return for the previous calendar or tax year; or

- (C) military identification, military dependent identification and permanent change of station orders or assignment orders substantiating individual's active duty assignment at a military facility in North Carolina.

- (2) All other types of licenses:

- (A) North Carolina voter registration card; or

- (B) Current North Carolina Driver's License; or

- (C) Current North Carolina Certificate of Domicile; or

- (D) Current North Carolina Identification Card issued by the North Carolina Division of Motor Vehicles; or

- (E) Military identification, military dependent identification and permanent change of station orders or assignment orders substantiating individual's active duty assignment at a military facility in North Carolina.

(f) Applications submitted without complete and required information shall be deemed incomplete and shall not be considered further until resubmitted with all required information.

(g) It is unlawful for a license or registration holder to fail to notify the Division of Marine Fisheries within 30 days of a change of address.

(h) Licenses are available at Offices of the Division or by mail from the Morehead City Office, unless otherwise specified. In addition, Recreational Commercial Gear Licenses are available at Wildlife Service Agents who have been designated as agents of the Department.

(i) To renew any Marine Fisheries licenses, endorsements, and commercial fishing vessel registration, except Recreational Commercial Gear Licenses, the following is required for the renewal application by the licensee, a responsible party or person holding a power of attorney;

- (1) The information required in Subparagraphs (a)(4), (a)(5), and (a)(6) of this Rule are only required if a change has occurred since the last issuance of license, endorsement or commercial fishing vessel registration.

- (2) Certification that articles of incorporation and list of corporate officers, if incorporated, written partnership agreement, if written partnership, or documentation papers or motor boat registration previously provided for initial

- license purchase are still valid and current for renewal.
- (3) Current and valid state driver's license or state identification picture identification numbers and expiration dates shall be verified on mail license renewal applications or any other electronic license renewal process, otherwise the licensee shall provide a photocopy for renewal by mail or visit a Division License Office and present a current and valid picture identification pursuant to Subparagraph (a)(2) of this Rule.
  - (4) The licensee's or responsible party's signature on the application shall certify all information as true and accurate. Notarization of signature on renewal applications is not required.
  - (5) The Division of Marine Fisheries may require current copies of documentation for licenses, endorsements, commercial fishing vessel registration on renewal when necessary to verify inconsistent information or the information cannot be verified by independent sources.
  - (6) If the linear length of the pier has not changed for the Ocean Fishing Pier License renewal, the responsible party shall certify that the length is accurate; otherwise, a Marine Patrol Officer's signature is required to certify the linear length before the license can be renewed.
  - (7) Certification that shellfish dealer certification by North Carolina previously provided for issuance of Fish Dealer License with clam or oyster categories or consolidated license is still valid and current for renewal.

*Authority G.S. 113-134; 113-168; 113-168.1-6; 113-169; 113-169.2-5; 113-171.1; 113-174.3; 113-174.4; 143B-289.52.*

#### **15A NCAC 030 .0112 FOR HIRE COASTAL RECREATIONAL FISHING**

- (a) It is unlawful to operate a For Hire Vessel unless the vessel operator possesses either the For Hire Blanket Coastal Recreational Fishing License (CRFL) for the vessel or a Division of Marine Fisheries For Hire Fishing Permit for the vessel as provided in 15A NCAC 030 .0503(k).
- (b) It is unlawful for a For Hire Vessel operator to operate under the For Hire Blanket CRFL without:
- (1) Holding the USCG certification required in 15A NCAC 030 .0101(a)(13);
  - (2) Having the For Hire Blanket CRFL for the vessel or copy thereof in possession and ready at hand for inspection; and
  - (3) Having current picture identification in possession and ready at hand for inspection.
- (c) It is unlawful for the holder of the For Hire Blanket CRFL to fail to participate in and provide complete and accurate information as requested by the Division for biological sampling and survey programs.

(d) It is unlawful to fail to display a current For Hire Blanket CRFL decal mounted on an exterior surface of the vessel so as to be plainly visible when viewed from the port side while engaged in for-hire recreational fishing.

*Authority G.S. 113-134; 113-174.3; 143B-289.52.*

#### **SECTION .0400 – STANDARD COMMERCIAL LICENSE ELIGIBILITY**

NOTE: 15A NCAC 030 .0402 was published in the September 4, 2007 North Carolina Register, Volume 22, Issue 05, page 293. Proposed amendments to this rule, as published, are shown below in italics and have an earliest effective date of February 1, 2008. Additional proposed amendments to this rule are shown below in regular font.

#### **15A NCAC 030 .0402 APPLICATION PROCESS**

- (a) Application forms for determination of eligibility for the Standard Commercial Fishing Licenses Eligibility Pool shall be available at all offices of the Division of Marine Fisheries and must be submitted to the Morehead City Office of the Division of Marine Fisheries for processing.
- ~~(b) Applications for determination of eligibility for the Standard Commercial Fishing License Eligibility Pool for the 1999-2000 license year shall be accepted beginning April 1, 1999. All applications received from April 1, 1999 through June 30, 1999, shall be reviewed for eligibility for the 1999-2000 license year.~~
- ~~(c)~~ (b) Only one application per individual for determination of eligibility for the Standard Commercial Fishing Licenses Eligibility Pool shall be accepted or may be pending at any one time. An applicant may ~~only~~ have only one entry in the eligibility pool at any one time.
- ~~(d)~~ (c) Individuals who currently hold or are eligible to purchase a Standard or Retired Standard Commercial Fishing License shall not be eligible to apply for additional Standard Commercial Fishing Licenses through the Standard Commercial Fishing Licenses Eligibility Pool.
- ~~(e)~~ (d) If an applicant has died or becomes ineligible and is subsequently selected from the eligibility pool, that license eligibility shall automatically revert to the eligibility pool.
- ~~(f)~~ (e) Persons claiming retirement from commercial fishing or transferring their Standard Commercial Fishing License may not apply for pool eligibility for two years from the date of the last ~~transfer~~ transfer except as provided in 15A NCAC 030 .0404(3).
- ~~(g)~~ (f) Applicants shall notify the Division of Marine Fisheries within 30 days of a change of address.

*Authority G.S. 113-134; 143B-289.52; S.L. 1998-225, s. 4:24.*

NOTE: 15A NCAC 030 .0404 was published in the September 4, 2007 North Carolina Register, Volume 22, Issue 05, pages 293-294. Proposed amendments to this rule, as published, are shown below in italics and have an earliest effective date of February 1, 2008. Additional proposed amendments to this rule are shown below in regular font.

**15A NCAC 030 .0404 ELIGIBILITY CRITERIA**

In determining eligibility of an application for the Standard Commercial Fishing License Eligibility Pool, the Eligibility Board shall apply the following criteria:

- (1) Involvement in Commercial Fishing:
  - (a) Significant involvement in the commercial fishing industry for three of the last five years; or
  - (b) Significant involvement in commercial fishing or in the commercial fishing industry prior to the last five years; or
  - ~~(c) Greater than 50 percent of the applicant's total annual income per year for at least three years derived from commercial fishing; or~~
  - ~~(d) Greater than 75 percent of the applicant's total annual income for three of the last five years being derived from commercial fishing; or~~
  - ~~(e)(c)~~ In the case of an applicant who ~~has turned is under 16 in the year prior to application, years of age,~~ significant involvement in commercial fishing for two out of the last five years ~~prior to reaching the age of 16~~ with a parent, legal guardian, grandparent or ~~other adult family member; other adult;~~ or
  - ~~(f)(d)~~ Significant ~~family~~ involvement of the applicant's family in commercial ~~fishing for the last five years fishing.~~ For the purpose of this Sub-item, family shall include mother, father, brother, sister, spouse, children, grandparents or legal guardian.

For the purposes of this Rule, significant involvement means persons or corporations who are engaged in the actual taking of ~~fish,~~ fish for sale, from the waters of the State, or other states, jurisdictions, or federal waters, or any licensed dealer or the dealer's employees who purchases fish at the point of ~~landing or their employees at the point of landing.~~ Significant involvement does not include activities such as those who transport fish from the point of landing; those who sell or make commercial or recreational fishing gear; those who operate bait and tackle ~~shops,~~ unless they are engaged in the actual taking of bait for sale; or those who work in fish markets or crab picking operations.

- (2) Compliance with Applicable Laws and Regulations:
  - (a) The applicant shall not have any licenses, endorsements or commercial fishing vessel registrations issued by the Division of Marine Fisheries or the right to hold such under

suspension or revocation at the time of application or during the eligibility review; or

- (b) If selected for the Standard Commercial Fishing License Eligibility Pool, the applicant shall become ineligible for the Standard Commercial Fishing License Eligibility Pool if any licenses, endorsements or registrations or the right to hold such issued by the Division of Marine Fisheries are suspended or revoked; or
- (c) Four convictions within the last three years or the number of convictions which would cause suspension or revocation of license, endorsement, or registration within the last three years shall result in the application being denied; or
- (d) A record of habitual violations evidenced by eight or more convictions in the last 10 years shall result in the application being denied.

For purposes of eligibility for the Standard Commercial Fishing License Eligibility Pool, the term convictions shall include but not be limited to any conviction for violation of any provision of G.S. 113 Chapter 113 of the North Carolina General Statutes and any rule implementing or authorized by such statutes; any conviction for violation of G.S. 76-40 and any rule implementing or authorized by such statute; any conviction of G.S. 75A Chapter 75A of the North Carolina General Statutes and any rule implementing or authorized by such statutes; any conviction for violation of any provision of Article 7 of G.S. 143B Chapter 143B of the North Carolina General Statutes and any rule implementing or authorized by such statutes; any conviction of resist, obstruct, or delay involving a Marine Patrol Officer or Wildlife Officer under G.S. 14-223; and any conviction involving assaultive behavior toward a Marine Patrol Officer or other governmental official of the Department of Environment and Natural Resources or the Wildlife Commission.

Applicants for the Standard Commercial Fishing License Eligibility Pool must provide certification that the applicant does not have four or more marine or estuarine resource violations during the previous three years.

- ~~(3)~~ The responsible party shall not have transferred a Standard Commercial Fishing License granted by the Eligibility Board.
- ~~(3)(4)~~ All applicants for the Standard Commercial Fishing License Eligibility Pool must meet all

other statutory eligibility requirements for the Standard Commercial Fishing License.

*Authority G.S. 113-134; 113-168.1; 113-168.2; 143B-289.52; S.L. 1998-225, s. 4.24.*

## **SECTION .0500 – PERMITS**

### **15A NCAC 03O .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS**

(a) To obtain any Marine Fisheries permit, the following information is required for proper application from the applicant, a responsible party or person holding a power of attorney:

- (1) Full name, physical address, mailing address, date of birth, and signature of the applicant on the application. If the applicant is not appearing before a license agent or the designated Division contact, the applicant's signature on the application shall be notarized;
- (2) Current picture identification of applicant, responsible party and, when applicable, person holding a power of attorney; acceptable forms of picture identification are driver's license, current North Carolina Identification card issued by the North Carolina Division of Motor Vehicles, military identification card, resident alien card (green card) or passport or if applying by mail, a copy thereof;
- (3) Full names and dates of birth of designees of the applicant who shall be acting under the requested permit where that type permit requires listing of designees;
- (4) Certification that the applicant and his designees do not have four or more marine or estuarine resource convictions during the previous three years;
- (5) For permit applications from business entities, the following documentation is required:
  - (A) Business Name;
  - (B) Type of Business Entity: Corporation, partnership, or sole proprietorship;
  - (C) Name, address and phone number of responsible party and other identifying information required by this Subchapter or rules related to a specific permit;
  - (D) For a corporation, current articles of incorporation and a current list of corporate officers when applying for a permit in a corporate name;
  - (E) For a partnership, if the partnership is established by a written partnership agreement, a current copy of such agreement shall be provided when applying for a permit;
  - (F) For business entities, other than corporations, copies of current assumed name statements if filed and

copies of current business privilege tax certificates, if applicable.

- (6) Additional information as required for specific permits.

(b) A permittee shall hold a valid Standard or Retired Standard Commercial Fishing License in order to hold a:

- (1) Pound Net Permit;
- (2) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean; or
- (3) Atlantic Ocean Striped Bass Commercial Gear Permit.

(c) A permittee and his designees shall hold a valid Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order to hold a:

- (1) Permit to Transplant (Prohibited) Polluted Shellfish;
- (2) Permit to Transplant Oysters from Seed Management Areas;
- (3) Permit to Use Mechanical Methods for Oysters or Clams on Shellfish Leases or Franchises;
- (4) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas; or
- (5) Depuration Permit.

(d) A permittee shall hold a valid:

- (1) Fish Dealer License in the proper category in order to hold Dealer Permits for Monitoring Fisheries Under a Quota/Allocation for that category; and
- (2) Standard Commercial Fishing License with a Shellfish Endorsement, Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order to harvest clams or oysters for depuration.

(e) Aquaculture Operations/Collection Permits:

- (1) A permittee shall hold a valid Aquaculture Operation Permit issued by the Fisheries Director to hold an Aquaculture Collection Permit.
- (2) The permittee or designees shall hold appropriate licenses from the Division of Marine Fisheries for the species harvested and the gear used under the Aquaculture Collection Permit.

(f) Atlantic Ocean Striped Bass Commercial Gear Permit:

- (1) Application for an Atlantic Ocean Striped Bass Commercial Gear Permit must be made prior to November 1 of each year. A person shall declare one of the following gears for an initial Atlantic Ocean Striped Bass Commercial Gear Permit and at intervals of three consecutive license years thereafter:
  - (A) gill net;
  - (B) trawl; or
  - (C) beach seine.

For the purpose of this Rule, a beach seine is defined as a swipe net constructed of multi-filament or multi-fiber webbing fished from the ocean beach that is deployed from a vessel

launched from the ocean beach where the fishing operation takes place.

Gear declarations are binding on the permittee for three consecutive license years without regard to subsequent annual permit issuance.

- (2) A person is not eligible for more than one Atlantic Ocean Striped Bass Commercial Gear Permit regardless of the number of Standard Commercial Fishing Licenses, Retired Standard Commercial Fishing Licenses or assignments held by the person.
- (3) The annual, nonrefundable permit fee is ten dollars (\$10.00).

**(g) For Hire Fishing Permit:**

- (1) The permittee shall hold a valid certification from the United States Coast Guard (USCG) that allows carrying six or fewer passengers or a certification from the USCG that allows carrying more than six passengers;
- (2) The permittee shall provide valid documentation papers or current motor boat registration or copies thereof for the vessel engaged as for-hire. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.

~~(g)~~(h) Applications submitted without complete and required information shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the applicant with deficiency in the application so noted.

~~(h)~~(i) A permit shall be issued only after the application has been deemed complete by the Division of Marine Fisheries and the applicant certifies to fully abide by the permit general and specific conditions established under 15A NCAC 03J .0107, 03K .0103, 03K .0104, 03K .0107, 03K .0206, 03K .0303, 03K .0401, 03O .0502, and 03O .0503 as applicable to the requested permit.

~~(i)~~(j) The Fisheries Director, or his agent may evaluate the following in determining whether to issue, modify or renew a permit:

- (1) Potential threats to public health or marine and estuarine resources regulated by the Marine Fisheries Commission;
- (2) Applicant's demonstration of a valid justification for the permit and a showing of responsibility as determined by the Fisheries Director;
- (3) Applicant's history of habitual fisheries violations evidenced by eight or more violations in 10 years.

~~(j)~~(k) The applicant shall be notified in writing of the denial or modification of any permit request and the reasons therefor. The applicant may submit further information, or reasons why the permit should not be denied or modified.

~~(k)~~(l) Permits are valid from the date of issuance through the expiration date printed on the permit. Unless otherwise established by rule, the Fisheries Director may establish the issuance timeframe for specific types and categories of permits based on season, calendar year, or other period based upon the

nature of the activity permitted, the duration of the activity, compliance with federal or state fishery management plans or implementing rules, conflicts with other fisheries or gear usage, or seasons for the species involved. The expiration date shall be specified on the permit.

~~(l)~~(m) To renew a permit, the permittee shall file a certification that the information in the original application is still valid, or a statement of all changes in the original application and any additional information required by the Division of Marine Fisheries.

~~(m)~~(n) For initial or renewal permits, processing time for permits may be up to 30 days unless otherwise specified in this Chapter.

~~(n)~~(o) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address.

~~(o)~~(p) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries of a change of designee prior to use of the permit by that designee.

~~(p)~~(q) Permit applications shall be available at all Division Offices.

*Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 113-210; 143B-289.52.*

**15A NCAC 03O .0503 PERMIT CONDITIONS;  
SPECIFIC**

**(a) Horseshoe Crab Biomedical Use Permit:**

- (1) It is unlawful to use horseshoe crabs for biomedical purposes without first obtaining a permit.
- (2) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to submit a report on the use of horseshoe crabs to the Division of Marine Fisheries due on February 1 of each year. Such reports shall be filed on forms provided by the Division and shall include a monthly account of the number of crabs harvested, statement of percent mortality up to the point of release, and a certification that harvested horseshoe crabs are solely used by the biomedical facility and not for other purposes.
- (3) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to comply with the Atlantic States Marine Fisheries Commission Horseshoe Crab Fisheries Management Plan monitoring and tagging requirements for horseshoe crabs. Copies of this plan are available from the Atlantic States Marine Fisheries Commission, 1444 Eye Street, NW, 6th Floor, Washington, DC 20005, (202) 289-6400, or the Division of Marine Fisheries' Morehead City Office.

**(b) Dealers Permits for Monitoring Fisheries under a Quota/Allocation:**

- (1) During the commercial season opened by proclamation or rule for the fishery for which a

Dealers Permit for Monitoring Fisheries under a Quota/Allocation permit is issued, it is unlawful for fish dealers issued such permit to fail to:

- (A) Fax or send via electronic mail by noon daily, on forms provided by the Division, the previous day's landings for the permitted fishery to the dealer contact designated on the permit. Landings for Fridays or Saturdays shall be submitted on the following Monday. If the dealer is unable to fax or electronic mail the required information, the permittee shall call in the previous day's landings to the dealer contact designated on the permit but shall maintain a log furnished by the Division;
  - (B) Submit the required log to the Division upon request or no later than five days after the close of the season for the fishery permitted;
  - (C) Maintain faxes and other related documentation in accordance with 15A NCAC 03I .0114;
  - (D) Contact the dealer contact daily regardless of whether or not a transaction for the fishery for which a dealer is permitted occurred;
  - (E) Record the permanent dealer identification number on the bill of lading or receipt for each transaction or shipment from the permitted fishery.
- (2) Striped Bass Dealer Permit:
- (A) It is unlawful for a fish dealer to possess, buy, sell or offer for sale striped bass taken from the following areas without first obtaining a Striped Bass Dealer Permit validated for the applicable harvest area:
    - (i) Atlantic Ocean;
    - (ii) Albemarle Sound Management Area as designated in 15A NCAC 03R .0201; and
    - (iii) The joint and coastal fishing waters of the Central/Southern Management Area as designated in 15A NCAC 03R .0201.
  - (B) No permittee shall possess, buy, sell or offer for sale striped bass taken from the harvest areas opened by proclamation without having a North Carolina Division of Marine Fisheries issued valid tag for the applicable area affixed through the mouth and

gill cover, or, in the case of striped bass imported from other states, a similar tag that is issued for striped bass in the state of origin. North Carolina Division of Marine Fisheries striped bass tags shall not be bought, sold, offered for sale, or transferred. Tags shall be obtained at the North Carolina Division of Marine Fisheries Offices. The Division of Marine Fisheries shall specify the quantity of tags to be issued based on historical striped bass landings. It is unlawful for the permittee to fail to surrender unused tags to the Division upon request.

- (3) Albemarle Sound Management Area for River Herring Dealer Permit: It is unlawful to possess, buy, sell or offer for sale river herring taken from the following area without first obtaining an Albemarle Sound Management Area for River Herring Dealer Permit: Albemarle Sound Management Area for River Herring is defined in 15A NCAC 03J .0209.
- (4) Atlantic Ocean Flounder Dealer Permit:
  - (A) It is unlawful for a Fish Dealer to allow vessels holding a valid License to Land Flounder from the Atlantic Ocean to land more than 100 pounds of flounder from a single transaction at their licensed location during the open season without first obtaining an Atlantic Ocean Flounder Dealer Permit. The licensed location shall be specified on the Atlantic Ocean Flounder Dealer Permit and only one location per permit shall be allowed.
  - (B) It is unlawful for a Fish Dealer to possess, buy, sell, or offer for sale more than 100 pounds of flounder from a single transaction from the Atlantic Ocean without first obtaining an Atlantic Ocean Flounder Dealer Permit.
  - (c) Blue Crab Shedding Permit: It is unlawful to possess more than 50 blue crabs in a shedding operation without first obtaining a Blue Crab Shedding Permit from the Division of Marine Fisheries.
  - (d) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean:
    - (1) It is unlawful to trawl for shrimp in the Atlantic Ocean without Turtle Excluder Devices installed in trawls within one nautical mile of the shore from Browns Inlet (34° 35.7000' N latitude) to Rich's Inlet (34° 17.6000' N latitude) without a valid Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean when allowed



- by proclamation from April 1 through November 30.
- (2) It is unlawful to tow for more than 55 minutes from April 1 through October 31 and 75 minutes from November 1 through November 30 in this area when working under this permit. Tow time begins when the doors enter the water and ends when the doors exit the water.
  - (3) It is unlawful to fail to empty the contents of each net at the end of each tow.
  - (4) It is unlawful to refuse to take observers upon request by the Division of Marine Fisheries or the National Marine Fisheries Service.
  - (5) It is unlawful to fail to report any sea turtle captured. Reports shall be made within 24 hours of the capture to the Marine Patrol Communications Center by phone. All turtles taken incidental to trawling shall be handled and resuscitated in accordance with requirements specified in 50 CFR 223.206, copies of which are available via the Internet at [www.nmfs.gov](http://www.nmfs.gov) and at the Division of Marine Fisheries, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.
- (e) Pound Net Set Permits. Rules setting forth specific conditions for pound net sets are set forth in 15A NCAC 03J .0107.
- (f) Aquaculture Operations/Collection Permits:
- (1) It is unlawful to conduct aquaculture operations utilizing marine and estuarine resources without first securing an Aquaculture Operation Permit from the Fisheries Director.
  - (2) It is unlawful:
    - (A) To take marine and estuarine resources from coastal fishing waters for aquaculture purposes without first obtaining an Aquaculture Collection Permit from the Fisheries Director.
    - (B) To sell, or use for any purpose not related to North Carolina aquaculture, marine and estuarine resources taken under an Aquaculture Collection Permit.
    - (C) To fail to submit to the Fisheries Director an annual report due on December 1 of each year on the form provided by the Division the amount and disposition of marine and estuarine resources collected under authority of this permit.
  - (3) Lawfully permitted shellfish relaying activities authorized by 15A NCAC 03K .0103 and .0104 are exempt from requirements to have an Aquaculture Operation or Collection Permit issued by the Fisheries Director.
  - (4) Aquaculture Operations/Collection Permits shall be issued or renewed on a calendar year basis.
  - (5) It is unlawful to fail to provide the Division of Marine Fisheries with a listing of all designees who will be acting under an Aquaculture Collection Permit at the time of application.
- (g) Scientific or Educational Collection Permit:
- (1) It is unlawful for individuals or agencies seeking exemptions from license, rule, proclamation or statutory requirements to collect for scientific or educational purposes as approved by the Division of Marine Fisheries any marine and estuarine species without first securing a Scientific or Educational Collection Permit.
  - (2) It is unlawful for persons who have been issued a Scientific or Educational Collection Permit to fail to submit a report on collections to the Division of Marine Fisheries due on December 1 of each year unless otherwise specified on the permit. The reports shall be filed on forms provided by the Division. Scientific or Educational Collection Permits shall be issued on a calendar year basis.
  - (3) It is unlawful to sell marine and estuarine species taken under a Scientific or Educational Collection Permit:
    - (A) without the required license(s) for such sale;
    - (B) to anyone other than a licensed North Carolina fish dealer; and
    - (C) without authorization stated on the permit for such sale.
  - (4) It is unlawful to fail to provide the Division of Marine Fisheries a listing of all designees who will be acting under Scientific or Educational Collection Permits at the time of application.
  - (5) The permittee or designees utilizing the permit shall call or fax the Division of Marine Fisheries Communications Center not later than 24 hours prior to use of the permit, specifying activities and location.
- (h) Under Dock Oyster Culture Permit:
- (1) It is unlawful to cultivate oysters in containers under docks for personal consumption without first obtaining an Under Dock Oyster Culture Permit.
  - (2) An Under Dock Oyster Culture Permit shall only be issued in accordance with provisions set forth in G.S. 113-210(c).
  - (3) The applicant shall complete and submit an examination, with a minimum of 70 percent correct answers, based on an educational package provided by the Division of Marine Fisheries pursuant to G.S. 113-210(j). The examination demonstrates the applicant's knowledge of:
    - (A) the application process;

- (B) permit criteria;
- (C) basic oyster biology and culture techniques;
- (D) shellfish harvest area closures due to pollution;
- (E) safe handling practices;
- (F) permit conditions; and
- (G) permit revocation criteria.
- (4) Action by an Under Dock Oyster Culture Permit holder to encroach on or usurp the legal rights of the public to access public trust resources in coastal fishing waters shall result in permit revocation.
- (i) Atlantic Ocean Striped Bass Commercial Gear Permit:
  - (1) It is unlawful to take striped bass from the Atlantic Ocean in a commercial fishing operation without first obtaining an Atlantic Ocean Striped Bass Commercial Gear Permit.
  - (2) It is unlawful to use a single Standard Commercial Fishing License, including assignments, to obtain more than one Atlantic Ocean Striped Bass Commercial Gear Permit during a license year.
- (j) Coastal Recreational Fishing License Exemption Permit:
  - (1) It is unlawful for the responsible party seeking exemption from recreational fishing license requirements for eligible individuals to conduct an organized fishing event held in coastal or joint fishing waters without first obtaining a Coastal Recreational Fishing License Exemption Permit.
  - (2) The Coastal Recreational Fishing License Exemption Permit shall only be issued for recreational fishing activity conducted solely for the participation and benefit of one of the following groups of eligible individuals:
    - (A) Individuals with physical or mental limitations;
    - (B) Members of the United States Armed Forces and their dependents, upon presentation of a valid military identification card, for military appreciation;
    - (C) Individuals receiving instruction on recreational fishing techniques and conservation practices from employees of state or federal agencies, or instructors affiliated with educational institutions; and
    - (D) Disadvantaged youths.
  - (3) The Coastal Recreational Fishing License Exemption Permit is valid for the date(s), time and physical location of the organized fishing event for which the exemption is granted and the time period shall not exceed one year from the date of issuance.
  - (4) The Coastal Recreational Fishing License Exemption Permit shall only be issued when all of the following, in addition to the

information required in 15A NCAC 03O .0501, is submitted to the Fisheries Director in writing a minimum of 30 days prior to the event:

- (A) The name, date(s), time and physical location of the event;
- (B) Documentation that substantiates local, state or federal involvement in the organized fishing event, if applicable;
- (C) The cost or requirements, if any, for an individual to participate in the event; and
- (D) An estimate of the number of participants.

(k) For Hire Fishing Permit:

- (1) It is unlawful to operate a For Hire Vessel unless the vessel operator possesses either the For Hire Blanket Coastal Recreational Fishing License (CRFL) for the vessel as provided in 15A NCAC 03O .0112 or a Division of Marine Fisheries For Hire Fishing Permit for the vessel.
- (2) It is unlawful for a For Hire vessel operator to operate under the For Hire Fishing Permit without:
  - (A) Holding the USCG certification required in 15A NCAC 03O .0501(g)(1);
  - (B) Having the For Hire Fishing Permit for the vessel or copy thereof in possession and ready at hand for inspection;
  - (C) Having current picture identification in possession and ready at hand for inspection.
- (3) It is unlawful for the permittee to fail to notify the Division immediately of any changes to information provided on the permit.
- (4) It is unlawful to fail to display a current For Hire Fishing Permit decal mounted on an exterior surface of the vessel so as to be plainly visible when viewed from the port side while engaged in for-hire recreational fishing.
- (5) The For Hire Fishing Permit is valid for one year from the date of issuance.

*Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 113-210; 143B-289.52.*

**SUBCHAPTER 03Q - JURISDICTION OF AGENCIES:  
CLASSIFICATION OF WATERS**

**SECTION .0100 - GENERAL REGULATIONS: JOINT**

**15A NCAC 03Q .0107 SPECIAL REGULATIONS:  
JOINT WATERS**

In order to effectively manage all fisheries resources in joint waters and in order to confer enforcement powers on both

fisheries enforcement officers and wildlife enforcement officers with respect to certain rules, the Marine Fisheries Commission and the Wildlife Resources Commission deem it necessary to adopt special rules for joint waters. Such rules supersede any inconsistent rules of the Marine Fisheries Commission or the Wildlife Resources Commission that would otherwise be applicable in joint waters under the provisions of 15A NCAC 03Q .0106:

- (1) Striped Bass
  - (a) It is unlawful to possess any striped bass or striped bass hybrid ~~taken by any means which~~ that is less than 18 inches long (total length).
  - (b) It is unlawful to possess striped bass or striped bass hybrids between 22 and 27 inches (total length) in joint fishing waters of the Central Southern Management Area as designated in 15A NCAC 03R .0201.
  - (c) It is unlawful to possess striped bass or striped bass hybrids May through September in the fishing waters of the Central Southern Management Area and the Albemarle Sound Management Area.
  - (d) It is unlawful to possess striped bass or striped bass hybrids taken from the joint waters of the Cape Fear River.
  - ~~(b)(e)~~ It is unlawful to possess more than one daily creel limit of striped bass or ~~their striped bass~~ hybrids, in the aggregate, per person per day, regardless of the number of management areas ~~fished, fished, and fish possessed by the individual must be in compliance with the size and creel limits for the management area being fished.~~
  - (f) Possession of fish shall be assessed for the creel and size limits of the management area in which the individual is found to be fishing, regardless of the size or creel limits for other management areas visited by that individual in a given day.
  - ~~(e)(g)~~ It is unlawful to engage in net fishing for striped bass or striped bass hybrids in joint waters except as authorized by rules of the Marine Fisheries Commission.
- (2) Lake Mattamuskeet:
  - (a) It is unlawful to set or attempt to set any gill net in Lake Mattamuskeet canals designated as joint waters.
  - (b) It is unlawful to use or attempt to use any trawl net or seines in Lake Mattamuskeet canals designated as joint waters.

- (3) Cape Fear River. It is unlawful to use or attempt to use any ~~net or net~~, net stakes or electrical fishing device within 800 feet of the dam at Lock No.1 on the Cape Fear River.
- (4) Shad: It is unlawful to possess more than 10 American shad or hickory shad, in the aggregate, per person per day taken by hook-and-line.

*Authority G.S. 113-132; 113-134; 143B-289.52.*

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to amend the rules cited as 15A NCAC 13B .0101, .0201, .0203, .0502.*

**Proposed Effective Date:** August 1, 2008

**Public Hearing:**

**Date:** February 18, 2008

**Time:** 2:00 p.m.

**Location:** 401 Oberlin Road, Raleigh, NC 27605, Division of Waste Management Conference Rooms 1 & 2

**Reason for Proposed Action:** *These rule changes are intended to clarify and renumber definitions, provide increased clarity of regulatory guidance in the areas of open dumps and permit denial, provide better clarification of existing groundwater rules, and correction of misstatement.*

**Procedure by which a person can object to the agency on a proposed rule:** *Persons may submit written objections to the proposed rules by contacting: Ellen Lorscheider, DENR-Division of Waste Management, Solid Waste Section, 1646 Mail Service Center, Raleigh, NC 27699-1646; fax (919) 733-4810; or email ellen.lorscheider@ncmail.net*

**Comments may be submitted to:** *Ellen Lorscheider, Planning and Programs Branch Head, NC DENR Division of Waste Management, 1646 Mail Service Center, Raleigh, NC 27699-1646, phone (919) 508-8400, fax (919) 733-4810, email ellen.lorscheider@ncmail.net*

**Comment period ends:** April 1, 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**

**CHAPTER 13 – SOLID WASTE MANAGEMENT**

**SUBCHAPTER 13B - SOLID WASTE MANAGEMENT**

**SECTION .0100 - GENERAL PROVISIONS**

**15A NCAC 13B .0101 DEFINITIONS**

The definitions in G.S. 130A-290 and the following definitions shall apply throughout this Subchapter:

- ~~(35)~~(1) "Agricultural Waste" means waste materials produced from the raising of plants and animals, including animal manures, bedding, plant stalks, hulls, and vegetable matter.
- ~~(1)~~(2) "Airport" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.
- ~~(36)~~(3) "Backyard Composting" means the on-site composting of yard waste from residential property by the owner or tenant for non-commercial use.
- ~~(2)~~(4) "Blood products" means all bulk blood and blood products.
- ~~(3)~~(5) "Cell" means compacted solid waste completely enveloped by a compacted cover material.
- ~~(37)~~(6) "Compost" means decomposed, humus-like organic matter, free from pathogens, offensive odors, toxins or materials harmful at the point of end use. Compost is suitable for use as a soil conditioner with varying nutrient values.
- ~~(39)~~(7) "Compost Facility" means a solid waste facility which utilizes a controlled biological process of degrading non-hazardous solid waste. A facility may include materials processing and hauling equipment; structures to control drainage; and structures to collect and treat leachate; and storage areas for the incoming waste, the final products, and residual materials.
- ~~(40)~~(8) "Composting" means the controlled decomposition of organic waste by naturally occurring bacteria, yielding a stable, humus-like, pathogen-free final product resulting in volume reduction of 30 - 75 percent.
- ~~(38)~~(9) "Composting Pad" means a surface, whether soil or manufactured, where the process of composting takes place, and where raw and finished materials are stored.

- ~~(41)~~(10) "Curing" means the final state of composting, after the majority of the readily metabolized material has been decomposed, in which the compost material stabilizes and dries.
- ~~(4)~~(11) "Demolition landfill" means a sanitary landfill that is limited to receiving stumps, limbs, leaves, concrete, brick, wood, uncontaminated earth or other solid wastes as approved by the Division.
- ~~(5)~~(12) "Division" means the Director of the Division of ~~Solid~~ Waste Management or the Director's authorized representative.
- ~~(56)~~(13) "Erosion control measure, structure, or device" means physical devices constructed, and management practices utilized, to control sedimentation and soil erosion such as silt fences, sediment basins, check dams, channels, swales, energy dissipation pads, seeding, mulching and other similar items.
- ~~(6)~~(14) "Explosive gas" means Methane ~~(CH-4)~~ (CH4).
- ~~(7)~~(15) "Federal act" means the Resource Conservation and Recovery Act of 1976, P.L. 94-580, as amended.
- ~~(8)~~(16) "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, which are inundated by the 100-year flood.
- ~~(52)~~(17) "Foreign Matter" means metals, glass, plastics, rubber, bones, and leather, but does not include sand, grit, rocks or other similar materials.
- ~~(9)~~(18) "Hazardous waste landfill facility" means any facility or any portion of a facility for disposal of hazardous waste on or in land in accordance with rules promulgated under this article.
- ~~(40)~~(19) "Incineration" means the process of burning solid, semi-solid or gaseous combustible wastes to an inoffensive gas and a residue containing little or no combustible material.
- ~~(49)~~(20) "Industrial Process Waste" means any solid, semi-solid, or liquid waste generated by a manufacturing or processing plant which is a result of the manufacturing or processing process. This definition does not include packaging materials associated with such activities.
- ~~(57)~~(21) "Industrial Solid Waste Landfill" means a facility for the land disposal of "industrial solid waste" as defined in Item (11) of Rule .1602 of this Subchapter, and is not a land application unit, surface impoundment, injection well, or waste pile, as defined under 40 CFR Part 257.
- ~~(54)~~(22) "Land clearing and inert debris landfill" means a facility for the land disposal of land clearing waste, concrete, brick, concrete block,

- uncontaminated soil, gravel and rock, untreated and unpainted wood, and yard trash.
- (53)(23) "Land clearing waste" means solid waste which is generated solely from land clearing activities such as stumps, trees, limbs, brush, grass, and other naturally occurring vegetative material.
- (11)(24) "Leachate" means any liquid, including any suspended components in liquid, that has percolated through or drained from solid waste.
- (12)(25) "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases which will ~~propagate~~ propagate a flame in air at ~~25°C~~ 25 degrees Celsius and atmospheric pressure.
- (13)(26) "Microbiological wastes" means and includes cultures and stocks of etiologic agents. The term includes cultures of specimens from medical, pathological, pharmaceutical, research, commercial, and industrial laboratories.
- (50)(27) "Mulch" means a protective covering of various substances, especially organic, to which no plant food has been added and for which no plant food is claimed. Mulch is generally placed around plants to prevent erosion, compaction, evaporation of moisture, freezing of roots, and weed growth.
- (14)(28) "One-hundred year flood" means a flood that has a one percent or less chance of recurring in any year or a flood of a magnitude ~~equalled~~ equaled or exceeded once in 100 years on the average over a significantly long period.
- (15)(29) "Open burning" means any fire wherein the products of combustion are emitted directly into the outdoor atmosphere and are not directed thereto through a stack or chimney, incinerator, or other similar devices.
- (42)(30) "Pathogens" means organisms that are capable of producing infection or diseases, often found in waste materials.
- (16)(31) "Pathological wastes" means and includes human tissues, organs, body parts, secretions and excretions, blood and body fluids that are removed during surgery and autopsies; and the carcasses and body parts of all animals that were exposed to pathogens in research, were used in the production of biologicals or in the in vivo testing of pharmaceuticals, or that died of known or suspected infectious disease.
- (17)(32) "Putrescible" means solid waste capable of being decomposed by microorganisms with sufficient rapidity as to cause nuisances from odors and gases, such as kitchen wastes, offal and carcasses.
- (18)(33) "Radioactive waste material" means any waste containing radioactive material as defined in G.S. 104E-5(14).
- (19)(34) "Regulated Medical Waste" means blood and body fluids in individual containers in volumes greater than 20 ml, microbiological waste, and pathological waste that have not been treated pursuant to Rule .1207 of this Subchapter.
- (47)(35) "Residues from Agricultural Products and Processing" means solids, semi-solids or liquid residues from food and beverage processing and handling; silviculture; agriculture; and aquaculture operations that are non-toxic, non-hazardous, and contain no domestic wastewater.
- (20)(36) "Respondent" means the person against whom an administrative penalty has been assessed.
- (21)(37) "Runoff" means the portion of precipitation that drains from an area as surface flow.
- (22)(38) "Sediment" means solid particulate matter both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.
- (23)(39) "Sharps" means and includes needles, syringes, and scalpel blades.
- (24)(40) "Siltation" means sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed, and maintained control measures and which has been transported from its point of origin within the site land-disturbing activity and which has been deposited, or is in suspension in water.
- (43)(41) "Silviculture Waste" means waste materials produced from the care and cultivation of forest trees, including bark and woodchips.
- (44)(42) "Soil Group I" means soil group I as defined in 15A NCAC 13B .0807(a)(1)(A) of the Septage Management Rules.
- (51)(43) "Soil Scientist" means an individual who is a Certified Professional Soil Scientist or Soil Specialist by American Registry of Certified Professional in Agronomy, Crops, and Soils (ARCPACS) or an individual that demonstrates equivalent experience or education.
- (25)(44) "Solid waste collector" means any person who collects or transports solid waste by whatever means, including but not limited to, highway, rail, and navigable waterway.
- (26)(45) "Solid waste generator" means any person who produces solid waste.
- (27)(46) "Spoiled food" means any food which has been removed from sale by the United States Department of Agriculture, North Carolina Department of Agriculture, Food and Drug Administration, or any other regulatory agency having jurisdiction in determining that food is unfit for consumption.
- (28)(47) "Steam sterilization" means treatment by steam at high temperatures for sufficient time to render infectious waste non-infectious.

- ~~(29)~~(48) "Transfer facility" means a permanent structure with mechanical equipment used for the collection or compaction of solid waste prior to the transportation of solid waste for final disposal.
- ~~(30)~~(49) "Treatment and processing facility" means a facility used in the treatment and processing of ~~putrescible~~ solid waste for final disposal or for utilization by reclaiming or recycling.
- ~~(48)~~ "Treatment and Processing Waste" means ~~waste that is a residual solid from a wastewater treatment or pretreatment facility.~~
- ~~(31)~~(50) "Vector" means a carrier, usually an arthropod, that is capable of transmitting a pathogen from one organism to another.
- ~~(32)~~(51) "Water supply watershed" means an area from which water drains to a point or impoundment, and the water is then used as a source for a public water supply.
- ~~(33)~~(52) "Water table" means the upper limit of the portion of the ground wholly saturated with water.
- ~~(45)~~(53) "Windrow" means an elongated compost pile (typically eight feet wide by ten feet high).
- ~~(34)~~(54) "Working face" means that portion of the land disposal site where solid wastes are discharged, spread, and compacted prior to the placement of cover material.
- (55) "Yard trash" means solid waste resulting from landscaping and yard maintenance such as brush, grass, tree limbs, and similar vegetative material.
- ~~(46)~~(56) "Yard Waste" means "Yard Trash" and "Land-clearing Debris" as defined in G.S. 130A-290, including stumps, limbs, leaves, grass, and untreated wood.

Authority G.S. 130A-294.

## SECTION .0200 - PERMITS FOR SOLID WASTE MANAGEMENT FACILITIES

### 15A NCAC 13B .0201 PERMIT REQUIRED

- (a) No person shall ~~establish or allow to be established on his land, a solid waste management facility, or otherwise treat, process, store, or dispose of solid waste unless a permit for the facility has been obtained from the Division, or arrange for the treatment, processing, storage or disposal of solid waste except at a solid waste management facility permitted by the Division for such activity.~~
- (b) No person shall ~~cause, suffer, allow, or permit the treatment, storage, or processing of solid waste upon any real and/or personal property owned, operated, leased, or in any way controlled by that person without first obtaining a permit for a solid waste management facility from the Division authorizing such activity.~~
- (c) No solid waste management facility shall be established, operated, maintained, constructed, expanded, modified, or closed without an appropriate and currently valid permit issued by the

Division. It is the responsibility of every owner and operator of a proposed solid waste management facility to apply for a permit for the facility. The term "owner" shall include record owners of the land where the facility is located or proposed to be located and holders of any leasehold interest, however denominated, in any part of the land and/or structures where the facility is located or proposed to be located.

~~(b)~~(d) The permit, except for land clearing and inert debris permits, shall have two parts, as follows:

- (1) A permit to construct a solid waste management facility shall be issued by the Division after site and construction plans have been approved and it has been determined that the facility can be operated in accordance with Article 9 of Chapter 130A and the applicable rules set forth in this Subchapter-Subchapter, and so as to provide reasonable protection to the environment and the public health. An applicant shall not clear or grade land or commence construction for a solid waste management facility until a construction permit has been issued.
- (2) A permit to operate a solid waste management facility may not be issued unless it has been determined that the facility has been constructed in accordance with the construction permit, that any pre-operative conditions of the construction permit have been met, and that the construction permit has been recorded, if applicable, in accordance with Rule .0204 of this Section.

~~(e)~~(e) Land clearing and inert debris facilities may be issued a combined permit to construct and operate the facility.

~~(d)~~(f) Land clearing and inert debris facilities subject to Rule .0563 Item (1) may construct and operate after notification as provided for under Rule .0563 Item (2).

~~(e)~~(g) Permits, including those issued prior to the effective date of this Rule, shall be reviewed every five years. Modifications, where necessary, shall be made in accordance with rules in effect at the time of review for those areas of a permitted sanitary landfill site which have not previously received solid waste.

~~(f)~~(h) All solid waste management facilities shall be operated in conformity with these Rules and in such a manner as to prevent the creation of a nuisance, unsanitary conditions, or potential public health hazard.

Authority G.S. 130A-294.

### 15A NCAC 13B .0203 PERMIT APPROVAL OR DENIAL

(a) Upon receipt of a permit application, the Division shall review the request to assure that all provisions of these Rules, the Solid Waste Management Act, and the Federal Act, will be met. Based on its review, the Division shall either approve or deny the request in writing.

(b) When an application is approved, the applicant shall be ~~mailed~~ provided a permit. If the approval is contingent upon

certain conditions being met by the applicant, such conditions shall be noted on the permit.

(c) Before receiving solid waste ~~on at a new site, newly permitted facility,~~ an inspection shall be made by a representative of the Division to assure that the site is prepared in accordance with the ~~permit, permit, and the permit shall be recorded with the Register of Deeds in the county where the facility is located in accordance with the recordation requirements set out in 15A NCAC 13B .0204.~~

(d) By receiving solid waste ~~on a new site, the applicant shall be considered to have accepted the conditions. at a permitted facility, the permittee(s) shall be considered to have accepted the conditions of the permit and shall comply with the conditions of the permit.~~

(e) When the Division denies a permit for a solid waste management facility, it shall state in writing the reason for such denial and shall also state its estimate of the changes in the applicant's proposed activities or plans which will be required in order that the applicant may obtain a permit. A denial shall be without prejudice ~~to the person's right to a hearing or for filing a future request to the submission of a future application for a permit after revisions are made to meet objections specified as reasons for denial. Reasons for denial are:~~ include:

- (1) Submission of incomplete information;
- (2) Failure to meet ~~the applicable requirements set forth in Sections .0300, .0400 and .0500 of this Subchapter applicable to the type of facility applied for; Subchapter;~~ or
- (3) ~~The past conduct by the applicant, as defined in G.S. 130A-309.06(b), which has resulted in repeated violations of solid waste management statutes, these Rules, or orders issued thereunder, or violations of permit conditions of a solid waste management facility located in this State; Failure to meet any applicable requirement or standard set forth in Article 9 of Chapter 130A of the N.C. General Statutes;~~ or
- (4) Any other reasons which would prevent the solid waste facility or site from being operated in accordance with Article 9, Chapter 130A of the General Statutes, these Rules, the Federal Act, or acceptable engineering or public health and environmental standards.

(f) Appeals of permit decisions shall be in accordance with Article 3 of N.C.G.S., Chapter 150B, and the Rules adopted thereunder.

*Authority G.S. 130A-294.*

## SECTION .0500 - DISPOSAL SITES

### 15A NCAC 13B .0502 OPEN DUMPS

~~A person~~ Any person(s) operating or having operated an open dump for disposal of solid waste or ~~a any person~~ person(s) who ~~owns-owns, leases or otherwise controls~~ land on which such an open dump is or has been operating shall immediately close the site in accordance with the following requirements:

- (1) Implement effective vector control, including baiting for at least two weeks after closing, to prevent vector migration to adjacent properties;
- (2) If the site is deemed suitable by the Division, compact and cover existing solid waste in place with one foot or more of suitable compacted earth; ~~a condition of closing the site by compacting and covering the waste in place shall be recordation of the waste disposal location by the property owner with the Register of Deeds in the county where the land lies.~~ earth. Closing the site by this method is conditioned upon the further requirement that the waste disposal location and development and conveyance restrictions prohibiting the disturbance of the solid waste disposal site be recorded by the property owner with the Register of Deeds in the county where the site is located. The Division shall provide the property owner with the development and conveyance restrictions to be recorded for that site. Copies of the recordation procedure may be obtained from and inspected at the ~~Division of Solid Waste Management;~~ Division;
- (3) If the site is deemed unsuitable by the Division, remove and place solid waste in an approved disposal site or facility;
- (4) Implement erosion control measures by grading and seeding; and
- (5) Prevent unauthorized entry to the site by means of gates, chains, berms, fences, and other security measures approved by the Division and post signs indicating closure for a period designated by the Division not to exceed one year.

*Authority G.S. 130A-294.*

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**APPROVED RULES**

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

*Rules approved by the Rules Review Commission at its meeting on December 13, 2007.*

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

<u>Evaluation of Applications</u>	02	NCAC	58	.0105*	22:04 NCR
<u>Grant Agreement</u>	02	NCAC	58	.0106*	22:04 NCR
<u>Reporting</u>	02	NCAC	58	.0107*	22:04 NCR

**PUBLIC HEALTH, COMMISSION FOR**

<u>Dosage &amp; Age Requirements for Immunization</u>	10A	NCAC	41A	.0401*	22:02 NCR
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**HOME INSPECTOR LICENSURE BOARD**

<u>Fee Schedule</u>	11	NCAC	08	.1011*	22:04 NCR
<u>Application for Original Approval of an Elective Coarse</u>	11	NCAC	08	.1319	22:04 NCR

**JUSTICE, DEPARTMENT OF**

<u>Minimum Standards for Company Police Officers</u>	12	NCAC	02I	.0202*	22:01 NCR
<u>Liability Insurance</u>	12	NCAC	02I	.0210*	22:01 NCR
<u>Suspension or Denial of Agency Certification</u>	12	NCAC	02I	.0211*	22:01 NCR
<u>Suspension, Revocation or Denial of Officer Commission</u>	12	NCAC	02I	.0212*	22:01 NCR
<u>Summary Suspensions</u>	12	NCAC	02I	.0214*	22:01 NCR
<u>Tenure</u>	12	NCAC	02I	.0301*	22:01 NCR
<u>Prohibited Acts</u>	12	NCAC	02I	.0304*	22:01 NCR

**PRIVATE PROTECTIVE SERVICES BOARD**

<u>Requirements for a Firearms Trainer Certificate</u>	12	NCAC	07D	.0901*	21:16 NCR
<u>Post-Delivery Report for Firearms Training Courses</u>	12	NCAC	07D	.0908*	n/a G.S.150B-21.5(a)(5)
<u>Unarmed Guard Trainer Certificate</u>	12	NCAC	07D	.0909	21:16 NCR
<u>Renewal of an Unarmed Guard Trainer Certificate</u>	12	NCAC	07D	.0911*	21:16 NCR

**SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION**

<u>Definitions</u>	12	NCAC	10B	.0103*	22:04 NCR
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**SOIL AND WATER CONSERVATION COMMISSION**

<u>Allocation Guidelines and Procedures</u>	15A	NCAC	06I	.0103*	22:01 NCR
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**WILDLIFE RESOURCES COMMISSION**

<u>Alcoa Power Generating Inc. Hydroelectric Station Safety</u>	15A	NCAC	10F	.0374*	21:19 NCR
<u>Duke Energy Corporation Hydroelectric Station Safety</u>	15A	NCAC	10F	.0375*	21:19 NCR
<u>Zones</u>					



**SECRETARY OF STATE, DEPARTMENT OF**

<u>Instructor Certification - Scope</u>	18	NCAC	07B	.0701*	21:05 NCR
<u>Instructor Certification - General</u>	18	NCAC	07B	.0702*	21:05 NCR
<u>Timing of Instructor Certification Application</u>	18	NCAC	07B	.0703*	21:05 NCR
<u>Department Rejection of Applications</u>	18	NCAC	07B	.0704*	21:05 NCR
<u>Fees</u>	18	NCAC	07B	.0705*	21:05 NCR
<u>Verification that Applicant Continues to Meet Requirement...</u>	18	NCAC	07B	.0706*	21:05 NCR
<u>Other Verifications</u>	18	NCAC	07B	.0707*	21:05 NCR
<u>Evidence of Minimum Experience</u>	18	NCAC	07B	.0708*	21:05 NCR
<u>Journal as Evidence of Experience</u>	18	NCAC	07B	.0709*	21:05 NCR
<u>Employer Affidavit as Evidence of Experience</u>	18	NCAC	07B	.0710*	21:05 NCR
<u>Alternative Evidence of Experience</u>	18	NCAC	07B	.0711*	21:05 NCR
<u>Recommendations</u>	18	NCAC	07B	.0712*	21:05 NCR
<u>Oral Presentation Requirement for Applicant</u>	18	NCAC	07B	.0713*	21:05 NCR
<u>Notary Public Instructor Certification and Recertificatio...</u>	18	NCAC	07B	.0714*	21:05 NCR
<u>Additional Requirements</u>	18	NCAC	07B	.0715*	21:05 NCR
<u>Minimum Instructional Duties of Certified Notary Public I...</u>	18	NCAC	07B	.0716*	21:05 NCR
<u>Evaluations of Instruction</u>	18	NCAC	07B	.0717*	21:05 NCR
<u>Eligibility for Recertification as Notary Public Instructor</u>	18	NCAC	07B	.0718*	21:05 NCR
<u>Notary Public Instructors Recertification Requirements</u>	18	NCAC	07B	.0719*	21:05 NCR
<u>Denial of Notary Public Instructor Certification or Recer...</u>	18	NCAC	07B	.0720*	21:05 NCR

**COSMETIC ART EXAMINERS, BOARD OF**

<u>Cleanliness of Operators</u>	21	NCAC	14H	.0111	22:05 NCR
<u>Cleanliness of Scissors, Shears, Razors and Other Equipment</u>	21	NCAC	14H	.0113*	22:05 NCR
<u>Prohibited Practices</u>	21	NCAC	14H	.0121*	22:05 NCR

**LANDSCAPE ARCHITECTS, BOARD OF**

<u>Application of Professional Seal</u>	21	NCAC	26	.0207*	21:13 NCR
<u>Examination</u>	21	NCAC	26	.0301*	21:13 NCR
<u>Certificate of Reciprocity</u>	21	NCAC	26	.0303*	21:13 NCR

**LANDSCAPE CONTRACTORS REGISTRATION BOARD**

<u>Fees</u>	21	NCAC	28	.0107*	22:05 NCR
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**MEDICAL BOARD**

<u>Application Forms</u>	21	NCAC	32B	.1101	22:06 NCR
<u>Fee</u>	21	NCAC	32B	.1102	22:06 NCR
<u>Personal Interview</u>	21	NCAC	32B	.1103	22:06 NCR
<u>Routine Inquiries</u>	21	NCAC	32B	.1104*	22:06 NCR
<u>CME</u>	21	NCAC	32B	.1105	22:06 NCR
<u>Application Forms</u>	21	NCAC	32B	.1201	22:06 NCR
<u>Letters of Recommendation</u>	21	NCAC	32B	.1202	22:06 NCR

<u>Fee</u>	21	NCAC	32B .1203	22:06 NCR
<u>Personal Interview</u>	21	NCAC	32B .1204	22:06 NCR
<u>Routine Inquiries</u>	21	NCAC	32B .1205*	22:06 NCR
<u>ECFMG Certification</u>	21	NCAC	32B .1206	22:06 NCR

**TITLE 02 – DEPARTMENT OF AGRICULTURE AND  
CONSUMER SERVICES**

**02 NCAC 58 .0105 EVALUATION OF  
APPLICATIONS**

(a) Applicants for funding from the ADFPTF shall submit two unbound complete applications suitable for photocopying. Applications must be sent by Fed-Ex, UPS, certified mail, or hand-delivered to: NCDA&CS, NCADFP Trust Fund at 2 West Edenton Street, Raleigh, NC 27601.

(b) Two separate applications are online at <http://www.ncadfp.org/> or available from the Department as noted in Paragraphs (c) and (d) of this Rule.

(c) To be eligible for consideration for funding for agricultural conservation easements or agricultural agreements, applicants shall complete the Agricultural Development and Farmland Preservation Application Form for Conservation Easements and Agricultural Agreements which contain the following information:

- (1) identifying information;
- (2) a description of the type of organization of the applicant;
- (3) project affiliations, matching funds, and partnerships;
- (4) whether funds are for an agricultural conservation easement or an agricultural agreement and the term years;
- (5) current land value assessment, requested amount of funds, estimated easement value, project completion date;
- (6) operation management plans;
- (7) values relevant to the easement;
- (8) agricultural, horticultural, or forestry property inventory;
- (9) what transition plans are in place to continue operations for the future;
- (10) threats of conversion;
- (11) conservation and environmental concerns; and
- (12) listed attachments.

(d) To be eligible for consideration for funding for agricultural development programs, applicants shall complete the Agricultural Development and Farmland Preservation Application Form for Public and Private Enterprise Programs, which contain the following information:

- (1) identifying information;
- (2) a description of the type of organization of the applicant;
- (3) project affiliations, matching funds, and partnerships;
- (4) a description of goals, target audience, and success measurements; and

(5) listed attachments.

(e) Each completed application shall be evaluated by the staff based on the information provided in the application and in accordance with the ADFPTF criteria described in this Rule.

(f) The staff shall review all applications for completeness. If an application is incomplete after the application deadline, the applicant may be asked to reapply for the next grant cycle, which will be publicly announced by the Commissioner on an annual basis.

(g) During the review and evaluation of proposals, the staff shall report to the Commissioner on any site visits that may be required for full consideration of the grant proposal.

(h) The Advisory Committee shall review the project evaluations and other relevant data prepared by the applicant and by ADFPTF staff. The Advisory Committee shall make recommendations to the Commissioner on projects for funding.

(i) The Commissioner and Advisory Committee shall consider the relative needs of the farmland preservation project and determine the proportion of available funds to be allocated for each eligible project.

(j) Grants shall be awarded contingent on the availability of sufficient funds to do so. Funds shall be conveyed to grantees through contracts with the Trust Fund. If the Commissioner determines that grant funds are not being used for the purpose for which they were awarded, the Trust Fund may cease making payments under the grant schedule until the problem has been resolved or may demand immediate return of any unspent money and interest from the grant. Grantees must reimburse the Trust Fund any funds that are determined to have not been spent for the purpose for which they were granted. Grantees must return any grant money which remains unspent at the conclusion of the grant project, with any interest earned on grant money.

(k) The following general criteria shall be used to evaluate conservation easement or agricultural agreement projects only:

- (1) parcel information;
- (2) planning for the future; and
- (3) site visits.

(l) The following general criteria shall be used to evaluate agricultural development programs only:

- (1) project description;
- (2) project implementation; and
- (3) applicant interview.

(m) The Commissioner and Advisory Committee shall also consider the following factors when evaluating projects:

- (1) the geographic distribution of projects;
- (2) the presence or absence of other funding sources;
- (3) the level of compliance with prior grant agreements;
- (4) the amount of funds available;
- (5) the amount of funds requested;

- (6) priority funding map; and
- (7) other relevant information in the application.

*History Note:* Authority G.S. 106-744;  
Eff. January 1, 2008.

**02 NCAC 58 .0106 GRANT AGREEMENT**

- (a) Upon approval, a written agreement shall be executed between the grant recipient(s) and the Commissioner.
- (b) The agreement shall define the Commissioner's and grant recipient's responsibilities and obligations, the project period, project scope and the amount of grant assistance.
- (c) The approved application and support documentation shall become a part of the grant agreement.
- (d) The grant agreement may be amended upon mutual consent and approval by the Commissioner and the grant recipient(s). The grant recipient(s) shall submit a written request to the Commissioner.
- (e) Projects may not begin until the Commissioner and grant recipient(s) sign the agreement.
- (f) The agreement shall include a requirement that, in any agricultural conservation easement funded by the ADFPTF, the State of North Carolina shall have the right to enforce the easement if the grantee of the easement fails to do so.

*History Note:* Authority G.S. 106-744;  
Eff. January 1, 2008.

**02 NCAC 58 .0107 REPORTING**

- (a) Grant recipients shall submit written progress reports at six-month intervals or upon completion of the project, whichever is sooner. Written reports shall describe the status of the project, progress toward achieving program objectives, notable occurrences and any problems encountered and steps taken to overcome the problems. Upon completion of the project, the successful applicant must make a final written report to the Commissioner which shall include project accomplishments and benefits, all expenditures by line item as established in the project budget, and verification of the number of hours or money in matching funds.
- (b) The staff shall review the progress reports for completeness, which shall include a showing of how the project is meeting its stated goals and performance standards. If the staff finds that the report is deficient in showing how the project is meeting its stated goals and performance standards, the grantee shall be notified of the deficiency and must provide a changed and corrected report within 30 working days. If a corrected or changed report is not received within 30 working days, the Trust Fund may withhold the next grant payment.

*History Note:* Authority G.S. 106-744;  
Eff. January 1, 2008.

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

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

- (1) Diphtheria, tetanus, and whooping cough vaccine -- five doses: three doses by age seven months and two booster doses, one by age 19 months and the second on or after the fourth birthday and before enrolling in school for the first time. However:
  - (A) Individuals who receive the first booster dose of diphtheria, tetanus, and whooping cough vaccine on or after the fourth birthday are not required to have a second booster dose;
  - (B) Individuals attending colleges and universities are required to have three doses of tetanus/diphtheria toxoid, one of which must have been within the last 10 years. Those individuals enrolling in college or university for the first time on or after July 1, 2008 must have had three doses of tetanus/diphtheria toxoid and a booster dose of tetanus/diphtheria/pertussis vaccine if a tetanus/diphtheria toxoid or tetanus/diphtheria/pertussis vaccine has not been administered within the past 10 years. A dose of tetanus/diphtheria/pertussis vaccine is not required for any student over the age of 64 years;
  - (C) A booster dose of tetanus/diphtheria/pertussis vaccine is required for individuals attending public school who are entering the sixth grade on or after August 1, 2008, if five years or more have passed since the last dose of tetanus/diphtheria toxoid. A booster dose of tetanus/diphtheria/pertussis vaccine is required for individuals not attending public schools who are 12 years of age on or after August 1, 2008, if five years or more have passed since the last dose of tetanus/diphtheria toxoid. However, pertussis (whooping cough) vaccine is not required for individuals between 7 years of age through the fifth grade for those attending public schools and 7 through 12 years of age for those not attending public schools.
- (2) Poliomyelitis vaccine--four doses: two doses of trivalent type by age five months; a third

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

- dose trivalent type before age 19 months, and a booster dose of trivalent type before enrolling in school for the first time. However:
- (A) An individual attending school who has attained his or her 18th birthday is not required to receive polio vaccine;
  - (B) Individuals who receive the third dose of poliomyelitis vaccine on or after the fourth birthday are not required to receive a fourth dose;
  - (C) The requirements for booster doses of poliomyelitis vaccine do not apply to individuals who enrolled for the first time in the first grade before July 1, 1987.
- (3) Measles (rubeola) vaccine--two doses of live, attenuated vaccine administered at least 28 days apart: one dose on or after age 12 months and before age 16 months and a second dose before enrolling in school for the first time. However:
- (A) An individual who has been documented by serological testing to have a protective antibody titer against measles is not required to receive measles vaccine;
  - (B) An individual who has been diagnosed prior to January 1, 1994, by a physician licensed to practice medicine as having measles (rubeola) disease is not required to receive measles vaccine;
  - (C) An individual born prior to 1957 is not required to receive measles vaccine;
  - (D) The requirement for a second dose of measles vaccine does not apply to individuals who enroll in school or in college or university for the first time before July 1, 1994.
- (4) Rubella vaccine--one dose of live, attenuated vaccine on or after age 12 months and before age 16 months. However:
- (A) An individual who has been documented by serologic testing to have a protective antibody titer against rubella is not required to receive rubella vaccine;
  - (B) An individual who has attained his or her fiftieth birthday is not required to receive rubella vaccine except in outbreak situations;
  - (C) An individual who entered a college or university after his or her thirtieth birthday and before February 1, 1989 is not required to meet the requirement for rubella vaccine except in outbreak situations.
- (5) Mumps vaccine--one dose of live, attenuated vaccine administered on or after age 12 months and before age 16 months and a second dose before enrolling in school, college or university for the first time. However:
- (A) An individual born prior to 1957 is not required to receive mumps vaccine;
  - (B) The requirements for mumps vaccine do not apply to individuals who enrolled for the first time in the first grade before July 1, 1987 or in college or university before July 1, 1994;
  - (C) An individual who has been documented by serological testing to have a protective antibody titer against mumps is not required to receive mumps vaccine;
  - (D) An individual entering school, college or university prior to July 1, 2008 is not required to receive a second dose of mumps vaccine.
- (6) *Haemophilus influenzae, b*, conjugate vaccine--three doses of HbOC or PRP-T or two doses of PRP-OMP before age seven months and a booster dose of any type on or after age 12 months and by age 16 months. However:
- (A) Individuals born before October 1, 1988 are not required to be vaccinated against *Haemophilus influenzae, b*;
  - (B) Individuals who receive the first dose of *Haemophilus influenzae, b*, vaccine on or after 12 months of age and before 15 months of age are required to have only two doses of HbOC, PRP-T or PRP-OMP;
  - (C) Individuals who receive the first dose of *Haemophilus influenzae, b*, vaccine on or after 15 months of age are required to have only one dose of any of the *Haemophilus influenzae* conjugate vaccines, including PRP-D;
  - (D) No individual who has passed their fifth birthday is required to be vaccinated against *Haemophilus influenzae, b*.
- (7) Hepatitis B vaccine--three doses: one dose by age three months, a second dose before age five months and a third dose by age 19 months. However:
- (A) The last dose of the hepatitis B vaccine series shall not be administered prior to 24 weeks of age;

- (B) Individuals born before July 1, 1994 are not required to be vaccinated against hepatitis B.
- (8) Varicella vaccine--1 dose administered on or after age 12 months and before age 19 months. However:
- (A) An individual with a laboratory test indicating immunity or with a history of varicella disease, documented by a health care provider, parent, guardian or person in loco parentis is not required to receive varicella vaccine. Serologic proof of immunity or documentation of previous illness must be presented whenever a certificate of immunization is required by North Carolina General Statute. The documentation shall include the name of the individual with a history of varicella disease and the approximate date or age of infection. Previous illness shall be documented by:
- (i) a written statement from a health care provider documented on or attached to the lifetime immunization card or certificate of immunization; or
- (ii) a written statement from the individual's parent, guardian or person in loco parentis attached to the lifetime immunization card or certificate of immunization.
- (B) An individual born prior to April 1, 2001 is not required to receive varicella vaccine.

(b) The healthcare provider shall administer immunizations in accordance with this Rule. However, if a healthcare provider administers vaccine up to and including the fourth day prior to the required minimum age, the individual dose is not required to be repeated. Doses administered more than 4 days prior to the requirements are considered invalid doses and shall be repeated.

(c) The State Health Director may suspend temporarily any portion of the requirements of this Rule due to emergency conditions, such as the unavailability of vaccine. The Department shall give notice in writing to all local health departments and other providers currently receiving vaccine from the Department when the suspension takes effect and when the suspension is lifted. When any vaccine series is disrupted by such a suspension, the next dose shall be administered within 90 days of the lifting of the suspension and the series resumed in accordance with intervals determined by the most recent recommendations of the Advisory Committee on Immunization Practices.

*History Note: Authority G.S. 130A-152(c); 130A-155.1; Eff. February 1, 1976;*

*Amended Eff. July 1, 1977;*  
*Readopted Eff. December 5, 1977;*  
*Temporary Amendment Eff. February 1, 1988, for a period of 180 days to expire on July 29, 1988;*  
*Amended Eff. October 1, 1995; October 1, 1994; January 1, 1994; January 4, 1993;*  
*Temporary Amendment Eff. February 23, 2000; August 20, 1999; May 21, 1999;*  
*Amended Eff. August 1, 2000;*  
*Temporary Amendment Eff. May 17, 2002; April 1, 2002;*  
*February 18, 2002; August 1, 2001;*  
*Amended Eff. January 1, 2008; November 1, 2005; January 1, 2005; April 1, 2003.*

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

### **11 NCAC 08 .1011 FEE SCHEDULE**

(a) The following fees apply to the licensure of home inspectors:

Application for Home Inspector License	\$25.00
Application for Associate Home Inspector License	\$15.00
Home Inspector Examination	\$75.00
Associate Home Inspector Examination	\$75.00
Initial Issuance of Home Inspector License	\$150.00
Initial Issuance of Associate Home Inspector License	\$100.00
Annual Renewal of Home Inspector License	\$150.00
Annual Renewal of Associate Home Inspector License	\$100.00
Late Renewal Penalty Fee - Home Inspector License	\$25.00
Late Renewal Penalty Fee - Associate Home Inspector License	\$15.00
Copies of Board Rules and License Standards	\$5.00

(b) The home inspector and the associate home inspector initial issuance license fees are due after successful completion of the examination. The Board shall not issue a license until it receives the appropriate fee. The license is valid from the date of issue until the following September 30.

(c) The one hundred fifty dollar (\$150. 00) fee for the Annual Renewal of Home Inspector License and the one hundred dollar (\$100.00) fee for the Annual Renewal of Associate Home Inspector License assessed under Paragraph (a) of this Rule are suspended for a one-year period beginning October 1, 2008, ending on September 30, 2009. This license fee suspension does not apply to late license renewals or any inactive licenses that are not currently active on October 1, 2008.

*History Note: Authority G.S. 143-151.49; 143-151.55; 143-151.57;*  
*Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996;*  
*Temporary Adoption Eff. October 24, 1996;*  
*Eff. July 1, 1998;*

*Amended Eff. January 1, 2008.*

**11 NCAC 08 .1319 APPLICATION FOR ORIGINAL APPROVAL OF AN ELECTIVE COURSE**

A person seeking original approval of a proposed elective course shall make application on a form prescribed by the Board. The course shall be submitted to the Board for approval no less than 45 days before the course presentation date. The Board shall not accept an application for original approval between July 1 and September 30. This restriction shall not apply when an applicant is seeking approval to conduct a course for which another sponsor has obtained approval. The applicant shall submit a nonrefundable fee of one hundred fifty dollars (\$150.00) per course which may be in the form of a check or money order payable to the Home Inspector Licensure Board. The application shall be accompanied by a copy of the course plan or instructor's guide for the course and a copy of materials that will be provided to students. An applicant that is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings.

*History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. July 18, 2002; Amended Eff. January 1, 2008.*

**TITLE 12 – DEPARTMENT OF JUSTICE**

**12 NCAC 02I .0202 MINIMUM STANDARDS FOR COMPANY POLICE OFFICERS**

(a) Every company police officer must meet the following requirements to obtain and maintain a company police commission:

- (1) be a citizen of the United States;
- (2) be a high school graduate (means graduation from a high school that meets the compulsory attendance requirements in the jurisdiction in which the school is located), or have passed the General Educational Development Test indicating high school equivalency; A specific exception to this educational requirement is granted to:
  - (A) an applicant who was the holder of a valid company police commission on June 30, 1972; or
  - (B) an applicant certified as a law enforcement officer by the Criminal Justice Education and Training Standards Commission on March 14, 1973.

In either case, the exception is not applicable if the applicant has had more than a 12 month break in service;
- (3) have attained a score of not less than 80 percent on a written examination of basic knowledge of laws of arrest, search, and investigation, and of the rules in this

Subchapter to be administered by a representative of the North Carolina Department of Justice. The Company Police Administrator shall advise in writing of test dates and sites at least five days prior to the examination. In the event an applicant fails to successfully complete the examination, only one re-test is allowed. Upon an applicant's failure to successfully complete the second test, the applicant must successfully complete certified Basic Law Enforcement Training coursework prior to re-testing, pursuant to 12 NCAC 09C .0402;

- (4) meet the minimum standards for criminal justice officers established by the North Carolina Criminal Justice Education and Training Standards Commission, appearing in Title 12, Chapter 09 of the North Carolina Administrative Code; which Standards are hereby incorporated by reference, and shall automatically include any later amendments and editions of the referenced material;
- (5) applicants who do not hold general certification as a law enforcement officer issued by the Criminal Justice Education and Training Standards Commission or the North Carolina Sheriff's Education and Training Standards Commission, must submit to and successfully complete a polygraph examination administered by the State Bureau of Investigation;
- (6) be at least 20 years of age;
- (7) have produced a negative result on a drug screen administered according to the following specifications:
  - (A) the drug screen shall be a urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive test result using a gas chromatography mass spectrometry (GC/MS) or other initial and confirmatory tests as may, from time to time, be authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs;
  - (B) a chain of custody shall be maintained on the specimen from collection to the eventual discarding of the specimen;
  - (C) the drugs whose use shall be tested for shall include cannabis, cocaine, phencyclidine (PCP), opiates and amphetamines or their metabolites;
  - (D) the test threshold values established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs

- are hereby incorporated by reference, and shall automatically include any later amendments and editions of the referenced material;
- (E) the test conducted shall be not more than 60 days old, calculated from the time when the laboratory reports the results to the date of employment;
  - (F) the laboratory conducting the test must be nationally certified for federal workplace drug testing programs by the Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention, Division of Workplace Programs, and must adhere to applicable federal rules, regulations and guidelines pertaining to the handling, testing, storage and preservation of samples, except that individual agencies may specify other drugs to be tested for in addition to those drugs set out in Part (C) of this Subparagraph; and
  - (G) every agency head shall arrange for a licensed physician to review drug tests reported by the laboratory;
- (8) notify the Company Police Administrator in writing of all criminal offenses for which the officer is arrested for or charged with, pleads no contest, pleads guilty, or is found guilty of, as well as all Domestic Violence Orders (50B) which are issued by a judicial official. This includes all criminal offenses except minor traffic infraction offenses and specifically includes any offense of Driving Under the Influence (DUI) or Driving While Impaired (DWI). A minor traffic offense is defined, for purposes of this Subparagraph as an offense where the maximum punishment allowable is 60 days or less. The notifications required for an arrest or charge must specify the nature of the offense and date of arrest or charge. Further notifications required must specify the nature of the offense, the court in which the case was handled and the date of the conviction or adjudication. All notifications must be received by the Company Police Administrator within five days of the date of the arrest or charge and case disposition. Applicants and officers required to notify the Company Police Administrator under this Subparagraph shall also make the same notification to their Department Head within five days of the date the case was disposed of in court. However, the notification to the Company Police Administrator does not excuse the officer from making an independent notification otherwise required by either the
- Criminal Justice Education and Training Standards Commission or the Sheriffs' Education and Training Standards Commission. The notifications required by this Subparagraph are required while the application is pending as well as, subsequent to a commission being issued;
- (9) be of good moral character within the meaning of: *In re Willis*, 288 N.C. 1, 215 S.E.2d 771 appeal dismissed 423 U.S. 076 (1975); *State v. Harris*, 216 N.C. 746, 6 S.E.2d 854 (1940); *In re Legg*, 325 N.C. 658, 386 S.E.2d 174 (1989); *In re Applicants for License*, 143 N.C. 1, 55 S.E. 635 (1906); *In re Dillingham*, 188 N.C. 162, 124 S.E. 130 (1924); *State v. Benbow*, 309 N.C. 538, 308 S.E.2d 647 (1983); and their progeny;
  - (10) not have committed or been convicted of a crime or crimes as specified in 12 NCAC 021 .0212(a) or (b), such that the applicant would be ineligible for commissioning as a Company Police officer; and
  - (11) submit to a background investigation as specified in 12 NCAC 021 .0205.
- (b) The requirements of this Rule shall apply to all applications for commission and shall also be applicable at all times during which the officer holds commission with the company police program.
- History Note: Authority G.S. 74E-4; Eff. February 1, 1976; Amended Eff. September 9, 1976; Readopted Eff. January 5, 1978; Amended Eff. November 1, 1984; September 1, 1981; Temporary Amendment Eff. March 23, 1990 for a Period of 180 Days to Expire on September 20, 1990; Amended Eff. January 1, 2008; August 2, 1993; September 1, 1990.*
- 12 NCAC 021 .0210 LIABILITY INSURANCE**
- (a) Any applicant for a non-public company police agency certification must file with the Company Police Administrator, either a copy of the liability insurance policy or a certificate of self insurance, at the following address:
- Company Police Administrator  
Company Police Program  
Post Office Drawer 310  
Raleigh, North Carolina 27602-0310  
Telephone: (919) 716-6472
- (b) The insurance carrier shall deliver any notice of cancellation of liability insurance by certified mail, return receipt requested, to the following address:
- Company Police Administrator  
Company Police Program  
Post Office Drawer 310  
Raleigh, North Carolina 27602-0310  
Telephone: (919) 716-6472
- (c) The insurance carrier shall deliver a declaration of insurance statement by certified mail, return receipt requested, at the

beginning of each new insurance coverage period, to the following address:

Company Police Administrator  
Company Police Program  
Post Office Drawer 310  
Raleigh, North Carolina 27602-0310

*History Note:* Authority G.S. 74E-3; 74E-4;  
*Eff. August 2, 1993;*  
*Amended Eff. January 1, 2008; August 1, 1996.*

**12 NCAC 02I .0211 SUSPENSION, REVOCATION  
OR DENIAL OF AGENCY CERTIFICATION**

(a) A company police agency certification may be suspended, revoked or denied upon a finding that the agency has:

- (1) failed to pay any required fees;
- (2) failed to produce or maintain a copy of a liability insurance policy or a certificate of self insurance;
- (3) failed to meet any of the requirements for certification provided in 12 NCAC 02I .0203;
- (4) failed to provide any of the required documentation pursuant to 12 NCAC 02I .0203;
- (5) failed to allow for the reasonable inspection of the Company Police agency records pursuant to G.S. 74E-4(3);
- (6) failed to ensure compliance by the agency's company police officers of any and all in-service training requirements as specified by 12 NCAC 09E .0100;
- (7) failed to submit the required in-service training compliance reports as required by 12 NCAC 09E .0100;
- (8) failed to submit any and all reports, notification or other information required by the rules in this Subchapter;
- (9) knowingly made a material misrepresentation of any information required for certification or commissioning from the Company Police Administrator or the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriff's Education and Training Standards Commission;
- (10) knowingly and willfully by any means of false pretense, deception, defraudation, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training, certification or commissioning from the Company Police Administrator, the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriff's Education and Training Standards Commission;
- (11) aided another in obtaining or attempting to obtain credit, training, or certification from the Company Police Administrator, the North Carolina Criminal Justice Education and

Training Standards Commission or the North Carolina Sheriff's Education and Training Standards Commission by means of deceit, fraud or misrepresentation or cheating;

- (12) failed to ensure that any employee not commissioned as a company police officer is not violating a prohibition set forth in 12 NCAC 02I .0304; or
- (13) fails to maintain at least one employee who is commissioned, pursuant to 12 NCAC 02I .0203(b), and to maintain at least one contract for services.

(b) An agency whose certification has been suspended, revoked, or denied may appeal the action in accordance with the provisions of G.S. 150B.

*History Note:* Authority G.S. 74E-4;  
*Eff. August 2, 1993;*  
*Amended Eff. January 1, 2008.*

**12 NCAC 02I .0212 SUSPENSION, REVOCATION,  
OR DENIAL OF OFFICER COMMISSION**

(a) A company police commission shall be revoked or denied upon a finding that the officer has committed or been convicted of:

- (1) any felony unless granted an unconditional pardon of innocence; or
- (2) any crime for which the authorized punishment could have been imprisonment for more than two years.

(b) The Attorney General, or his designee, may revoke, suspend, or deny the commission of a company police officer when the Company Police Administrator finds that the applicant for commission or the commissioned company police officer has committed or been convicted of:

- (1) a crime or unlawful act as defined in 12 NCAC 09A .0103(23)(b) as a Class B misdemeanor and which occurred after the date of initial certification;
- (2) a crime or unlawful act as defined in 12 NCAC 09A .0103(23)(b) as a Class B misdemeanor within a five-year period prior to the date of certification;
- (3) four or more crimes or unlawful acts as defined in 12 NCAC 09A .0103(23)(b) as Class B misdemeanors regardless of the date of commission or conviction;
- (4) four or more crimes or unlawful acts as defined in 12 NCAC 09A .0103(23)(a) as a Class A misdemeanor, each of which occurred after the date of initial certification; or
- (5) any combination of four or more crimes or unlawful acts defined in 12 NCAC 09A .0103(23)(a) as a Class A misdemeanor or defined in 12 NCAC 09A .0103(23)(b) as a Class B misdemeanor regardless of the date of commission or conviction.

(c) A company police commission shall be revoked or denied upon a finding that:



- (1) the officer lacks good moral character as referred to in G.S. 17C-10(c) and 12 NCAC 02I .0202(a)(9);
- (2) the officer fails to meet any of the required standards as specified in 12 NCAC 02I .0202;
- (3) the officer has been terminated from employment with the company police agency for which the officer is commissioned or is no longer employed with such company police agency;
- (4) the officer has committed any act prohibited by 12 NCAC 02I .0304;
- (5) the certification of the company police agency with which the officer is commissioned is terminated, suspended or revoked.
- (6) knowingly made a material misrepresentation of any information required for commissioning or certification from the Company Police Administrator, the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriffs' Education and Training Standards Commission; or
- (7) has been denied certification or had such certification suspended or revoked by the North Carolina Criminal Justice Education and Training Standards Commission, the North Carolina Sheriff's Education and Training Standards Commission or a similar North Carolina, out of state or federal approving, certifying or licensing agency.

(d) An officer whose certification has been suspended, revoked, or denied may appeal the action in accordance with the provisions of G.S. 150B.

*History Note: Authority G.S. 74E-4; Eff. August 2, 1993; Amended Eff. January 1, 2008.*

#### **12 NCAC 02I .0214 SUMMARY SUSPENSIONS**

(a) The Company Police Administrator, through designation by the Attorney General, may summarily suspend the commission of the company police officer before the commencement of proceedings for suspension or revocation of the certification when, in the opinion of the Company Police Administrator, the public health, safety, or welfare requires this emergency action of summary suspension. The Attorney General has determined that the following conditions specifically affect the public health, safety, or welfare, and therefore, the Company Police Administrator may utilize summary suspension when:

- (1) the person has committed or been convicted of a violation of the criminal code which would require a revocation or denial of certification;
- (2) the person has been convicted of any felony (unless granted an unconditional pardon of innocence) or any crime for which the authorized punishment could have been imprisonment for more than two years;

- (3) the commissioned company police officer fails to complete the minimum in-service training requirements as prescribed in Title 12, Chapter 09 of the North Carolina Administrative Code; or
- (4) the commissioned company police officer produces a positive result on a drug screening administered as set out in 12 NCAC 02I .0202(7).

(b) A summary suspension is effective on the date specified in the order of the summary suspension or upon the service of the certified copy of the order at the last known address of the person, whichever is later. The summary suspension shall remain in effect during the proceedings.

(c) Upon verbal notification by the Company Police Administrator that the company police commission of any officer is being summarily suspended by written order, the Department Head of the company police agency shall take such steps as are necessary to ensure that the officer does not perform duties requiring a company police commission through the Attorney General.

*History Note: Authority G.S. 74E-4; 74E-10; 150B-3; Eff. August 2, 1993; Amended Eff. January 1, 2008.*

#### **12 NCAC 02I .0301 TENURE**

(a) A company police agency certification shall remain in effect until:

- (1) The Attorney General directs termination; or
- (2) The required liability insurance is terminated or suspended by the agency's insurance carrier.

(b) A company police officer commission shall remain in effect until:

- (1) The Attorney General directs termination;
- (2) The company police officer ceases to be employed by a company police agency;
- (3) The agency by which the officer is employed no longer exists;
- (4) Evidence is presented that the person has committed an act which would have originally caused denial of the application or an act prohibited by Rule .0304 of this Section; or
- (5) Either the Criminal Justice Education and Training Standards Commission or the North Carolina Sheriffs' Education and Training Standards Commission suspends or revokes an officer's certification for cause.

*History Note: Authority G.S. 74E-4; 74E-6; 74E-10; Eff. February 1, 1976; Readopted Eff. January 5, 1978; Amended Eff. January 1, 2008; August 2, 1993; September 1, 1990; November 1, 1984; September 1, 1981.*

#### **12 NCAC 02I .0304 PROHIBITED ACTS**

In addition to the prohibited acts set forth elsewhere in the rules in this Subchapter and in G.S. Chapter 74E, a company police officer shall not commit the following acts:

- (1) use of excess force while in the performance of his official duties;
- (2) carrying a concealed weapon except:
  - (a) when on his own business property or at home;
  - (b) when employed as a company police officer, while on duty and in compliance with G.S. 14-269(b)(4) and G.S. 74E-6; or
  - (c) when off duty and in compliance with G.S. 14-269(b)(5).
- (3) activating or operating a red light in or on any vehicle in this State unless such vehicle is exempted from the provisions of G.S. 20-130.1(b);
- (4) activating or operating a blue light in or on any vehicle in this State except when operating a motor vehicle used primarily by company or railroad police in the performance of his official duties:
  - (a) when in property jurisdiction limitations specifically described under G.S. 74E-6;
  - (b) when in continuous or immediate pursuit of a person for an offense committed upon real property owned by or in the possession or control of his employer or real property or in the possession and control of a person who has contracted with the employer to provide on-site police security personnel services for the property; or
  - (c) during the transportation of an arrestee, which the company police agency has taken into custody;
- (5) activating or operating a siren when operating any motor vehicle used primarily by any company police agency in the performance of his official duties when outside of the property jurisdiction limitations specifically described under G.S. 74E-6 unless in immediate and continuous pursuit;
- (6) representing in any manner at any time that he is a federal, state, county, or municipal law enforcement officer, while in performance of official duties as a company police officer within his territorial jurisdiction.
- (7) impeding traffic, stopping motorists or pedestrians, or in any manner imposing or attempting to impose his will upon another person as police authority unless:
  - (a) he is on the property specifically described under G.S. 74E-6; or
  - (b) when in immediate and continuous pursuit of any person for an offense which occurred within the property jurisdiction limitations specifically described under G.S. 74E-6;

- (8) using or attempting to use authority granted under a company police commission pursuant to this Subchapter outside the political boundaries of North Carolina; or
- (9) violating Rule .0306 of this Section.

*History Note: Authority G.S. 74E-4; 74E-6; 74E-8; Eff. February 1, 1976; Readopted Eff. January 5, 1978; Amended Eff. January 1, 2008; August 2, 1993; November 1, 1984; April 9, 1980; December 28, 1979.*

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**12 NCAC 07D .0901 REQUIREMENTS FOR A FIREARMS TRAINER CERTIFICATE**

(a) Firearms trainer applicants shall:

- (1) meet the standards established by 12 NCAC 07D .0703;
- (2) have a minimum of one year supervisory experience in security with a contract security company or proprietary security organization, or one year experience with any federal, U.S. military, state, county or municipal law enforcement agency,
- (3) attain a 90 percent score on a firearm's course approved by the Board and the Attorney General, with a copy of the firearm's course certificate to be kept on file in the administrator's office;
- (4) successfully complete a training course approved by the Board and the Attorney General which shall consist of minimum of 40 hours of classroom and practical range training in handgun and shotgun safety and maintenance, range operations, night firearm training, control and safety procedures, and methods of handgun and shotgun firing;
- (5) pay the certified trainer application fee established in 12 NCAC 07D .0903(a)(1); and
- (6) successfully complete the requirements of a Unarmed Trainer Certificate established by 12 NCAC 07D .0909.

(b) A Firearms Trainer Certificate shall expire two years after the date of issuance.

*History Note: Authority G.S. 74C-5; 74C-13; Eff. June 1, 1984; Amended Eff. January 1, 2008; August 1, 2004; November 1, 1991.*

**12 NCAC 07D .0908 POST-DELIVERY REPORT FOR FIREARMS TRAINING COURSES**

Firearms Trainers shall submit to the Board a post-delivery report for all firearms training courses required by 12 NCAC 07D .0807 within 20 days after completion of the firearms training. The report shall be submitted on a Board form and shall contain the following information:

- (1) Certified Firearms Trainer's name;

- (2) Date, time, and location of classroom training;
- (3) Date, time, and location of range qualification;
- (4) Full name of the students who completed the firearms training course;
- (5) Classroom exam score for each student completing the firearms training course;
- (6) Range score for each student completing the firearms training course; and
- (7) Certified Firearms Trainer's signature.

*History Note: Authority G.S. 74C-5; 74C-13;  
Temporary Adoption Eff. October 2, 2002;  
Temporary Adoption Expired July 29, 2003;  
Eff. December 1, 2003;  
Amended Eff. January 1, 2008.*

**12 NCAC 07D .0909 UNARMED GUARD TRAINER CERTIFICATE**

(a) To receive an unarmed guard trainer certificate, an applicant shall meet the following requirements:

- (1) comply with the requirements of 12 NCAC 07D.0703;
- (2) have a minimum of one year experience in security with contract security company or proprietary security organization, or one year experience with any federal, U.S. military, state, county or municipal law enforcement agency;
- (3) successfully complete a training course approved by the Board and the Attorney General which shall consist of a minimum of 24 hours classroom instruction to include the following topic areas:
  - (A) civil liability for the security trainer - two hours;
  - (B) interpersonal communications in instruction - three hours;
  - (C) teaching adults - four hours;
  - (D) principles of instruction - one hour;
  - (E) methods and strategies of instruction - one hour;
  - (F) principles of instruction: audio-visual aids - three hours; and
  - (G) student performance: 45 minute presentation.
- (4) favorable recommendation from the employing or contracting licensee; and
- (5) comply with the application process for an Unarmed Trainer Certificate as set forth in 12 NCAC 07D .0910.

(b) In lieu of completing the training course set forth in Subparagraph (a)(3) of this Rule, an applicant may submit to the Board a Criminal Justice General Instructor Certificate from North Carolina Criminal Justice Education and Training Standards Commission or any training certification that meets or exceeds the requirements of Subparagraph (a)(3) of this Rule and is approved by the Director of PPS.

(c) An Unarmed Guard Trainer Certificate shall expire two years after the date of issuance.

*History Note: Authority G.S. 74C-8; 74C-9; 74C-11; 74C-13;  
Eff. October 1, 2004;  
Amended Eff. January 1, 2008.*

**12 NCAC 07D .0911 RENEWAL OF AN UNARMED GUARD TRAINER CERTIFICATE**

Each applicant for renewal of an unarmed guard trainer certificate shall complete a board renewal form. This form shall be submitted not less than 30 days prior to the expiration of the applicant's current certificate. In addition, the applicant shall include the following:

- (1) the renewal fee set forth in 12 NCAC 07D .0903(a)(3);
- (2) certification of a minimum of 16 hours of Board approved armed or unarmed instruction performed during the current unarmed guard trainer certification period; and
- (3) statement verifying the classes taught during the current unarmed guard trainer certification period on a form prescribed by the Board.

*History Note: Authority G.S. 74C-8; 74C-9; 74C-11; 74C-13;  
Eff. August 1, 2004;  
Amended Eff. January 1, 2008.*

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**12 NCAC 10B .0103 DEFINITIONS**

In addition to the definitions set forth in G.S. 17E-2, the following definitions apply throughout this Chapter, unless the context requires otherwise:

- (1) "Appointment" as it applies to a deputy sheriff means the date the deputy's oath of office is administered; and as it applies to a detention officer means either the date the detention officer's oath of office was administered, if applicable, or the detention officer's actual date of employment as reported on the Report of Appointment (Form F-4) by the employing agency, whichever is earlier; and as it applies to a telecommunicator, the telecommunicator's actual date of employment as reported on the Report of Appointment (Form F-4T).
- (2) "Convicted" or "Conviction" means for purposes of this Chapter, the entry of:
  - (a) a plea of guilty;
  - (b) a verdict or finding of guilt by a jury, judge, magistrate, or other adjudicating body, tribunal, or official, either civilian or military; or
  - (c) a plea of no contest, nolo contendere, or the equivalent.
- (3) "Department Head" means the chief administrator of any criminal justice agency or communications center. Department head includes the sheriff or a designee appointed in writing by the Department head.

- (4) "Director" means the Director of the Sheriffs' Standards Division of the North Carolina Department of Justice.
- (5) "Division" means the Sheriffs' Standards Division.
- (6) "High School Graduation" means successful completion of all requirements for either public or non-public schools, including passing any required competency tests, established by the State Board of Education or other entity having jurisdiction where the student graduated at the time the student finished high school. A certificate or diploma reflecting the person accomplished some but not all graduation requirements is not sufficient. The high school must meet the compulsory attendance requirements in the jurisdiction in which the school is located.
- (7) "Enrolled" means that an individual is currently participating in an on-going presentation of a commission-certified basic training course which has not been concluded on the day probationary certification expires.
- (8) "Essential Job Functions" means those tasks deemed by the agency head to be necessary for the proper performance of a justice officer.
- (9) "Lateral Transfer" means certification of a justice officer when the applicant for certification has previously held general or grandfather certification as a justice officer or a criminal justice officer as defined in G.S. 17C-2(c), excluding state correctional officers, state probation/parole officers, and state youth services officers, provided the applicant has been separated from a sworn law enforcement position for no more than one year, or has had no break in service.
- (10) "Misdemeanor" means those criminal offenses not classified by the North Carolina General Statutes, the United States Code, the common law, or the courts as felonies. Misdemeanor offenses are classified by the Commission as follows:
  - (a) "Class A Misdemeanor" means:
    - (i) an act committed or omitted in violation of any common law, duly enacted ordinance or criminal statute of this state which is not classified as a Class B Misdemeanor pursuant to Sub-item (10)(b) of this Rule. Also specifically included herein as a Class A Misdemeanor is the offense of driving while impaired, if the offender was sentenced under punishment level three [G.S. 20-179(i)], level four [G.S. 20-179(j)], or level five [G.S. 20-179(k)]. All other traffic offenses under Chapter 20 (motor vehicles) are not classified as Class A Misdemeanors.
    - (ii) acts committed or omitted in North Carolina prior to October 1, 1994 in violation of any common law, duly enacted ordinance or criminal statute, of this state for which the maximum punishment allowable for the designated offense included imprisonment for a term of not more than six months. Also specifically included herein as a Class A Misdemeanor is the offense of driving while impaired, if the offender was sentenced under punishment level three [G.S. 20-179(i)], level four [G.S. 20-179(j)], or level five [G.S. 20-179(k)]. All other traffic offenses under Chapter 20 (motor vehicles) are not classified as Class A Misdemeanors.
    - (iii) any act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of not more than six months. Specifically excluded from this grouping of "Class A Misdemeanor" criminal offenses for jurisdictions other than North Carolina, are motor vehicle or traffic offenses designated as misdemeanors under the laws of other jurisdictions, or duly enacted ordinances of an authorized governmental entity with the exception of the offense of driving while impaired

- which is expressly included herein as a class A misdemeanor, if the offender could have been sentenced for a term of not more than six months.
- (b) "Class B Misdemeanor" means:
- (i) an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state which is classified as a Class B Misdemeanor as set forth in the "Class B Misdemeanor Manual" as published by the North Carolina Department of Justice and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. Copies of the publication may be obtained from the North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602. There is no cost per manual at the time of adoption of this Rule.
  - (ii) acts committed or omitted in North Carolina prior to October 1, 1994 in violation of any common law, duly enacted ordinance, or criminal statute, of this state for which the maximum punishment allowable for the designated offense included imprisonment for a term of more than six months but not more than two years. Specifically excluded from the grouping of "Class B misdemeanors" committed or omitted in North Carolina prior to October 1, 1994 are motor vehicle or traffic offenses designated as being misdemeanors under G.S. 20 (motor vehicles), with the following exceptions: "Class B misdemeanors" committed or omitted in North Carolina prior to October 1, 1994 expressly include, either first or subsequent offenses of G.S. 20-138(a) or (b), G.S. 20-166 (duty to stop in the event of an accident), G.S. 20-138.1 (impaired driving) if the defendant was sentenced under punishment level one [G.S. 20-179(g)] or punishment level two [G.S. 20-179(h)] for the offense, and shall also include a violation of G.S. 20-28(b) [driving while license permanently revoked or suspended].
  - (iii) any act committed or omitted in violation of any common law, duly enacted ordinance, or criminal statute of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of more than six months but not more than two years. Specifically excluded from this grouping of "Class B Misdemeanor" criminal offenses for jurisdictions other than North Carolina, are motor vehicle or traffic offenses designated as being misdemeanors under the laws of other jurisdictions with the following exceptions: Class B Misdemeanor does expressly include, either first or subsequent offenses of driving while impaired if the maximum allowable punishment is for a term of more than six months but not more than two years, and driving while license permanently revoked or permanently suspended.
- (11) "Felony" means any offense designated a felony by the laws, statutes, or ordinances of the jurisdiction in which the offense occurred.
- (12) "Dual Certification" means that a justice officer holds probationary, general, or grandfather certification in two or more of the following positions with the same agency:

- |   |   |
|---|---|
| <p>(a) deputy sheriff;<br/>         (b) detention officer;<br/>         (c) telecommunicator.</p> <p>(13) "Detention Officer" means any person performing responsibilities, either on a full-time, part-time, permanent or temporary basis, which includes the control, care, and supervision of any inmates incarcerated in a county jail or other confinement facility under the direct supervision and management of the sheriff. "Detention Officer" shall also mean the administrator and the other custodial personnel of district confinement facilities as defined in G.S. 153A-219.</p> <p>(14) "Deputy Sheriff" means any person who has been duly appointed and sworn by the sheriff and who is authorized to exercise the powers of arrest in accordance with the laws of North Carolina.</p> <p>(15) "Telecommunicator" means any person performing responsibilities, either on a full-time, part-time, permanent or temporary basis, for communication functions to include receiving calls or dispatching for emergency and law enforcement services.</p> <p>(16) "Commission" as it pertains to criminal offenses means a finding by the North Carolina Sheriffs' Education and Training Standards Commission or an administrative body, pursuant to the provisions of G.S. 150B, that a person performed the acts necessary to satisfy the elements of a specified criminal offense.</p> <p>(17) "Sworn Law Enforcement Position" means a position with a criminal justice agency of the United States, any state, or a political subdivision of any state which, by law, has general power of arrest and requires each of the following:</p> <p style="padding-left: 40px;">(a) successful completion of the Basic Law Enforcement Training</p> | <p>curriculum offered by the respective state or federal entity; and</p> <p>(b) an independent oath of office providing for the execution of the laws of the respective state or federal jurisdiction.</p> <p>(18) "General Powers of Arrest" means the authority to enforce the state or federal laws within the officer's territorial and subject matter jurisdiction to include the authority to arrest and cite offenders under the laws of the jurisdiction. These powers must be conferred on the officer by virtue of occupying a sworn law enforcement position. General powers of arrest means those powers, even though limited by subject matter jurisdiction, which may be exercised as a routine responsibility of the office. General powers of arrest does not mean those powers of arrest conferred by virtue of a special appointment or those granted as an incidental, as opposed to a primary, function of the office.</p> <p>(19) "In-Service Training Coordinator" means the person designated by the Department Head to administer the agency's in-service training program.</p> |
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*History Note: Authority G.S. 17E-7;  
 Eff. January 1, 1989;  
 Amended Eff. January 1, 1994; January 1, 1993;  
 Temporary October 1, 1994 for a period of 180 days or until the permanent rule become effective whichever is sooner;  
 Amended Eff. January 1, 1996; March 1, 1995;  
 Temporary Amendment Eff. March 1, 1998;  
 Amended Eff. January 1, 2008; January 1, 2006; August 1, 2000; August 1, 1998.*

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

### 15A NCAC 06I .0103 ALLOCATION GUIDELINES AND PROCEDURES

(a) The Commission shall allocate the cost share funds to the districts in the designated program areas. To receive fund allocations, each district designated eligible by the commission shall submit an annual strategy plan to the commission at the beginning of each fiscal year. Funds may be allocated to each district and the Division for any or all of the following purposes:

- (1) Cost share and cost share incentive payments,
- (2) technical assistance and administrative assistance, and
- (3) statewide or local education and outreach activities.

(b) The Commission shall consider the relative needs of the program for BMP implementation, local technical assistance, and education to determine the proportion of available funds to be allocated for each eligible purpose prior to allocating funds to districts and the Division.

(c) Funds for cost share and cost share incentive payments shall be allocated to the districts at the beginning of the fiscal year and whenever the Commission determines that sufficient funds are available to justify a reallocation. Districts shall be allocated monies based on the identified level of nonpoint source pollution problems and the respective district's BMP installation goals as demonstrated in the district annual strategy plan. The allocation method used for disbursement of funds is based on the score of each respective district for those parameters approved by the Commission pursuant to Subparagraph (9) of this Paragraph. The points each

district scores on each parameter are totaled and proportioned to the total dollars available under the current program year funding according to the following formula:

- (1) Sum of Parameter Points = Total Points
- (2)  $\frac{\text{Percentage Total Points Each District}}{\text{Total Dollars Available}} = \frac{\text{Dollars Available to Each District}}{\text{Total Points}}$
- (3) The minimum allocated to a particular district shall be one thousand five hundred dollars (\$1,500) per program year, unless the district requests less than one thousand five hundred dollars (\$1,500).
- (4) If a district requests less than the dollars available to that district in Subparagraph (2) of this Paragraph, then the excess funds beyond those requested by the district shall be allocated to the districts who did not receive their full requested allocation using the same methodology described in Subparagraph (2) of this Paragraph.
- (5) 95 percent of the total program funding shall be allocated to the district accounts in the initial allocation. The Division shall retain five percent of the total funding in a contingency fund to be used to respond to an emergency or natural disaster. If the funds are not needed to respond to an emergency, then the contingency fund shall be allocated at the March meeting of the Commission.
- (6) The Commission may recall funds allocated to a district during a fiscal year that have not been encumbered to an agreement at any time if it determines the recalled funds are needed to respond to an emergency or natural disaster.
- (7) At any time a district may submit a revised strategy plan and apply to the Commission for additional funds.
- (8) CPOs that encumber funds under the current year must be submitted to the Division by 5:00 p.m. on the first Wednesday in June.
- (9) Districts shall be allocated funds based on their respective data for each of the following parameters:
  - (A) Relative rank of the number of miles of stream identified as less than fully supporting due to nonpoint source pollution as reported in the North Carolina Water Quality Assessment and Impaired Waters List and the most recent Basinwide Water Quality Plan for each river basin, where the source of pollution is not solely due to agriculture. (20 percent) The North Carolina Water Quality Assessment and Impaired Waters list and the Basinwide Water Quality Plans are produced by the Division of Water Quality.
  - (B) Relative rank of the percentage of the county draining to waters classified as Outstanding Resource Waters, High Quality Waters, Trout, or Shellfishing (open) on the current schedule of Water Quality Standards and Classifications. (20 percent)
  - (C) The percentage of each county covered by NPDES Phase I and Phase II requirements. (20 percent)
  - (D) Relative rank of population density for the county. (20 percent)
  - (E) Relative rank of the percentage of a county's land area that is located within drinking water assessment areas, as delineated by the Public Water Supply Section of the Division of Environmental Health. (20 percent)

(d) The funds available for technical and administrative assistance shall be allocated by the Commission based on the needs as expressed by the district and needs to accelerate the installation of BMPs in the respective district. Each district may use these monies to fund new positions or to accelerate present technical assistance. Districts must provide an itemized budget to the division in order to qualify for technical assistance funds. N.C. Community Conservation Assistance Program technical assistance funds may be used for technical assistance with the district matching at least 50 percent of the total. Each district to which funds are allocated for technical assistance shall demonstrate to the Commission that matching funds are available prior to any expenditure of funds. The allocation method used for disbursement of funds is based on the score of each respective district for those parameters approved by the Commission pursuant to Subparagraph (4) of this Paragraph. The points each district scores for each parameter are totaled and proportioned to the total dollars available under the current program year funding according to the following formula:

- (1) Sum of Parameter Points = Total Points
- (2)  $\frac{\text{Percentage Total Points Each District}}{\text{Total Dollars Available}} = \frac{\text{Dollars Available to Each District}}{\text{Total Points}}$
- (3) If a district requests less than the dollars available to that district in Subparagraph (2) of this Paragraph, then the excess funds beyond those requested by the district shall be allocated to the districts who did not receive their full requested allocation using the same methodology described in Subparagraph (2) of this Paragraph.
- (4) Priority for funding shall be based upon the following parameters:
  - (A) Whether the position is presently funded by Community Conservation Assistance Program technical assistance funds. (25 percent)
  - (B) The proportion of Community Conservation Assistance Program funds for cost share and cost share incentive allocated to districts served by this technical assistance request (normalized to 1 to 100 scale by multiplying each district's score by a factor such that the product of the highest score for this parameter is 100) (50 percent), and
  - (C) The amount of additional funds leveraged by grants and other funds committed to districts served by this technical assistance request (normalized to 1 to 100 scale by multiplying each district's score by a factor such that the product of the highest score for this parameter is 100). (25 percent)
- (5) Subject to availability of funds and local match, provide support for technical assistance for every district.

- (6) District technicians may be jointly funded by more than one district to accelerate the program in each participating district. Each district must be eligible for cost sharing in the program. Requests for funding (salary, FICA, insurance, etc.) of a shared position must be presented to the division by all concerned districts and the division shall cost share to the billing district at a 50-50 rate based on the portion of the FTE provided each respective district. A shared position must be officially housed in one specific district and cost share for support items (office rent, telephone, etc.) shall be paid to one district only.
- (7) Funds, if available, may be allocated to each participating district to provide for administrative costs under this program. These funds shall be used for clerical assistance and other related program administrative costs and shall be matched with in-kind funds of an equal amount from the district.
- (e) The funds available for the education and outreach purpose shall be allocated by the Commission based on the needs as expressed by the district and needs to accelerate the installation of BMPs in that respective district. Districts and the Division may use these funds for holding workshops for potential applicants and for developing, duplicating, and distributing outreach materials or signs. Districts must provide an itemized budget to the Division in order to qualify for education and outreach funds. Education and outreach funds shall be allocated to each district in accordance with the following formula:
- (1) Each district shall receive the lesser of one thousand dollars (\$1,000) or the result of the following equation:
- |                         |   |  |   |  |   |                                    |
|-------------------------|---|--|---|--|---|------------------------------------|
| Total Dollars Available | x | Total Dollars Requested by Each District | ÷ | Total Dollars Requested by All Districts | = | Dollars Available to Each District |
|-------------------------|---|--|---|--|---|------------------------------------|
- (2) If more funds are available for allocation than are requested by districts or the Division, then the excess funds shall be added to the funds to be allocated for cost share and cost share incentive payments.

*History Note: Authority G.S. 139-4; 139-8; 143-215.74M; 143B-294; Eff. January 1, 2008.*

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

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

(b) Fishing. Except as otherwise provided in this Paragraph or in Paragraph (c) of this Rule, no person may enter the waters within the regulated areas described in Paragraph (a) of this Rule. Persons engaged in fishing within the regulated areas described in Paragraph (a) of this Rule may enter these waters in connection with such fishing activities provided that they shall

wear at all times a U.S. Coast Guard approved personal flotation device in serviceable condition and of appropriate size for the wearer.

(c) Boating. Any person in or upon a boat, raft or other floating object that enters into the regulated areas described in Paragraph (a) of this Rule shall wear at all times a U.S. Coast Guard approved personal flotation device in serviceable condition and of appropriate size for the wearer. No vessel may tie off to any part of the hydroelectric station structure or the accessory portions thereof within regulated areas described in Paragraph (a) of this Rule, or to anchor or otherwise secure a vessel in these areas.

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

(e) Placement and Maintenance of Markers. Alcoa Power Generating, Inc. is designated as a suitable entity for placement

and maintenance of buoys and other signs implementing this Rule.

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

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

*History Note: Authority G.S. 75A-3; 75A-15; Eff. January 1, 2008.*

**15A NCAC 10F .0375 DUKE ENERGY CORPORATION HYDROELECTRIC STATION SAFETY ZONES**

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

(b) Fishing. Except as otherwise provided in this Paragraph or in Paragraph (c) of this Rule, no person may enter the waters within the regulated areas described in Paragraph (a) of this Rule. Persons engaged in fishing within the regulated areas described in Paragraph (a) of this Rule may enter these waters in connection with such fishing activities provided that they shall wear at all times a U.S. Coast Guard approved personal flotation device in serviceable condition and of appropriate size for the wearer.

(c) Boating. Any person in or upon a boat, raft or other floating object that enters into the regulated area described in Paragraph (a) of this Rule shall wear at all times a U.S. Coast Guard approved personal flotation device in serviceable condition and of appropriate size for the wearer. No vessel may tie off to any part of the dam structure or the accessory portions thereof within regulated areas described in Paragraph (a) of this Rule, or to anchor or otherwise secure a vessel in these areas.



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

(e) Placement and Maintenance of Markers. Duke Energy Corporation is designated as a suitable entity for placement and maintenance of buoys and other signs implementing this Rule.

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

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

*History Note:* Authority G.S. 75A-3; 75A-15;  
Eff. January 1, 2008.

## TITLE 18 – OFFICE OF SECRETARY OF STATE

### **18 NCAC 07B .0701 INSTRUCTOR CERTIFICATION – SCOPE**

(a) Except as otherwise provided in G.S. 10B-14 and this Section, notaries public shall comply with all requirements for certification or recertification as a notary public instructor as set forth in this Chapter.

(b) A notary public who is a licensed member of the North Carolina State Bar shall comply with all requirements of this Chapter in order to obtain certification or recertification as a notary public instructor.

*History Note:* Authority G.S. 10B-8; 10B-14;  
Eff. January 1, 2008.

### **18 NCAC 07B .0702 INSTRUCTOR CERTIFICATION - GENERAL**

Applicants for notary public instructor certification shall:

- (1) Complete the Department's notary public instructor application form and submit it to the Department;

- (2) Comply with the requirements of Rule .0708 through Rule .0711 of this Chapter regarding verification of 12 months of experience;
- (3) Comply with the requirements of Rule .0712 of this Chapter regarding recommendations;
- (4) Comply with the requirements of Rule .0713 of this Chapter regarding an oral presentation of a notary public course curriculum lesson;
- (5) Make a passing grade on the final examination in the notary public instructor certification course as set forth in Rule .0714 of this Chapter; and
- (6) Except as otherwise provided in G.S. 10B-14(c) and Rule .0705 of this Chapter, pay the required fee.

*History Note:* Authority G.S. 10B-8; 10B-14;  
Eff. January 1, 2008.

### **18 NCAC 07B .0703 TIMING OF INSTRUCTOR CERTIFICATION APPLICATION**

An application for notary public instructor certification or recertification shall not be submitted to the Division during the period of any sanction issued by the Division.

*History Note:* Authority G.S. 10B-8; 10B-14;  
Eff. January 1, 2008.

### **18 NCAC 07B .0704 DEPARTMENT REJECTION OF APPLICATIONS**

The Department shall reject a notary instructor certification or recertification application which is received:

- (1) While an investigation into the applicant's performance of the duties of a notary public or notary public instructor is open; or
- (2) During the period of any sanction issued by the Division.

*History Note:* Authority G.S. 10B-8; 10B-14;  
Eff. January 1, 2008.

### **18 NCAC 07B .0705 FEES**

(a) The fee required by G.S. 10B-14 for certification and recertification as a notary public instructor shall be paid in accordance with Rule .0105 of this Chapter.

(b) A person asserting that he or she is not required to submit a fee pursuant to G.S. 10B-14(c) shall include verification that as of the date of application the applicant is currently employed as a register of deed, clerk of court or is the Director or an authorized employee of the Secretary as set forth in G.S. 10B-14(c).

(c) The Secretary may refuse to administer the notary public instructor certification examination to an applicant who has failed to pay the fee required for certification or recertification as a notary public instructor before the examination date.

*History Note:* Authority G.S. 10B-8; 10B-14;  
Eff. January 1, 2008.

**18 NCAC 07B .0706 VERIFICATION THAT APPLICANT CONTINUES TO MEET REQUIREMENTS FOR A NOTARY COMMISSION**

An applicant for notary public instructor certification or recertification shall verify that:

- (1) The applicant continues to meet each of the qualifications for a notary commission found in G.S. 10B-5 and 10B-7; and
- (2) With regard to changes requiring notification to the Division pursuant to Rule .0107 of this Chapter, verify:
  - (a) That there have been no changes requiring notification to the Department;
  - (b) That there have been changes requiring notification to the Department and that the applicant has made all required notifications; or
  - (c) That there have been changes requiring notification to the Department and the applicant has not previously made the required notification to the Department but is including the notification with the application.

*History Note: Authority G.S. 10B-8; 10B-14; Eff. January 1, 2008.*

**18 NCAC 07B .0707 OTHER VERIFICATIONS**

An applicant for notary public instructor certification shall verify that he or she:

- (1) Possesses and has read the current notary public guidebook; and
- (2) Has read Chapter 10B of the General Statutes and this Chapter.

*History Note: Authority G.S. 10B-8; 10B-14; Eff. January 1, 2008.*

**18 NCAC 07B .0708 EVIDENCE OF MINIMUM EXPERIENCE**

- (a) For purposes of these Rules a notarial act is an act set out in G.S. 10B-20(a).
- (b) For purposes of demonstrating the experience required by G.S. 10B-14(a)(2), an applicant shall show evidence of performing notarial acts during each month of the 12 months immediately preceding the application to become a certified notary instructor.
- (c) Evidence of performance of notarial acts shall be presented by one of the methods set forth in Rule .0709 through Rule .0711 of this Chapter.

*History Note: Authority G.S. 10B-8; 10B-14; Eff. January 1, 2008.*

**18 NCAC 07B .0709 JOURNAL AS EVIDENCE OF EXPERIENCE**

(a) An applicant for notary public instructor certification may submit a journal of notarial acts as evidence of experience performing notarial acts.

(b) The submitted journal shall, at a minimum, include:

- (1) The dates on which notarial acts were performed;
- (2) The type of notarial act performed; and
- (3) The name(s) of the party(ies) for whom each notarial act was performed.

(c) The applicant shall submit an affidavit verifying that the information in the journal submitted in compliance with this Rule is true and correct.

*History Note: Authority G.S. 10B-8; 10B-14; Eff. January 1, 2008.*

**18 NCAC 07B .0710 EMPLOYER AFFIDAVIT AS EVIDENCE OF EXPERIENCE**

(a) An applicant for notary public instructor certification may submit an affidavit from his or her employer verifying that the applicant has had experience performing notarial acts.

(b) The submitted affidavit shall, at a minimum, include the following:

- (1) The name of the corporation, business, individual or entity employing the applicant;
- (2) The full name of the person verifying the applicant's experience;
- (3) The authority of the person to verify the applicant's experience, including his or her title;
- (4) The address, telephone number and, if applicable, email address of the person verifying the applicant's experience;
- (5) A narrative description of the reasons the applicant has performed notarial acts while employed by the person or entity submitting the affidavit; and
- (6) Verification that the applicant has performed at least one notarial act during each of the 12 immediately preceding months.

(c) The submitted affidavit may also contain a recommendation pursuant to Rule .0712 of this Chapter.

*History Note: Authority G.S. 10B-8; 10B-14; Eff. January 1, 2008.*

**18 NCAC 07B .0711 ALTERNATIVE EVIDENCE OF EXPERIENCE**

An applicant for notary public instructor certification may submit evidence of experience performing notarial acts other than a journal or employer affidavit, provided the evidence includes:

- (1) An affidavit from the applicant verifying that the applicant has performed at least one notarial act in each of the 12 immediately preceding months; and

- (2) An affidavit from at least one person unrelated to the applicant by birth, marriage or adoption which establishes that the applicant has performed at least one notarial act during each of the 12 months immediately preceding the application.

*History Note: Authority G.S. 10B-8; 10B-14;  
Eff. January 1, 2008.*

**18 NCAC 07B .0712 RECOMMENDATIONS**

A notary public instructor certification applicant shall submit three recommendations on the Division's recommendation form from persons unrelated to the applicant by birth, marriage or adoption.

*History Note: Authority G.S. 10B-8; 10B-14;  
Eff. January 1, 2008.*

**18 NCAC 07B .0713 ORAL PRESENTATION REQUIREMENT FOR APPLICANT**

(a) A notary public instructor certification student shall provide an oral presentation of a section of the notary public curriculum which shall be evaluated according to the standards set forth in Paragraph (c) of this Rule.

(b) A passing grade on the notary public instructor certification oral presentation shall be 80 percent.

(c) The oral presentation of a notary public instructor certification student shall be graded for instructional ability using standards including the notary public instructor student's:

- (1) Voice quality (projection, articulation, speech rate);
- (2) Verbal skill (fluency and clarity);
- (3) Physical appearance and mannerisms (attire, posture, body language, eye contact, movement) to project a professional demeanor;
- (4) Professional qualities of the instructor (knowledge, self-confidence, tact, enthusiasm, sensitivity);
- (5) Selection and use of training aids (use of writing surface and other aids, effective use of multimedia, transparencies, and slides, relates aids to objectives, and use of aids when scheduled);
- (6) Presentation of information in logical sequence;
- (7) Timing of presentation to allow for sufficient time for questions and discussion;
- (8) Transition of subjects with continuous progression and development of lesson;
- (9) Emphasis of key points and frequent summarization of topics to entire lesson or course and use of examples to clarify the subjects;
- (10) Frequent establishment of relevance of the topics to entire lesson or course and use of examples to clarify the subjects; and

- (11) Following the Division's notary public curriculum.

(d) A notary public instructor student who fails the oral presentation portion of the notary public instructor certification course may schedule one additional oral presentation within three months of the failure to complete the oral presentation requirement as required by Paragraph (b) of this Rule.

*History Note: Authority G.S. 10B-8; 10B-14;  
Eff. January 1, 2008.*

**18 NCAC 07B .0714 NOTARY PUBLIC INSTRUCTOR CERTIFICATION AND RECERTIFICATION EXAMINATIONS**

(a) A passing grade on the notary public instructor certification or recertification final examination shall be 90 percent.

(b) A notary public instructor certification or recertification applicant who fails to achieve a passing grade on the final examination may apply to take the test one additional time within three months.

*History Note: Authority G.S. 10B-8; 10B-14;  
Eff. January 1, 2008.*

**18 NCAC 07B .0715 ADDITIONAL REQUIREMENTS**

If the Division receives information or a complaint that gives reason to question the notary public instructor's eligibility or ability to perform the duties of a notary public instructor, the Division may require the notary public instructor to:

- (1) Submit to an interview;
- (2) Submit additional information; or
- (3) Submit audio and visual documentation such as a video of actual instruction.

*History Note: Authority G.S. 10B-8; 10B-14;  
Eff. January 1, 2008.*

**18 NCAC 07B .0716 MINIMUM INSTRUCTIONAL DUTIES OF CERTIFIED NOTARY PUBLIC INSTRUCTORS**

(a) A certified notary public instructor shall verify the identity of each student during the first instructional period and again prior to administration of the notary public examination by requiring satisfactory evidence of identity as defined in G.S. 10B-3(22)(a).

(b) A certified notary public instructor shall follow the Division supplied curriculum for notary public instruction unless the instructor has been granted approval by the Division for a variance.

(c) While performing their duties as certified notary public instructors, certified instructors shall comply with applicable State and federal laws relating to adult education.

(d) When administering the notary public examination, a certified notary public instructor shall take steps to prevent cheating by students taking the notary public examination.

(e) When administering the notary public examination, a certified notary public instructor shall report to the Division within two business days if the instructor has reason to believe

that there has been cheating on a notary public examination by any student, and shall provide:

- (1) The name, address and contact information for any student suspected of cheating; and
- (2) A narrative description of the instructor's reasons for believing cheating may have occurred.

(f) Notary public instructors shall submit student notary public examination grades to the Division within two business days after the examination has been administered.

(g) A notary public instructor shall demonstrate a professional demeanor at all times during instruction and administration of the duties of a certified notary public instructor.

(h) A notary public instructor shall not use profanity or obscene language when instructing the notary public course or administering the notary public examination.

*History Note: Authority G.S. 10B-8; 10B-14; Eff. January 1, 2008.*

#### **18 NCAC 07B .0717 EVALUATIONS OF INSTRUCTION**

(a) If the employer of a certified notary public instructor conducts a written performance evaluation of the instructor at least once per calendar year, the instructor shall submit a copy of the performance evaluation to the Department within 30 days after receipt of the written performance evaluation from the employer.

(b) If the employer of a certified notary public instructor does not conduct a written performance evaluation of the instructor at least once per calendar year, the instructor shall:

- (1) Require that his or her notary public course students in one class each calendar year complete the Division's student evaluation of notary public course instructor form; and
- (2) Shall submit copies of all completed student evaluation forms to the Division within 30 days of receipt of the completed forms.

(c) The Department may conduct evaluations of instructional performance of certified notary public instructors by methods including:

- (1) Surveys of notary public students;
- (2) Requests for audio-visual recordings of courses; and
- (3) Observation of classroom instruction.

*History Note: Authority G.S. 10B-8; 10B-14; Eff. January 1, 2008.*

#### **18 NCAC 07B .0718 ELIGIBILITY FOR RECERTIFICATION AS NOTARY PUBLIC INSTRUCTOR**

A notary public instructor shall not be eligible for recertification as a notary public instructor if the notary public instructor:

- (1) Has failed to submit notary public student examination grades or notary public instructor evaluations to the Division as required by Rules .0716 and .0717 of this Chapter;

- (2) Has been subject to disciplinary action by the Division in relation to:
  - (a) The performance of notary public duties pursuant to Chapter 10B of the General Statutes or this Chapter; or
  - (b) The performance of notary public instructor duties; or
- (3) Has failed to comply with other requirements imposed upon a notary or notary public instructor pursuant to law or rule.

*History Note: Authority G.S. 10B-8; 10B-14; Eff. January 1, 2008.*

#### **18 NCAC 07B .0719 NOTARY PUBLIC INSTRUCTOR RECERTIFICATION REQUIREMENTS**

An applicant for recertification as a notary public instructor shall:

- (1) Complete the Department's notary public instructor application form and submit it to the Department;
- (2) Comply with the requirements of Rule .0708 through Rule .0711 of this Chapter regarding verification of 12 months of experience performing notarial acts;
- (3) Comply with the requirements of Rule .0713 of this Chapter regarding an oral presentation of a notary public course lesson;
- (5) Make a passing grade on the final examination in the notary public instructor certification recertification course as set forth in Rule .0714 of this Chapter;
- (6) Except as otherwise provided in Rule .0705 of this Chapter, pay the required fee; and
- (7) Submit an affidavit verifying that the applicant has taught the notary public instructor course at least twice a year during the two-year certification period.

*History Note: Authority G.S. 10B-8; 10B-14; Eff. January 1, 2008.*

#### **18 NCAC 07B .0720 DENIAL OF NOTARY PUBLIC INSTRUCTOR CERTIFICATION OR RECERTIFICATION**

An application for notary public instructor certification or recertification may be denied:

- (1) For any reason for which an application for commissioning or re-commissioning of a notary public may be denied; or
- (2) If an applicant no longer meets the requirements or fails to comply with the requirements to be a certified notary public instructor.

*History Note: Authority G.S. 10B-8; 10B-14; Eff. January 1, 2008.*

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

**CHAPTER 14 – COSMETIC ART EXAMINERS**

**21 NCAC 14H .0111 CLEANLINESS OF OPERATORS**

- (a) All operators shall be personally clean and neat.
- (b) Every person employed in a beauty establishment shall wear clean, washable outer garments with sleeves while serving patrons.
- (c) Each licensee shall wash his or her hands with soap and water or an equally effective cleansing agent immediately before and after serving each client.

*History Note: Authority G.S. 88B-4;  
Eff. February 1, 1976;  
Amended Eff. January 1, 2008; June 1, 1994.*

**21 NCAC 14H .0113 CLEANLINESS OF SCISSORS: SHEARS: RAZORS AND OTHER EQUIPMENT**

- (a) All scissors, shears, razors, and other metal instruments used while shaping hair must be cleaned and disinfected after each use in the following manner:

- (1) If the implement is not immersible, it shall be cleaned by wiping it with a clean cloth moistened with a disinfectant, used in accordance with the manufacturer's instructions, that states the solution will destroy HIV, TB or HBV viruses and approved by the Federal Environmental Protection Agency.
- (2) If it is immersible, it shall be disinfected by immersion, at least once a day and whenever it comes in contact with blood, with:
  - (A) disinfectant, used in accordance with the manufacturer's instructions, that states the solution will destroy HIV, TB or HBV viruses and approved by the Federal Environmental Protection Agency.
  - (B) EPA registered, hospital/pseudomonacidal (bactericidal, virucidal, and fungicidal) and tuberculocidal, that is mixed and used according to the manufacturer's directions;
  - (C) household bleach in a 10 percent solution for 10 minutes.
- (3) If the implement is not used immediately after cleaning, it must be stored in a clean, closed cabinet until it is needed.

- (b) Furniture, equipment and fixtures must be of a washable material and kept clean and in good repair.
- (c) Lancets, disposable razors, and other sharp objects shall be disposed in puncture-resistant containers.

*History Note: Authority G.S. 88B-4;*

*Eff. February 1, 1976;*

*Amended Eff. January 1, 2008; October 1, 2006; February 1, 2004; August 1, 1998; June 1, 1994; January 1, 1989; April 1, 1988.*

**21 NCAC 14H .0121 PROHIBITED PRACTICES**

- (a) Licensed cosmetologists, estheticians, and manicurists shall not use or possess in a shop any of the following products:

- (1) Methyl Methacrylate Liquid Monomer a.k.a. MMA;
- (2) Razor-type callus shavers designed and intended to cut growths of skin such as corns and calluses;
- (3) Permanent makeup, defined as beautifying the face by inserting or implanting facial cosmetic pigment under the surface of the skin or mucosa; or
- (4) FDA rated Class III devices.

- (b) Class II devices may be used by licensees while under the direct supervision of a licensed physician.

*History Note: Authority G.S. 88B-2; 88B-4;*

*Eff. April 1, 2004;*

*Amended Eff. January 1, 2008; May 1, 2007; December 1, 2004.*

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**CHAPTER 26 – LICENSING BOARD OF LANDSCAPE ARCHITECTS**

**21 NCAC 26 .0207 APPLICATION OF PROFESSIONAL SEAL**

- (a) Use of Seal. The seal(s) of the landscape architect(s) responsible for the work and the landscape architectural corporation seal, if appropriate, shall be applied to the following documents:

- (1) Drawings and specifications prepared for public agency approval;
- (2) Drawings and specifications issued for the purpose of bidding, negotiation or construction;
- (3) Reports of technical nature; and
- (4) Letters and certificates of professional opinion.

- (b) The seal(s) shall be applied only to documents prepared personally or under the immediate supervision of the landscape architect whose seal is affixed, except that seals may be applied to documents that were not prepared by the landscape architect in the following circumstances:

- (1) Documents that were initially sealed by an out of state individual who is a licensed landscape architect in the state of origin of such plans may then be reviewed by a North Carolina Landscape Architect for code conformance, design adequacy, and site adaptation for the specific application within North Carolina. Standard plans, which bear the seal of an individual who is a licensed landscape architect, shall be sealed by the North Carolina Landscape Architect who is assuming

responsibility. In addition to the seal, a statement shall be included as follows: "These plans have been examined by the undersigned. I have determined that they comply with existing local North Carolina codes, and have been properly site adapted for use in this area."

- (2) Documents that are prepared by another licensed professional and obtained by the Landscape Architect may be used to prepare landscape architectural design documents provided the origin of the documents and information prepared by another licensed professional shall appear on each drawing or sheet of the documents sealed by the landscape architect.

(c) Signature and Date. The individual's seal or facsimile thereof shall have the landscape architect's original signature across its face and the effective date shall be indicated below or elsewhere on the document.

(d) Co-authorship. When a document requiring seals has been co-authored by the landscape architect and another licensed design professional of another discipline, the landscape architect shall indicate by notation each portion for which he or she is responsible.

(e) Failure to use the professional seal according to this Rule may be deemed by the Board to be "gross malpractice" within the meaning of G.S. 89A-7.

(f) Electronically transmitted documents and electronic seals shall be allowed. Documents, including drawings, specifications and reports, that are transmitted electronically to a client or a governmental agency shall have the computer-generated seal removed from the original file, unless signed with a digital signature as defined in Paragraph (g) of this Rule. After removal of the seal, the electronic media shall have the following language inserted in lieu of the signature and date:

This document originally issued and sealed by (name of sealer), (license number), on (Date of sealing). This medium shall not be considered a certified document. Hardcopy documents containing the original seal, signature, and date may be obtained from (name of sealer).

(g) The scanned digital files of certified documents that cannot be altered are not subject to the requirements of Paragraph (f) of this Rule. The electronic transmission of CAD, vector or other similar files subject to easy editing are subject to the requirements of this Paragraph. Easy editing is based on the file consisting of separate elements that can be modified or deleted in part or in whole.

(h) Documents to be electronically transmitted that are signed using a digital signature shall contain the authentication procedure in a secure mode and a list of the hardware, software and parameters used to prepare the document(s). Secure mode means that the authentication procedure has protective measures to prevent alteration or overriding of the authentication procedure. The term "digital signature" shall be an electronic authentication process that is attached to or logically associated with an electronic document. The digital signature shall be:

- (1) Unique to the licensee using it;
- (2) Capable of verification;

- (3) Under the sole control of the licensee; and
- (4) Linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.

*History Note: Authority G.S. 89A-3.1; 89A-7; RRC Objection Eff. June 17, 1993 Due to Lack of Statutory Authority and Ambiguity; Eff. August 1, 1993; RRC Objection cured Eff. January 20, 1994; Amended Eff. January 1, 2008; February 1, 1994.*

## **21 NCAC 26 .0301 EXAMINATION**

(a) Notice. The Board shall hold at least one examination during each year and may hold such additional examinations as may appear necessary. The secretary shall give public notice of the time and place for each examination at least 60 days in advance of the date set for the examination.

(b) Examination. The Landscape Architect Registration Examination published by the Council of Landscape Architectural Registration Boards shall be the examination given by the Board, so long as the Board shall remain a member of the Council of Landscape Architectural Registration Boards. The Board may administer a state supplement to the Landscape Architecture Registration Exam (LARE) as allowed by the Council.

(c) "Qualified Applicant" - An applicant is deemed qualified to take the Landscape Architects Registration Examination (LARE) upon graduation from a Landscape Architect's Accreditation Board (LAAB) accredited collegiate curriculum in landscape architecture and has completed the experience requirements, both as set forth in Paragraphs (d) and (e) of this Rule.

(d) Educational Requirements. In allowing credit for education in fulfilling the minimum qualification requirements established by statute, the Board will allow credit for educational experience as follows: An undergraduate, a masters, or a doctorate degree from an accredited curriculum approved by the Landscape Architectural Accreditation Board (LAAB) shall be deemed to have met the educational requirement.

(e) Experience Requirements.

- (1) An applicant shall have a minimum of 8,000 hours of professional experience in landscape architecture working under the direct supervision of a registered landscape architect. In submitting an application to the Board for registration, a licensed landscape architect shall certify that the applicant has completed the number of hours indicated on the form; or
- (2) An applicant may petition the Board for up to 8,000 hours of experience credit by providing proof of work experience that is directly related to the practice of landscape architecture as defined by G.S. 89A-1(3).
- (3) Experience credits shall be based on a full-time work week of 40 hours and a work year of at least 2,000 hours. Part-time work must be fully described and can be given proportional credit.

- (4) One cannot receive experience credit if the work is fulfilling an educational requirement.

- (5) duplicate certificate \$5.00  
 (6) examination or re-examination fee \$60.00  
 (7) copy of duplicate parchment certificate \$35.00

*History Note:* Authority G.S. 89A-3.1; 89A-4(a), (b);  
 Eff. February 1, 1976;  
 Readopted Eff. September 30, 1977;  
 Amended Eff. January 1, 2008; August 1, 1993; August 1, 1988;  
 November 1, 1980; July 2, 1979.

*History Note:* Authority G.S. 89D-4; 89D-5; 89D-8;  
 Eff. February 1, 1976;  
 Readopted Eff. September 30, 1977;  
 Amended Eff. January 1, 2008; January 1, 1992; September 1, 1988, October 1, 1983.

**21 NCAC 26 .0303 CERTIFICATE OF RECIPROCITY**

(a) To assure that the requirements of the other state are at least equivalent to those of this state, an applicant for a certificate of registration by reciprocity shall show education and experience equal to those required of applicants residing in this state who seek registration by examination.

(b) An application for a certificate of registration by reciprocity must be made on the form provided by the board and must be accompanied by the fee.

(c) To be approved for a certificate of registration by reciprocity, the applicant must meet the following requirements:

- (1) Provide evidence of having successfully completed the examination published by the Council of Landscape Architectural Registration Boards or hold a certificate issued by the Council of Landscape Architectural Registration Boards; and
- (2) Provide certification from the proper official of any state having a landscape architectural registration act that the individual is currently registered and in good standing in that state.
- (3) In lieu of the requirements of Subparagraph (1) of this Paragraph an applicant for reciprocity who was licensed prior to the adoption of a national examination shall show proof of having met the requirements of their licensing state at the time of their licensure.
- (4) Submit such additional information concerning the applicant's qualifications as may be requested by the board.
- (5) Submit examples of work upon request.

*History Note:* Authority G.S. 89A-3.1(3); 89A-4(c);  
 Eff. February 1, 1976;  
 Readopted Eff. September 30, 1977;  
 Amended Eff. January 1, 2008; August 1, 1988; July 1, 1984.

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**CHAPTER 28 - REGISTRATION BOARD OF LANDSCAPE CONTRACTORS**

**21 NCAC 28 .0107 FEES**

Fees, as authorized by G.S. 89D-5, shall be as follows:

- (1) application fee is set in G.S. 89D-5(b) \$75.00
- (2) initial certificate fee \$60.00
- (3) all renewal fees \$60.00
- (4) penalty for late renewal fee \$25.00

**21 NCAC 32B .1101 APPLICATION FORMS**

An applicant for reactivation of a license which has been placed on inactive status within the past calendar year shall complete the Board's application forms requesting information regarding the applicant's personal, education, and professional background.

*History Note:* Authority G.S. 90-6; 90-15.1;  
 Eff. January 1, 2008.

**21 NCAC 32B .1102 FEE**

A fee of two hundred and sixty three dollars (\$263.00) is due at the time of application. In the event the applicant does not appear for a scheduled personal interview, licensure is denied, or the application is withdrawn, no portion of the fee may be refunded.

*History Note:* Authority G.S. 90-6; 90-15.1;  
 Eff. Pending Consultation pursuant to G.S. 12-3.1.

**21 NCAC 32B .1103 PERSONAL INTERVIEW**

An applicant for reactivation of license may be required to appear in person for an interview with the Executive Director, a Board member, or the full Board, upon verification of all credentials.

*History Note:* Authority G.S. 90-6; 90-15.1;  
 Eff. January 1, 2008.

**21 NCAC 32B .1104 ROUTINE INQUIRIES**

An applicant for reactivation of license shall request that the Federation of State Medical Boards (FSMB) submit its Data Bank inquiry to the Board.

*History Note:* Authority G.S. 90-6; 90-15.1;  
 Eff. January 1, 2008.

**21 NCAC 32B .1105 CME**

An applicant for reactivation shall submit documentation of continuing medical education (CME) obtained in the past three years.

*History Note:* Authority G.S. 90-6; 90-14; 90-15.1;  
 Eff. January 1, 2008.

**21 NCAC 32B .1201 APPLICATION FORMS**

An applicant for reinstatement of a license which has been inactive for longer than the past calendar year, or which has been surrendered, revoked or suspended, shall complete the Board's application forms requesting information regarding the applicant's personal, education, and professional background.

*History Note: Authority G.S. 90-6; 90-14; 90-15.1;  
Eff. January 1, 2008.*

**21 NCAC 32B .1202 LETTERS OF RECOMMENDATION**

An applicant for reinstatement of license shall request that three letters of recommendation be submitted to the Board on his behalf. The letters shall be originals addressed to the Board and shall contain the original signature of the author. One of the letters shall be from someone who has known the applicant for a period of 10 years. Two of the letters shall be from physicians and shall be on Board forms. Recommendations shall not be from relatives.

*History Note: Authority G.S. 90-6; 90-14; 90-15.1;  
Eff. January 1, 2008.*

**21 NCAC 32B .1203 FEE**

A fee of three hundred and eighty eight dollars (\$388.00) is due at the time of application. In the event the applicant does not appear for a scheduled personal interview, licensure is denied or the application is withdrawn, no portion of the fee may be refunded.

*History Note: Authority G.S. 90-6; 90-14; 90-15.1;  
Eff. Pending Consultation pursuant to G.S. 12-3.1.*

**21 NCAC 32B .1204 PERSONAL INTERVIEW**

An applicant may be required to appear in person for an interview with the Executive Director, a Board member, or the full Board upon verification of all credentials.

*History Note: Authority G.S. 90-6; 90-14; 90-15.1;  
Eff. January 1, 2008.*

**21 NCAC 32B .1205 ROUTINE INQUIRIES**

An applicant for reinstatement of license shall request the following reports be submitted to the Board:

- (1) Reports from all state Medical Boards or agencies in which the applicant has ever held a medical license indicating the status of the applicant's license and whether or not the license has been revoked, suspended, surrendered, or placed on probation mailed directly from other state boards or agencies to the Board.
- (2) An AMA Physician Profile (requested by applicant of AMA).
- (3) FSMB Data Bank inquiry (requested by applicant of FSMB).
- (4) AOIA Physician Profile (requested by applicant of AOIA) if applicant is an osteopathic physician.
- (5) Reports from National Practitioner Data Bank (NPDB) and Healthcare Integrity and Protection Data Bank (HIPDB) (requested by applicant).

*History Note: Authority G.S. 90-6; 90-14; 90-15.1;  
Eff. January 1, 2008.*

**21 NCAC 32B .1206 ECFMG CERTIFICATION**

An applicant for reinstatement of license who is a graduate of a medical school not approved by LCME or AOA shall furnish an original ECFMG Certification Status Report of a currently valid standard certificate of ECFMG. ECFMG certification may be waived by the Board if the applicant has either:

- (1) Passed the ECFMG examination and successfully completed an approved Fifth Pathway Program (original ECFMG Certification Status Report from the ECFMG required); or
- (2) Been licensed in another state on the basis of written examination prior to the establishment of ECFMG in 1958.

*History Note: Authority G.S. 90-6; 90-14; 90-15.1;  
Eff. January 1, 2008.*



*This Section contains information for the meeting of the Rules Review Commission on Thursday January 17 & February 21, 2008, 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**

February 21, 2008      March 20, 2008  
April 17, 2008      May 15, 2008

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**RULES REVIEW COMMISSION****January 17, 2008****MINUTES**

The Rules Review Commission met on Thursday, January 17, 2008, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Jerry Crisp, Jim Funderburk, Jeff Gray, Keith Gregory, Jennie Hayman, Clarence Horton, John Lewis and Dan McLawhorn.

Staff members present were: Joseph DeLuca and Bobby Bryan, Commission Counsel and Angela J. Person, Administrative Assistant.

The following people were among those attending the meeting:

Catherine Blum	DENR/Division of Marine Fisheries
Cheryl Gilgo	DENR/Division of Marine Fisheries
Clint Pinyan	Board of Pharmacy
Rich Carpenter	DENR/Division of Marine Fisheries
Sheree Brown	Crime Control and Public Safety/Alcohol Law Enforcement
Marvin Waters	Crime Control and Public Safety/Alcohol Law Enforcement
Roger Hutchings	Crime Control and Public Safety/Alcohol Law Enforcement
Hunter Corn	General Public
Ian Palmquist	Equality NC
Carolyn Bakewell	Board of Dental Examiners
Bobby White	North Carolina Dental Board
Nancy Pate	Department of Environment and Natural Resources
John Rustin	North Carolina Family Policy Council
Renee Batts	NCCCS
Jason Culbreth	Carolina Fight Promotions
Cory Menees	DHHS/Division of Public Health
Lisa Johnson	DHHS/Division of Social Services
Ellie Sprenkel	Department of Insurance
Etta Maynard	Department of Insurance
Jean Holliday	Department of Insurance
Glenda Artis	DHHS/Division of Aging and Adult Services
Heather Carter	DHHS/Division of Aging and Adult Services
Will Crumley	Office of State Budget and Management
Lee Hoffman	DHHS/Division of Health Service Regulation

Nadine Pfeiffer	DHHS/Division of Health Service Regulation
Dana Simpson	Smith Anderson
Peggy Oliver	Office of State Personnel
Sid Harrell	Department of Environment and Natural Resources
Karen Cochrane Brown	General Assembly Staff
Nellie Riley	Office of State Personnel
Barry Gupton	NCDOI/Building Code Council
Rose Williams	Department of Insurance
Johanna Reese	Department of Transportation
Delores Joyner	Office of State Personnel/State Personnel Commission
Suzanne Williams	NCCCS
Thomas Wright	Office of State Personnel
Valerie Bateman	Department of Justice/Office of State Personnel
Robert Privott	North Carolina Health Board Administration
Lennie Collins	Department of Revenue
Gene Cella	Department of Revenue
Victor Barbour	Department of Transportation
Molly Masich	Office of Administrative Hearings
Julie Edwards	Office of Administrative Hearings
Dana Vojtko	Office of Administrative Hearings

### **APPROVAL OF MINUTES**

The meeting was called to order at 10:10 a.m. with Ms. Hayman presiding. She reminded the Commission members that they 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 December 13, 2007 meeting. There were none and the minutes were approved as distributed.

### **FOLLOW-UP MATTERS**

Prior to the review of the rules from the Department of Justice, Commissioner Gray recused himself and did not participate in any discussion or vote concerning these rules because he is General Counsel and Legislative Agent for the Company Police Association of North Carolina that is the subject of Rules 12 NCAC 02I .0203, .0305, .0306 and .0501.

12 NCAC 02I .0203, .0305, .0306, .0501 – Department of Justice. The Commission approved the rewritten rules submitted by the agency contingent on receiving technical changes to .0305 and .0501. The changes were subsequently received.

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 Board on a contract basis. This includes rules in the follow-up matters and rules on the log of permanent rules filings.

12 NCAC 07D .0601 – Private Protective Services Board. No rewritten rule has been submitted and no action was taken

15A NCAC 01N .0101, .0102, .0103, .0201, .0202, .0301, .0303, .0401, .0402, .0403, .0502, .0601, .0602, .0603, .0604, .0605, .0606, .0701, .0704, .0801, .0902 – Environment and Natural Resources. The Commission approved rewritten rules .0103, .0502 and .0902 submitted by the agency as well as the remaining rules.

15A NCAC 07J .0701, .0703 – Coastal Resources Commission. No rewritten rules have been submitted and no action was taken.

19A NCAC 02D .0803, .0807 – Department of Transportation. The Commission approved the rewritten rules submitted by the agency.

21 NCAC 14A .0101 – Cosmetic Art Examiners. This rule was returned to the agency at the agency's request.

Prior to the review of the rules from the Medical Board, Commissioner Lewis recused himself and did not participate in any discussion or vote concerning these rules because he is a member of the Medical Board. This includes rules in the follow-up matters and rules on the log of temporary rules filings.

21 NCAC 32B .1207 – Medical Board. The Commission approved the rewritten rule submitted by the agency.

**LOG OF FILINGS**

Chairman Haymen presided over the review of the log of permanent rules.

Prior to the review of the rules from the Department of Revenue, Commissioner Horton recused himself and did not participate in any discussion or vote concerning these rules because he is assigned to preside over two cases in which the Secretary of Revenue is a defendant and which involve the Secretary's rules and practices.

Prior to the review of the rules from the State Personnel Commission, Commissioner Horton recused himself and did not participate in any discussion or vote concerning these rules because he is assigned to preside over a pending lawsuit in which the State Personnel Commission is the primary defendant.

All rules were approved unanimously with the following exceptions:

11 NCAC 06A .0413: Department of Insurance – The rule was withdrawn by the agency and refiled for next month.

12 NCAC 07D .0801: The Commission objected to this Rule based on ambiguity. In (d) it is not clear what is meant by “firearms certificates”. The term does not appear to be used anywhere else in the agency's statutes or rules. The technical changes requested also must be made to this rule. This objection applies to existing language in the rule.

14A NCAC 12 .0102: Alcohol Law Enforcement – The Commission objected to this Rule based on lack of necessity. The majority of terms defined in this rule are not otherwise used in this Chapter. There is no need to define terms not used.

14A NCAC 12 .0402: Alcohol Law Enforcement - The Commission objected to Rule .0402 based on ambiguity and lack of necessity. Paragraph (c) prohibits the licensing of any person named in an administrative action or indictment for certain actions. The rule implies that the prohibition applies even if there is a finding that no violation occurred. It is unclear if this is what is intended. If that is what the paragraph means, it does not appear that the provision is necessary to accomplish any purpose for which the rule is being adopted. This objection applies to existing language in the Rule.

14A NCAC 12 .0406: Alcohol Law Enforcement - The Commission objected to this Rule based on ambiguity. In (5)(A), it is not clear what standards the division will use in approving examinations.

14A NCAC 12 .0605: Alcohol Law Enforcement - The Commission objected to this Rule based on ambiguity. In (f), it is not clear what Amateur Sports Organizations are recognized by the Division, or conversely, what standards the division uses in determining which to recognize.

14A NCAC 12 .0801: Alcohol Law Enforcement - The Commission objected to this Rule based on ambiguity and lack of necessity. In (2), it is not clear what standards the Division representative will use in approving scales. In (3), the allowances in the text are not consistent with the allowances shown in the chart. For example, there is a three pound allowance for featherweights in the text, not five pounds in the chart. It is not clear which is to be enforced. It is not necessary to set the allowance in the text and in the chart. The chart also sets glove size requirements as does Rule .0804. It is not necessary to set the requirements in more than one place.

14A NCAC 12 .0802: Alcohol Law Enforcement - This rule was withdrawn by the agency.

14A NCAC 12 .0804: Alcohol Law Enforcement - The Commission objected to this Rule based on ambiguity and lack of necessity. The provisions in (a) and (b) are also in the chart in Rule .0801. It is not necessary for the provisions to be in more than one place. In (c), it is not clear what brands and models of gloves have been approved by the Division representative, or conversely, what standards he will use in approving them.

14A NCAC 12 .0805: Alcohol Law Enforcement - The Commission objected to this Rule based on ambiguity and lack of necessity. In (a), it is not clear what makes overhead lighting “appropriate”. In (b)(5), it is not clear what standards the Division will use in approving padding. There is the same issue in (c)(6) and (8). In (c)(7), it is not clear if chain length fencing coated with vinyl is required for all fencing or just an example of suitable fencing. In (d), it is not clear whether a promoter is required to place video screens inside a ring, cage, or fenced area if requested by the Division representative. If not, the paragraph does not appear necessary.

14A NCAC 12 .0806: Alcohol Law Enforcement - The Commission objected to this Rule based on lack of statutory authority and ambiguity. The introductory part of the rule allows the Division to waive the rule without giving the specific guidelines required by G.S. 150B-19(6), and is therefore outside the agency's authority. The first sentence in (6) requires a minimum of eight scheduled

bouts. The second sentence, while unclear because it is not a complete sentence, seems to require exactly eight bouts. It is not clear what the requirement is.

14A NCAC 12 .0807: Alcohol Law Enforcement – This rule was withdrawn by the agency.

14A NCAC 12 .0810: Alcohol Law Enforcement - This rule was withdrawn by the agency.

14A NCAC 12 .0811: Alcohol Law Enforcement - The Commission objected to this Rule based on ambiguity. In (c), it is not clear if a high risk contestant must provide the results of only one or all the listed tests.

17 NCAC 04C .0901, .0902, .1101, .1705: Department of Revenue – These rules were withdrawn by the agency.

17 NCAC 05D .0114: Department of Revenue – This rule was withdrawn by the agency.

25 NCAC 01L .0102: State Personnel Commission – The Commission objected to this Rule based on lack of authority and ambiguity. In (a) line 11 this rule adds “sexual orientation” to the list of categories that state agencies are prohibited from using in making employment decisions as set out in the second sentence, lines 8 – 11. There is no authority cited that allows the State Personnel Commission to set non-discrimination categories or state policies that are not otherwise set out in statute by the state legislature. G.S. 126-4 does allow and even require that the SPC “shall establish policies and rules governing ... (10) programs of equal opportunity.” However that does not extend to establishing the actual categories of equal opportunity that are not already established as state policy by the legislature. Even if there were authority for the rule, it is unclear what is meant by “sexual orientation,” “gender-related identity or expression” and “perceived” as used in (a) and (c) of this rule. It is unclear whose perception is referred to, i.e., whether it is the self-perception by the person whose sexual orientation is at issue or the perception by one whose behavior is being regulated by this rule. Commissioners Funderburk, Gray, Hayman and Lewis voted to accept staffs recommendation to object to this rule. Commissioners Gregory and McLawhorn voted to oppose staffs recommendation.

Speaking in support of the rule were Thomas Wright, Director of the Office of State Personnel, Nellie Riley, and Valerie Bateman, attorney for the agency and Ian Palmquist from Equality NC. John Rustin from NC Family Policy Council spoke in opposition of the rule.

The meeting recessed for a short break at 12:15 p.m. and reconvened at 12:30 p.m.

R202: Building Code Council – This rule was approved but the Commission has received 10 letters of objection to the rule and the rule is submitted for legislative review.

## **TEMPORARY RULES**

Chairman Hayman presided over the review of the temporary rules. The rules were approved unanimously.

## **STATE MEDICAL FACILITY PLAN**

The Commission found that the Department of Health and Human Services and the State Health Coordinating Council complied with G.S. 131E-176(25) in adopting the 2008 State Medical Facilities Plan.

## **COMMISSION PROCEDURES AND OTHER BUSINESS**

Commissioner Hayman reminded the Commissioners about signing up for ethics training.

The meeting adjourned at 1:00 p.m.

The next scheduled meeting of the Commission is Thursday, February 21, 2008 at 10:00 a.m.

Respectfully Submitted,  
Angela J. Person  
Administrative Assistant

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## **LIST OF APPROVED PERMANENT RULES**

January 17, 2008 Meeting

**SOCIAL SERVICES COMMISSION**

<u>Planning Program Activities</u>	10A NCAC 06R .0501
<u>Nutrition</u>	10A NCAC 06R .0502
<u>Transportation</u>	10A NCAC 06R .0503
<u>Records</u>	10A NCAC 06R .0508

**HEALTH SERVICE REGULATION, DIVISION OF**

<u>Definitions</u>	10A NCAC 14C .2301
<u>Information Required of Applicant</u>	10A NCAC 14C .2302
<u>Performance Standards</u>	10A NCAC 14C .2303
<u>Support Services</u>	10A NCAC 14C .2304
<u>Staffing and Staff Training</u>	10A NCAC 14C .2305

**PUBLIC HEALTH, COMMISSION FOR**

<u>Authorized WIC Vendors</u>	10A NCAC 43D .0706
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**INSURANCE, DEPARTMENT OF**

<u>Definitions</u>	11 NCAC 06A .0101
<u>N.C. Non-Resident Broker's Insurance Bond</u>	11 NCAC 06A .0211
<u>North Carolina Notice of Cancellation</u>	11 NCAC 06A .0217
<u>Responsibility of Applicant at Examination Site</u>	11 NCAC 06A .0304
<u>Licensing of Resident Agent, LTD, Representative and Adju...</u>	11 NCAC 06A .0402
<u>Licensing and Broker</u>	11 NCAC 06A .0404
<u>Licensing of Nonresident Broker</u>	11 NCAC 06A .0405
<u>Licensing of Motor Vehicle Damage Appraiser</u>	11 NCAC 06A .0408
<u>Adjuster's Learner's Permit</u>	11 NCAC 06A .0414
<u>Personal Interviews</u>	11 NCAC 06A .0604
<u>General Requirements</u>	11 NCAC 06A .0701
<u>Prelicensing Education Schools</u>	11 NCAC 06A .0702
<u>Program Directors</u>	11 NCAC 06A .0703
<u>Courses</u>	11 NCAC 06A .0704
<u>Instructors</u>	11 NCAC 06A .0705
<u>Definitions</u>	11 NCAC 06A .0801
<u>Licensee Requirements</u>	11 NCAC 06A .0802
<u>Carryover Credit</u>	11 NCAC 06A .0804
<u>Calculation of ICECS</u>	11 NCAC 06A .0805
<u>Hardship</u>	11 NCAC 06A .0807
<u>Instructor Qualification</u>	11 NCAC 06A .0808
<u>Approval of Courses</u>	11 NCAC 06A .0809
<u>Sanctions for Noncompliance</u>	11 NCAC 06A .0811
<u>Issuance/Continuation of Provider Approval</u>	11 NCAC 06A .0813
<u>Exemptions</u>	11 NCAC 12 .0604

**JUSTICE, DEPARTMENT OF**

<u>Application for Company Police Agency</u>	12	NCAC 02I	.0203
<u>Transfers</u>	12	NCAC 02I	.0305
<u>Badges, Uniforms, Vehicles and Officer Identification</u>	12	NCAC 02I	.0306
<u>Agency Retention of Records of Commission</u>	12	NCAC 02I	.0501

**PRIVATE PROTECTIVE SERVICES BOARD**

<u>Training Video and Training Test</u>	12	NCAC 07D	.1109
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**ALCOHOL LAW ENFORCEMENT**

<u>Scope</u>	14A	NCAC 12	.0101
<u>North Carolina State Boxing Authority Section of the ALE ...</u>	14A	NCAC 12	.0103
<u>Drugs and Foreign Substances</u>	14A	NCAC 12	.0201
<u>Physical Examination</u>	14A	NCAC 12	.0301
<u>Permits</u>	14A	NCAC 12	.0401
<u>Duties of Contestants</u>	14A	NCAC 12	.0403
<u>Duties of Promoters and Matchmakers</u>	14A	NCAC 12	.0404
<u>Duties of Managers</u>	14A	NCAC 12	.0405
<u>Duties of Judges</u>	14A	NCAC 12	.0407
<u>Duties of Announcers</u>	14A	NCAC 12	.0408
<u>Duties of Timekeepers</u>	14A	NCAC 12	.0409
<u>Duties of Seconds</u>	14A	NCAC 12	.0410
<u>Duties of Trainers</u>	14A	NCAC 12	.0411
<u>Duties of Physicians</u>	14A	NCAC 12	.0412
<u>Contracts and Financial Arrangements</u>	14A	NCAC 12	.0413
<u>Weigh-Ins-Boxing</u>	14A	NCAC 12	.0501
<u>Equipment-Boxing</u>	14A	NCAC 12	.0502
<u>Scoring-Boxing</u>	14A	NCAC 12	.0503
<u>Fouls-Boxing</u>	14A	NCAC 12	.0504
<u>Weigh-Ins-Kickboxing</u>	14A	NCAC 12	.0601
<u>Equipment-Kickboxing</u>	14A	NCAC 12	.0602
<u>Scoring-Kickboxing</u>	14A	NCAC 12	.0603
<u>Fouls-Kickboxing</u>	14A	NCAC 12	.0604
<u>Toughman Match</u>	14A	NCAC 12	.0701
<u>Handwraps-Mixed Martial Arts</u>	14A	NCAC 12	.0803
<u>Scoring-Mixed Martial Arts</u>	14A	NCAC 12	.0808
<u>Fouls-Mixed Martial Arts</u>	14A	NCAC 12	.0809

**ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF**

<u>Purpose</u>	15A	NCAC 01N	.0101
<u>Definitions</u>	15A	NCAC 01N	.0102
<u>Applicable Procedures</u>	15A	NCAC 01N	.0103
<u>Availability of Loans</u>	15A	NCAC 01N	.0201
<u>Loan Restrictions</u>	15A	NCAC 01N	.0202

<u>Determination of Eligibility</u>	15A NCAC 01N .0301
<u>Eligible Project Costs</u>	15A NCAC 01N .0303
<u>Filing Deadlines</u>	15A NCAC 01N .0401
<u>Application Procedures</u>	15A NCAC 01N .0402
<u>Project Schedule and Resolution</u>	15A NCAC 01N .0403
<u>Assignment of Priorities</u>	15A NCAC 01N .0502
<u>General Criteria</u>	15A NCAC 01N .0601
<u>Public Health and Compliance</u>	15A NCAC 01N .0602
<u>Consolidation</u>	15A NCAC 01N .0603
<u>Reliability</u>	15A NCAC 01N .0604
<u>Affordability</u>	15A NCAC 01N .0605
<u>Source Protection and Management</u>	15A NCAC 01N .0606
<u>Determination of Awards and Bypass Procedures</u>	15A NCAC 01N .0701
<u>Disbursement of Loans</u>	15A NCAC 01N .0704
<u>Interest Rates</u>	15A NCAC 01N .0801
<u>Audit</u>	15A NCAC 01N .0902

**MARINE FISHERIES COMMISSION**

<u>Prohibited Rakes</u>	15A NCAC 03K .0102
<u>Shellfish or Seed Management</u>	15A NCAC 03K .0103
<u>Prohibited Taking</u>	15A NCAC 03K .0304
<u>Bay Scallops - Seasons and Harvest Limits</u>	15A NCAC 03K .0501
<u>Soaked or Swelled Bay Scallops Prohibited</u>	15A NCAC 03K .0506
<u>Application Process</u>	15A NCAC 03O .0402
<u>Eligibility Board Review</u>	15A NCAC 03O .0403
<u>Eligibility Criteria</u>	15A NCAC 03O .0404

**COASTAL RESOURCES COMMISSION**

<u>Civil Penalties</u>	15A NCAC 07J .0409
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**REVENUE, DEPARTMENT OF**

<u>Pre-Hearing Conference</u>	17 NCAC 01C .0201
<u>Procedure of Hearing</u>	17 NCAC 01C .0202
<u>Assistance of Counsel</u>	17 NCAC 01C .0203
<u>Failure to Appear</u>	17 NCAC 01C .0205
<u>Application for Hearing</u>	17 NCAC 01C .0305
<u>Waiver of Time Limitation</u>	17 NCAC 01C .0307
<u>Claim for Tax Refund</u>	17 NCAC 01C .0316
<u>Tax Refund</u>	17 NCAC 01C .0317
<u>Computation and Payment of Amusement Gross Receipts Taxes</u>	17 NCAC 04B .0302
<u>Overpayments Applied to Next Year</u>	17 NCAC 05C .1904
<u>Purpose</u>	17 NCAC 05D .0107
<u>Who May Submit Request</u>	17 NCAC 05D .0108
<u>Request for Alternative Apportionment Formula</u>	17 NCAC 05D .0109
<u>Time for Filing</u>	17 NCAC 05D .0110
<u>Notice of Conference</u>	17 NCAC 05D .0111

<u>Who Shall Attend the Conference</u>	17 NCAC 05D .0112
<u>Conduct of the Conference</u>	17 NCAC 05D .0113
<u>Final Decision</u>	17 NCAC 05D .0115
<u>Additional Fire and Lightning Taxes</u>	17 NCAC 05E .0102
<u>Group Premiums</u>	17 NCAC 05E .0105

## **TRANSPORTATION, DEPARTMENT OF**

<u>Advertisement and Invitations for Bids</u>	19A NCAC 02D .0803
<u>Examination of Plans: Specs: Contract: and Site of Work</u>	19A NCAC 02D .0807
<u>Purpose and Scope</u>	19A NCAC 02D .1101
<u>Definitions</u>	19A NCAC 02D .1102
<u>Certification of Firms</u>	19A NCAC 02D .1103
<u>Renewal of Certification</u>	19A NCAC 02D .1104
<u>Change in Ownership or Control</u>	19A NCAC 02D .1105
<u>Decertification</u>	19A NCAC 02D .1106
<u>Appeals of Denial of Certification</u>	19A NCAC 02D .1107
<u>Goals</u>	19A NCAC 02D .1108
<u>Counting Participation Toward Meeting the Goal</u>	19A NCAC 02D .1109
<u>Non-Attainment of Goals</u>	19A NCAC 02D .1110
<u>Performance Related Replacement of Eligible Firms</u>	19A NCAC 02D .1111
<u>Replacement of a Firm Removed by Decertification</u>	19A NCAC 02D .1112

## **DENTAL EXAMINERS, BOARD OF**

<u>Location</u>	21 NCAC 16A .0104
<u>Time for Filing</u>	21 NCAC 16B .0402
<u>Temporary Volunteer Dental Permit</u>	21 NCAC 16B .0801
<u>Time for Filing</u>	21 NCAC 16C .0402
<u>Applications</u>	21 NCAC 16I .0101
<u>Penalty/Non-Compliance/Continuing Education Requirement</u>	21 NCAC 16I .0105
<u>Fee for Late Filing and Duplicate Licenses</u>	21 NCAC 16I .0106
<u>License Void Upon Failure to Renew</u>	21 NCAC 16I .0107
<u>Sterilization</u>	21 NCAC 16J .0103
<u>General Anesthesia Credentials and Permit</u>	21 NCAC 16Q .0201
<u>Applications</u>	21 NCAC 16R .0101
<u>Fee for Late Filing</u>	21 NCAC 16R .0102
<u>Penalty/Non-Compliance/Continuing Education</u>	21 NCAC 16R .0107
<u>Eligibility to Practice Hygiene Outside Direct Supervision</u>	21 NCAC 16Z .0101
<u>Record Keeping</u>	21 NCAC 16Z .0102
<u>Inspections</u>	21 NCAC 16Z .0103

## **MEDICAL BOARD**

<u>Ten-Year Qualification</u>	21 NCAC 32B .1207
<u>Administration of Vaccines by Pharmacists</u>	21 NCAC 32U .0101

## **PHARMACY, BOARD OF**



Administration of Vaccines by Pharmacists 21 NCAC 46 .2507

**STATE PERSONNEL COMMISSION**

Content and Procedure 25 NCAC 01B .0201  
Presentations 25 NCAC 01B .0204  
Requests for Declaratory Ruling 25 NCAC 01B .0213  
Continuances 25 NCAC 01B .0439  
Policy 25 NCAC 01N .0501  
Administration 25 NCAC 01N .0502  
Wellness Leader 25 NCAC 01N .0503  
Wellness Committees 25 NCAC 01N .0504

**BUILDING CODE COUNCIL**

NC Building Code - Wind-Borne Debris Region 1609.2  
NC Residential Code - Wind-Borne Debris Region R202  
NC Residential Code - Minimum Depth R403.1.4  
NC Residential Code - Note 1 R403.1(1)  
NC Residential Code - Table R403.1

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**LIST OF APPROVED TEMPORARY RULES**  
**January 17, 2008 Meeting****HEALTH SERVICE REGULATION, DIVISION OF**

Performance Standards 10A NCAC 14C .1903  
Definitions 10A NCAC 14C .2101  
Information Required of Applicant 10A NCAC 14C .2102  
Performance Standards 10A NCAC 14C .2103  
Facility 10A NCAC 14C .2106  
Definitions 10A NCAC 14C .2701  
Information Required of Applicant 10A NCAC 14C .2702  
Performance Standards 10A NCAC 14C .2703  
Information Required of Applicant 10A NCAC 14C .3702  
Information Required of Applicant 10A NCAC 14C .4002  
Performance Standards 10A NCAC 14C .4003  
Facility 10A NCAC 14C .4006

**MEDICAL BOARD**

Definitions 21 NCAC 32W .0101  
Qualifications for License 21 NCAC 32W .0102  
Inactive License Status 21 NCAC 32W .0103  
Annual Renewal 21 NCAC 32W .0104  
Continuing medical Education 21 NCAC 32W .0105  
Student Anesthesiologist Assistants 21 NCAC 32W .0106  
Exemption from License 21 NCAC 32W .0107  
Scope of Practice 21 NCAC 32W .0108

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**RULES REVIEW COMMISSION**

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<u>Supervision of Anesthesiologist Assistants</u>	21	NCAC 32W .0109
<u>Limitations on Practice</u>	21	NCAC 32W .0110
<u>Title and Practice Protection</u>	21	NCAC 32W .0111
<u>Identification Requirements</u>	21	NCAC 32W .0112
<u>Fees</u>	21	NCAC 32W .0113
<u>Violations</u>	21	NCAC 32W .0114
<u>Practice During a Disaster</u>	21	NCAC 32W .0115

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**AGENDA**  
**RULES REVIEW COMMISSION**  
**Thursday, February 21, 2008, 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 and the rules committee meeting
  - III. Follow-Up Matters:
    - A. Private Protective Services Board – 12 NCAC 07D .0601, .0801(Bryan)
    - B. Alcohol Law Enforcement – 14A NCAC 12 .0102, .0402, .0406, .0605, .0801, .0804, .0805, .0806, .0811 (Bryan)
    - C. Coastal Resources Commission – 15A NCAC 07J .0701, .0703 (Bryan)
    - D. State Personnel Commission – 25 NCAC 01L .0102 (DeLuca)
  - IV. Review of Log of Permanent Rule filings for rules filed between December 21, 2007 and January 22, 2008 (attached)
  - V. Review of Temporary Rules
  - VI. Commission Business
    - Report from the Rules Committee
    - Next meeting: March 20, 2008
- 

**Commission Review**  
**Log of Permanent Rule Filings**  
**December 21, 2007 through January 22, 2008**

**ADMINISTRATION, DEPARTMENT OF**

The rules in Chapter 44 are from the office for historically underutilized businesses. The rules in Subchapter 44A concern certification including general provisions (.0100); HUB certification application (.0200); documentation (.0300); third party challenge (.0400); revocation of HUB certification (.0500); and review (.0600).

<u>Scope</u>	01	NCAC 44A .0101
<u>Adopt/*</u>		
<u>Definitions</u>	01	NCAC 44A .0102
<u>Adopt/*</u>		
<u>Application</u>	01	NCAC 44A .0201
<u>Adopt/*</u>		
<u>Documentation</u>	01	NCAC 44A .0202
<u>Adopt/*</u>		
<u>Approval</u>	01	NCAC 44A .0203
<u>Adopt/*</u>		

<u>Duration</u> Adopt/*	01	NCAC	44A	.0204
<u>Changes in Ownership or Management and Control</u> Adopt/*	01	NCAC	44A	.0205
<u>Denial</u> Adopt/*	01	NCAC	44A	.0206
<u>Renewal</u> Adopt/*	01	NCAC	44A	.0207
<u>Inactivity</u> Adopt/*	01	NCAC	44A	.0208
<u>Required Documentation</u> Adopt/*	01	NCAC	44A	.0301
<u>Challenge Initiation</u> Adopt/*	01	NCAC	44A	.0401
<u>HUB Office Investigation</u> Adopt/*	01	NCAC	44A	.0402
<u>Determination</u> Adopt/*	01	NCAC	44A	.0403
<u>HUB Status During Challenge</u> Adopt/*	01	NCAC	44A	.0404
<u>Reasons for Revocation</u> Adopt/*	01	NCAC	44A	.0501
<u>Notice</u> Adopt/*	01	NCAC	44A	.0502
<u>Review</u> Adopt/*	01	NCAC	44A	.0601
<u>Contents</u> Adopt/*	01	NCAC	44A	.0602
<u>Criteria</u> Adopt/*	01	NCAC	44A	.0603
<u>Decision</u> Adopt/*	01	NCAC	44A	.0604
<u>Status Pending Review</u> Adopt/*	01	NCAC	44A	.0605
<u>Appeal</u> Adopt/*	01	NCAC	44A	.0606

## **INSURANCE, DEPARTMENT OF**

The rules in Chapter 6 are from the Agent Services Division. The rules in Subchapter 6A cover general provisions (.0100); forms (.0200); examinations (.0300); licensing (.0400); license renewals and cancellations (.0500); license denials (.0600); prelicensing education (.0700); continuing education (.0800); and public adjusters (.0900).

<u>Licensing of Business Entities</u> Amend/*	11	NCAC	06A	.0413
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The rules in Chapter 8 are the engineering and building codes including the approval of school maintenance electricians (.0400); qualification board-limited certificate (.0500); qualification board-probationary certificate (.0600); qualification board-standard certificate (.0700); disciplinary actions and other contested matters (.0800); manufactured housing board (.0900); NC Home Inspector Licensure Board (.1000); home inspector standards of practice and code of ethics (.1100); disciplinary actions (.1200); home inspector continuing education (.1300); Manufactured Housing Board continuing education (.1400); and alternate designs and construction appeals (.1500).

<u>Alternate Designs and Construction Appeals</u> Adopt/*	11	NCAC	08	.1501
<u>Time for Appeal and Documents Required</u> Adopt/*	11	NCAC	08	.1502
<u>Service on Local Authority</u> Adopt/*	11	NCAC	08	.1503
<u>Response by Local Authority</u> Adopt/*	11	NCAC	08	.1504
<u>Review of Local Authority Decision</u> Adopt/*	11	NCAC	08	.1505
<u>Administrative and Judicial Review</u> Adopt/*	11	NCAC	08	.1506

## **ALCOHOL LAW ENFORCEMENT**

The rules in Chapter 12 are from the boxing authority section of the alcohol law enforcement division including purpose (.0100); drugs and foreign substances (.0200); physical examination (.0300); permits, licensing and contracts (.0400); boxing (.0500); kickboxing (.0600); toughman (.0700); and mixed martial arts (.0800).

<u>Appearance-Mixed Martial Arts</u> Adopt/*	14A	NCAC	12	.0802
<u>Seconds Duties-Mixed Martial Arts</u> Adopt/*	14A	NCAC	12	.0807
<u>Amateurs-Mixed Martial Arts</u> Adopt/*	14A	NCAC	12	.0810

## **ENVIRONMENTAL MANAGEMENT COMMISSION**

The rules in Chapter 2 concern environmental management and are promulgated by the Environmental Management Commission or the Department of Environment and Natural Resources. The rules in Subchapter 02C concern well construction standards including criteria and standards applicable to water-supply and certain other type wells (.0100); criteria and standards applicable to injection wells (.0200); and permitting and inspection of private drinking water wells (.0300).

<u>Scope and Purpose</u> Adopt/*	15A	NCAC	02C	.0301
<u>Definitions</u> Adopt/*	15A	NCAC	02C	.0302
<u>Application for Construction Permit</u> Adopt/*	15A	NCAC	02C	.0303
<u>Permitting</u> Adopt/*	15A	NCAC	02C	.0304
<u>Grout Inspection: Certification</u> Adopt/*	15A	NCAC	02C	.0305
<u>Well Completion and Certification</u> Adopt/*	15A	NCAC	02C	.0306
<u>Well Data and Records</u> Adopt/*	15A	NCAC	02C	.0307
<u>Appeal Procedure</u> Adopt/*	15A	NCAC	02C	.0308

The rules in Subchapter 2H concern procedures for permits: approvals including point source discharges to the surface waters (.0100); waste not discharged to surface waters (.0200); coastal waste treatment disposal (.0400); water quality certification (.0500);

laboratory certification (.0800); local pretreatment programs (.0900); stormwater management (.1000); biological laboratory certification (.1100); special orders (.1200); and discharges to isolated wetlands and isolated waters (.1300).

Stormwater Requirements: Coastal Counties

15A NCAC 02H .1005

Amend/\*

The rules in Subchapter 2Q are rules relating to applying for and obtaining air quality permits and include general information (.0100); fees (.0200); application requirements (.0300); acid rain program requirements (.0400); establishment of an air quality permitting program (.0500); transportation facility requirements (.0600); toxic air pollutant procedures (.0700); and exempt categories (.0800).

Permit and Application Fees

15A NCAC 02Q .0203

Amend/\*

Inflation Adjustment

15A NCAC 02Q .0204

Amend/\*

**SOIL AND WATER CONSERVATION COMMISSION**

The rules in Chapter 6 are from the Soil and Water Conservation Commission and are intended to further the state policy of conserving soil resources and preventing soil erosion and floodwater and sediment damages to the farms, forests, and grazing land assets of the state.

The rules in Subchapter 06E concern the agriculture cost share program for nonpoint source pollution controls.

Definitions for Subchapter 06E

15A NCAC 06E .0102

Amend/\*

Cost Share and Incentive Payments

15A NCAC 06E .0105

Amend/\*

Cost Share Agreement

15A NCAC 06E .0107

Amend/\*

District Program Operation

15A NCAC 06E .0108

Amend/\*

The rules in Subchapter 6I concern the community conservation assistance program for nonpoint source pollution control.

Cost Share Agreement

15A NCAC 06I .0107

Adopt/\*

District Program Operation

15A NCAC 06I .0108

Adopt/\*

**WILDLIFE RESOURCES COMMISSION**

The rules in Subchapter 10F cover motorboats and water safety including boat registration (.0100); safety equipment and accident reports (.0200); and local water safety regulations covering speed limits, no-wake restrictions, restrictions on swimming and other activities, and placement of markers for designated counties or municipalities (.0300).

Safety Equipment

15A NCAC 10F .0201

Amend/\*

**NC MEDICAL BOARD/PERFUSION ADVISORY COMMITTEE**

The rules in Subchapter 32V are rules covering licensure of perfusionists and the practice of perfusion. Perfusion primarily

concerns operating cardiopulmonary bypass systems during cardiac surgery cases.

<u>Fees</u>	21	NCAC	32V	.0115
Amend/*				

### **FUNERAL SERVICE, BOARD OF**

The rules in Chapter 34 are from the North Carolina Board of Funeral Service. The rules in Subchapter 34B are funeral service rules including rules relating to resident trainees (.0100); examinations (.0200); licensing (.0300); continuing education (.0400); out-of-state licensees (.0500); funeral establishments (.0600); and preparation of dead bodies (.0700).

<u>Definitions</u>	21	NCAC	34B	.0407
Amend/*				
<u>Course Accreditation Standards</u>	21	NCAC	34B	.0409
Amend/*				
<u>General Course Approval</u>	21	NCAC	34B	.0411
Amend/*				
<u>Accreditation of Prerecorded Programs and Live Programs B...</u>	21	NCAC	34B	.0413
Amend/*				
<u>Accreditation of Computer-Based CE</u>	21	NCAC	34B	.0414
Amend/*				

### **OCCUPATIONAL THERAPY, BOARD OF**

The rules in Chapter 38 cover organization and general provisions (.0100); application for license (.0200); licensing (.0300); business conduct (.0400); rules (.0500); administrative hearing procedures (.0600); professional corporations (.0700); continuing competence activity (.0800); supervision, supervisory roles, and clinical responsibilities of occupational therapist and occupational therapy assistants (.0900); supervision of limited permittees (.1000); and supervision of unlicensed personnel (.1100).

<u>Continuing Duty to Report Certain Crimes and Civil Suits</u>	21	NCAC	38	.0305
Amend/*				

### **PSYCHOLOGY BOARD**

The rules in Chapter 54 are from the Board of Psychology and cover general provisions (.1600); application for licensure (.1700); education (.1800); examination (.1900); supervision (.2000); renewal (.2100); professional corporations (.2200); administrative hearing procedures (.2300); rulemaking procedures (.2400); rulemaking hearings (.2500); declaratory rulings, (.2600); health services provider certification (.2700); and ancillary services (.2800).

<u>Criminal History Record Check</u>	21	NCAC	54	.1612
Adopt/*				
<u>Information Required</u>	21	NCAC	54	.1701
Amend/*				
<u>Senior Psychologist</u>	21	NCAC	54	.1707
Amend/*				
<u>Reinstatement</u>	21	NCAC	54	.2103
Amend/*				
<u>HSP-PA Requirements</u>	21	NCAC	54	.2706
Amend/*				

### **RESPIRATORY CARE BOARD**

The rules in Chapter 61 are from the Respiratory Care Board and concern organization and definitions (.0100); application for

<u>Application Process</u>	21	NCAC	61	.0201
Amend/*				
<u>Fees</u>	21	NCAC	61	.0204
Amend/*				
<u>Inactive Status</u>	21	NCAC	61	.0305
Amend/*				

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**CONTESTED CASE DECISIONS**

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

**OFFICE OF ADMINISTRATIVE HEARINGS**

**Chief Administrative Law Judge**  
**JULIAN MANN, III**

**Senior Administrative Law Judge**  
**FRED G. MORRISON JR.**

**ADMINISTRATIVE LAW JUDGES**

Beecher R. Gray  
Selina Brooks  
Melissa Owens Lassiter  
Don Overby

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>
<b><u>ALCOHOL BEVERAGE CONTROL COMMISSION</u></b>				
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	
ABC Commission v. Agustin Zeferino Hernandez	07 ABC 1366	Overby	11/30/07	
A list of Child Support Decisions may be obtained by accessing the OAH Website: <a href="http://www.ncoah.com/decisions">www.ncoah.com/decisions</a> .				
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<b><u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u></b>				
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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	



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Rita Amirahmadi v. DHHS, Division of Medical Assistance	07 DHR 0250	Elkins	06/05/07	
Linda S. Little, Littles Day Care	07 DHR 0266	Overby	05/23/07	
Kareem S. Scott v. DHHS, DFS	07 DHR 0300	Webster	05/11/07	
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Robin E. Peacock, Bridging to Success, Inc v. DHHS, DFS, Mental	07 DHR 0510	Gray	05/30/07	
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Sandra Leathers v. DHHS, Division of Child Development	07 DHR 0612	Gray	11/02/07	
Anna Trask v. DHHS, Health Care Personnel Registry	07 DHR 0661	Overby	06/15/07	
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Robert Anthony Wilson v. DOJ, Company Police Program	06 DOJ 1508	Gray	02/16/07	
Jerry Hailey v. Insurance Underwriting Association	06 DOJ 1528	Gray	10/01/07	22:09 NCR 883
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