

NORTH CAROLINA REGISTER

VOLUME 22 • ISSUE 17 • Pages 1491 - 1583

March 3, 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.

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

Office of Administrative Hearings
Rules Division
Capehart-Crocker House (919) 733-2678
424 North Blount Street (919) 733-3462 FAX
Raleigh, North Carolina 27601-2817

contact: Molly Masich, Codifier of Rules molly.masich@ncmail.net (919) 733-3367
Dana Vojtko, Publications Coordinator dana.vojtko@ncmail.net (919) 733-2679
Julie Edwards, Editorial Assistant julie.edwards@ncmail.net (919) 733-2696
Felicia Williams, Editorial Assistant felicia.s.williams@ncmail.net (919) 733-3361

Rule Review and Legal Issues

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

contact: Joe DeLuca Jr., Commission Counsel joe.deluca@ncmail.net (919) 715-8655
Bobby Bryan, Commission Counsel bobby.bryan@ncmail.net (919) 733-0928
Angela Person, Administrative Assistant angela.person@ncmail.net (919) 733-2721

Fiscal Notes & Economic Analysis

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

contact: William Crumbley, Economic Analyst william.crumbley@ncmail.net (919) 807-4740

Governor's Review

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

Legislative Process Concerning Rule-making

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

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

County and Municipality Government Questions or Notification

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

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

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

contact: Anita Watkins awatkins@nclm.org

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 th 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.

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

**EXECUTIVE ORDER NO. 135
AMENDING AND 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 amended to include all 100 counties and is hereby extended until April 30, 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 the specified time mentioned above or the duration of the emergency whichever is less.

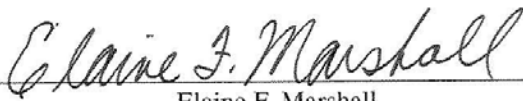
IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this fourth day of February in the year of our Lord two thousand and eight, and of the Independence of the United States of America the two hundred and thirty-second.





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.



U.S. Department of Justice
Civil Rights Division

CC:MSR:DJ:maf:jdh
DJ 166-012-3
2007-5785

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

January 17, 2008

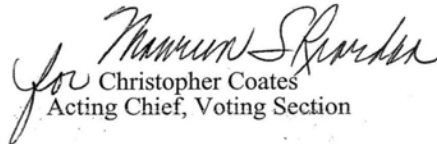
Mr. David A. Holec
City Attorney
P.O. Box 7207
Greenville, North Carolina 27835-7207

Dear Mr. Holec:

This refers to ten annexations (adopted between August 9, 2007, and September 13, 2007) and their designation to districts of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on November 19, 2007.

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

Sincerely,


for Christopher Coates
Acting Chief, Voting Section

**SUMMARY OF NOTICE OF
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY
Tremont Partners, LP**

Pursuant to N.C.G.S. 130A-310.34, Tremont Partners, LP has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Charlotte, Mecklenburg County, North Carolina. The Property, where Ferguson Enterprises, Inc. currently operates a warehouse and showroom, consists of approximately 2.88 acres and is located at 101 West Tremont Avenue. Environmental contamination exists on the Property in groundwater. Tremont Partners, LP has committed itself to effect redevelopment of the Property that will consist of a multi-story building containing luxury residential units with amenities, as well as retail, office and other commercial uses, and a parking structure. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Tremont Partners, LP, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35.

The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Public Library of Charlotte & Mecklenburg County, 310 N. Tryon St., Charlotte, NC 28202 by contacting Allison Aiken at that address or at (704) 336-2725; or at NC Brownfields Program, 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, where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents.

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 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 Tremont Partners, LP, 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 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 March 4, 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: Dick Bachelder
PSA Inc/ADS Inc
PO Box 3000
Hilliard, OH 43026

For: Revised Innovative Approval for "BioDiffuser" chambered subsurface wastewater 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.

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, 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.

NOTICE OF CHANGE OF LOCATION FOR PUBLIC HEARING

The Gasoline and Oil Inspection Board published a Notice of Text of proposed rules pertaining to motor fuel standards, 02 NCAC 42, in the 22:14 North Carolina Register. The location of the public hearing has been changed to the Governor James G. Martin Building, North Carolina State Fairgrounds, 1025 Blue Ridge Blvd., Raleigh, NC. The time and date of the public hearing will still be at 10:00 on March 18, 2008.

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

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

TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Pesticide Board intends to adopt the rules cited as 02 NCAC 09L .2201 - .2203.

Fiscal Impact:

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

Proposed Effective Date: July 1, 2008

CHAPTER 09 - FOOD AND DRUG PROTECTION DIVISION

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than March 18, 2008, to James W. Burnette, Jr., Secretary, NC Pesticide Board, 1090 Mail Service Center, Raleigh, NC 27699-1090.

SUBCHAPTER 09L - PESTICIDE SECTION

SECTION .2200 - INTERIM PROTECTION MEASURES FOR THE CAROLINA HEELSPLITTER MUSSEL

Reason for Proposed Action: The North Carolina Pesticide Board is proposing these rules to protect the North Carolina Heelsplitter Mussel, a federally endangered species occurring in Union County, NC. The rules identify pesticides needing additional use limitations to provide additional protections and establish setback areas near streams where these pesticides cannot be used.

02 NCAC 09L .2201 DEFINITIONS

All specific words or terms used in this Section other than those defined in this Rule shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460. "Pesticide use limitation areas" means areas where the use of a specific pesticide is further regulated in order to protect and promote the recovery of federally listed endangered or threatened animal or plant species that are in danger of becoming extinct.

Authority G.S. 143-458; 143-466(a).

Procedure by which a person can object to the agency on a proposed rule: Any person may object to the proposed rules by submitting a written statement of objection(s) to James W. Burnette, Jr., Secretary, NC Pesticide Board, 1090 Mail Service Center, Raleigh, NC 27699-1090.

02 NCAC 09L .2202 PESTICIDE USE LIMITATION AREAS

The table in 02 NCAC 09L .2203 contains pesticide active ingredients that have specific limitations on pesticide use in order to protect the federally listed endangered species Carolina heelsplitter (*Lasmigona decorata*) in Union County, NC, in the vicinity of:

Comments may be submitted to: James W. Burnette, Jr., 1090 Mail Service Center, Raleigh, NC 27699-1090, phone (919) 733-3556, fax (919) 733-9796, email james.burnette@ncmail.net

Comment period ends: May 2, 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

- (1) the main stem of Goose Creek from the NC Highway 218 bridge, downstream to its confluence with the Rocky River;
- (2) the main stem of Duck Creek, from the Mecklenburg/Union County line, downstream to its confluence with Goose Creek; and
- (3) the main stem of Waxhaw Creek, from NC Highway 200 bridge, downstream to the North Carolina/South Carolina State line.

Authority G.S. 143-458; 143-466(a).

**02 NCAC 09L .2203 PESTICIDES WITH
ADDITIONAL USE LIMITATIONS**

The application of any of the following pesticides in the vicinity of the areas identified in 02 NCAC 09L .2202 must not occur within the pesticide use limitation areas identified by the codes in the following table:

| <u>Pesticide Active Ingredient</u> | <u>Code</u> |
|------------------------------------|-------------|
| <u>Azinphos-methyl</u> | <u>2x</u> |
| <u>Benomyl</u> | <u>1x</u> |
| <u>Captan</u> | <u>1x</u> |
| <u>Carbaryl</u> | <u>2x</u> |
| <u>Carbofuran</u> | <u>1x</u> |
| <u>Chlorpyrifos</u> | <u>3z</u> |
| <u>Diazinon</u> | <u>2x</u> |
| <u>Dicofol</u> | <u>2x</u> |
| <u>Dimethoate</u> | <u>2x</u> |
| <u>Endosulfan</u> | <u>2x</u> |
| <u>Esfenvalerate</u> | <u>1x</u> |
| <u>Ethion</u> | <u>2x</u> |
| <u>Ethoprop</u> | <u>1x</u> |
| <u>Fenamiphos</u> | <u>2x</u> |
| <u>Fonofos</u> | <u>2x</u> |
| <u>Malathion</u> | <u>2x</u> |
| <u>Methidathion</u> | <u>2x</u> |
| <u>Methomyl</u> | <u>1x</u> |
| <u>Mevinphos</u> | <u>2x</u> |
| <u>Naled</u> | <u>1x</u> |
| <u>Parathion (ethyl)</u> | <u>2x</u> |
| <u>Pendimethalin</u> | <u>2x</u> |
| <u>Permethrin</u> | <u>1x</u> |
| <u>Phorate</u> | <u>1x</u> |
| <u>Phosmet</u> | <u>1x</u> |
| <u>Phosphamidon</u> | <u>1x</u> |
| <u>Propiconazole</u> | <u>1x</u> |
| <u>Pyrethrins</u> | <u>2x</u> |
| <u>Terbufos</u> | <u>2x</u> |
| <u>Trichlorfon</u> | <u>2x</u> |

Code/Limitations:

- (1) 1x - Within the area described in 02 NCAC 09L .2202 and one-half mile up all streams that join the area, do not apply this pesticide within 20 yards from the edge of water for ground applications and within 100 yards for aerial applications;
- (2) 2x - Within the area described in 02 NCAC 09L .2202 and one-half mile up all streams that join the area, do not apply this pesticide within 40 yards from the edge of water for ground applications and within 200 yards for aerial applications;
- (3) 3z - Within the area described in 02 NCAC 09L .2202, do not apply this pesticide within 100 yards from the edge of water for ground applications and within one-fourth mile for aerial applications.

Authority G.S. 143-458; 143-466(a).

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

**CHAPTER 30 - NC BOARD OF MASSAGE AND
BODYWORK THERAPY**

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Massage and Bodywork Therapy intends to adopt the rule cited as 21 NCAC 30 .0516 and amend the rules cited as 21 NCAC 30 .0102, .0201.

Proposed Effective Date: August 1, 2008

Public Hearing:

Date: April 17, 2008

Time: 11:00 a.m.

Location: Wachovia Capitol Center, 13th Floor Conference Room, 150 Fayetteville Street, Raleigh, NC 27601

Reason for Proposed Action: *These amendments to existing rules and the additional new rule are being submitted to clarify the Massage and Bodywork Therapy Practice Act.*

Procedure by which a person can object to the agency on a proposed rule: *Any person may object to any of these proposed amendments or adoptions by submitting a written statement to Charles P. Wilkins at PO Box 2539, Raleigh, NC 27602, postmarked on or before June 3, 2008.*

Comments may be submitted to: *Charles P. Wilkins, PO Box 2539, Raleigh, NC 27602, phone (919) 833-2752, fax (919) 833-1059, email cwilkins@bws-law.com*

Comment period ends: June 3, 2008

Procedure for Subjecting a Proposed Rule to Legislative

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

Fiscal Impact:

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

SECTION .0100 - ORGANIZATION AND GENERAL PROVISIONS

21 NCAC 30 .0102 DEFINITIONS

In addition to the definitions set forth in G.S. 90-622(1) through (5), the following definitions apply:

- (1) Classroom hours of supervised instruction. -- Student learning activities in a training program that is conducted in the physical presence of an instructor who meets the qualifications of Rule .0612 of this Chapter.
(2) Generally recognized psychometric principles and standards. -- Standards for Educational and Psychological Testing (1999, American Psychological Association, American Educational Research Association, National Council on Measurement in Education), Principles of Fairness: An Examining Guide for Credentialing Boards (Revised 2002, Council on Licensure, Enforcement, and Regulation, National Organization for Competency Assurance) which is hereby incorporated by reference, including subsequent amendments and editions. Copies of the standards may be obtained from The American Psychological Association at 750 First Street, NE, Washington, DC 20002-4242 or online at http://www.apa.org/science/standards.html.
(8) Practice Act. -- Article 36, Chapter 90 of the North Carolina General Statutes: The North Carolina Massage and Bodywork Therapy Practice Act.
(5) Licensee. -- A person who holds a valid license issued by the Board to engage in the practice of massage and bodywork therapy.
(9) Reciprocity. -- Pursuant to G.S. 90-630, a provision which shall apply to practitioners of massage and bodywork therapy qualified pursuant to Rule .0304 who reside outside the State.
(7) Place of business. -- The primary street location where the licensee provides massage and bodywork therapy. If the licensee provides massage and bodywork therapy only at the location of clients, then it shall be the residence street address of the licensee.
(6) Malpractice. -- Conduct in variance with the Standards of Practice set forth in Section .0500 that results in harm to a client or that endangers the health or safety of a client.
(3) Gross negligence. -- The intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another.
(4) Incompetency. -- Conduct that evidences a lack of ability, fitness or knowledge to apply principles or skills of the profession of massage and bodywork therapy.

- (10) Therapeutic, educational, or relaxation purposes. -- Pursuant to G.S. 90-622(3), that which is intended to positively affect the health and well-being of the client, and that does not include sexual activity, as defined in Rule .0508.

Authority G.S. 90-622; 90-626(9).

SECTION .0200 - APPLICATION FOR LICENSE

21 NCAC 30 .0201 APPLICATION AND SCOPE

Each applicant for a license as a massage and bodywork therapist shall complete an application form provided by the Board. This form shall be submitted to the Board and shall be accompanied by:

- (1) Recent original photograph(s) One original color photograph of the applicant taken within six months preceding the date of the application of acceptable sufficient quality for identification. Such The photograph shall be of the head and shoulders, passport type, two inches by two inches in size;
(2) The proper fees, as required by Rule .0204 of this Section;
(3) Documentation that the applicant has earned a high school diploma or equivalent;
(4) Documentation that the applicant is 18 years of age or older;
(5) Documentation that the applicant has successfully completed a course of study at a Board-approved school consisting of a minimum of 500 classroom hours of supervised instruction. If the applicant attended a school which is not Board-approved, the Board may elect to review that applicant's educational credentials for approval on a case-by-case basis. At a minimum, the The documentation of such training must come from a school which is licensed by the educational licensing authority in the state, territory or country in which it operates, or is exempt by statute. In North Carolina the documentation must come from a proprietary school approved by the Board or a community college program. The curriculum must meet or be substantially equivalent to the standards set forth in Rule .0602(a)(3) .0620(2) of this Chapter;
(6) Documentation that the applicant has successfully passed achieved a passing score on an examination administered by a certifying agency that has been approved by the National Commission of Certifying Agencies (NCCA) Agencies, and documentation that the applicant is a certificant and is in good standing with such agency agency; or has achieved a passing score on a competency assessment examination administered by the

Board or approved by the Board as meeting generally recognized psychometric principles and standards; and

- (7) A form provided by the Board containing signed statements from two licensed massage and bodywork therapists, or other licensed health care practitioners, attesting to the applicant's good moral character and adherence to ethical standards.

Authority G.S. 90-626(2); 90-629.

SECTION .0500 - STANDARDS OF PROFESSIONAL CONDUCT

21 NCAC 30 .0516 TREATMENT IN BODY CAVITIES

A licensed massage and bodywork therapist (LMBT) may perform massage and bodywork therapy inside the vaginal or anal cavities of a client provided the LMBT complies with the following requirements prior to the massage or bodywork therapy:

- (1) the LMBT obtains written and signed consent from the client for treatment inside the client's vaginal or anal cavities stating that the client has been advised that the client has the right to have another person, provided either by the client or therapist, present in the room while the treatment is being performed and indicating whether the client chooses treatment with a third person present or treatment with only the therapist and the client present;
(2) the massage and bodywork therapy treatment is performed in conformance with Rule .0509 of this Chapter;
(3) the LMBT is competent to perform massage and bodywork therapy inside the vaginal or anal cavities of the client; and
(4) a written prescription or order has been received from a licensed medical doctor prescribing or ordering the specific massage and bodywork therapy treatment.

Authority G.S. 90-626(9).

CHAPTER 64 - BOARD OF EXAMINERS OF SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Examiners for Speech and Language

Pathologists and Audiologists intends to adopt the rule cited as 21 NCAC 64 .0218.

Proposed Effective Date: August 1, 2008

Public Hearing:

Date: April 18, 2008

Time: 10 a.m.

Location: 3100 Tower Blvd., Suite 522m, Durham, NC

Reason for Proposed Action: To provide rule for continuing education pursuant to statutory amendment effective October 1, 2007.

Procedure by which a person can object to the agency on a proposed rule: Appear at the hearing on April 18, 2008.

Comments may be submitted to: John C. Randall, 3100 Tower Blvd., Durham, NC 27707

Comment period ends: April 18, 2008

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

Fiscal Impact:

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

SECTION .0200 - INTERPRETATIVE RULES

21 NCAC 64 .0218 CONTINUING EDUCATION

The Board requires that beginning January 1, 2009 each licensee must complete annually 10 hours of continuing professional education as approved by the Board.

Authority G.S. 90-304(a)(3).

APPROVED RULES

*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 January 17, 2008

**REGISTER CITATION TO THE
NOTICE OF TEXT**

SOCIAL SERVICES COMMISSION

| | | |
|------------------------------------|---------------------|-----------|
| <u>Planning Program Activities</u> | 10A NCAC 06R .0501* | 22:08 NCR |
| <u>Nutrition</u> | 10A NCAC 06R .0502* | 22:08 NCR |
| <u>Transportation</u> | 10A NCAC 06R .0503 | 22:08 NCR |
| <u>Records</u> | 10A NCAC 06R .0508* | 22:08 NCR |

HEALTH SERVICE REGULATION, DIVISION OF

| | | |
|--|---------------------|-----------|
| <u>Definitions</u> | 10A NCAC 14C .2301* | 22:08 NCR |
| <u>Information Required of Applicant</u> | 10A NCAC 14C .2302* | 22:08 NCR |
| <u>Performance Standards</u> | 10A NCAC 14C .2303* | 22:08 NCR |
| <u>Support Services</u> | 10A NCAC 14C .2304 | 22:08 NCR |
| <u>Staffing and Staff Training</u> | 10A NCAC 14C .2305* | 22:08 NCR |

PUBLIC HEALTH, COMMISSION FOR

| | | |
|-------------------------------|---------------------|--------------------------|
| <u>Authorized WIC Vendors</u> | 10A NCAC 43D .0706* | n/a G.S. 150B-21.5(a)(3) |
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INSURANCE, DEPARTMENT OF

| | | |
|---|--------------------|-----------|
| <u>Definitions</u> | 11 NCAC 06A .0101 | 22:08 NCR |
| <u>N.C. Non-Resident Broker's Insurance Bond</u> | 11 NCAC 06A .0211 | 22:08 NCR |
| <u>North Carolina Notice of Cancellation</u> | 11 NCAC 06A .0217 | 22:08 NCR |
| <u>Responsibility of Applicant at Examination Site</u> | 11 NCAC 06A .0304* | 22:08 NCR |
| <u>Licensing of Resident Agent, LTD, Representative and Adju...</u> | 11 NCAC 06A .0402* | 22:08 NCR |
| <u>Licensing and Broker</u> | 11 NCAC 06A .0404* | 22:08 NCR |
| <u>Licensing of Nonresident Broker</u> | 11 NCAC 06A .0405 | 22:08 NCR |
| <u>Licensing of Motor Vehicle Damage Appraiser</u> | 11 NCAC 06A .0408 | 22:08 NCR |
| <u>Adjuster's Learner's Permit</u> | 11 NCAC 06A .0414 | 22:08 NCR |
| <u>Personal Interviews</u> | 11 NCAC 06A .0604 | 22:08 NCR |
| <u>General Requirements</u> | 11 NCAC 06A .0701* | 22:08 NCR |
| <u>Prelicensing Education Schools</u> | 11 NCAC 06A .0702* | 22:08 NCR |
| <u>Program Directors</u> | 11 NCAC 06A .0703* | 22:08 NCR |
| <u>Courses</u> | 11 NCAC 06A .0704* | 22:08 NCR |
| <u>Instructors</u> | 11 NCAC 06A .0705* | 22:08 NCR |
| <u>Definitions</u> | 11 NCAC 06A .0801* | 22:08 NCR |
| <u>Licensee Requirements</u> | 11 NCAC 06A .0802* | 22:08 NCR |
| <u>Carryover Credit</u> | 11 NCAC 06A .0804 | 22:08 NCR |

APPROVED RULES

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|---|----|------|-----|--------|-----------|
| <u>Calculation of ICECS</u> | 11 | NCAC | 06A | .0805* | 22:08 NCR |
| <u>Hardship</u> | 11 | NCAC | 06A | .0807* | 22:08 NCR |
| <u>Instructor Qualification</u> | 11 | NCAC | 06A | .0808* | 22:08 NCR |
| <u>Approval of Courses</u> | 11 | NCAC | 06A | .0809* | 22:08 NCR |
| <u>Sanctions for Noncompliance</u> | 11 | NCAC | 06A | .0811* | 22:08 NCR |
| <u>Issuance/Continuation of Provider Approval</u> | 11 | NCAC | 06A | .0813* | 22:08 NCR |
| <u>Exemptions</u> | 11 | NCAC | 12 | .0604* | 22:08 NCR |

JUSTICE, DEPARTMENT OF

| | | | | | |
|--|----|------|-----|--------|-----------|
| <u>Application for Company Police Agency</u> | 12 | NCAC | 02I | .0203* | 22:01 NCR |
| <u>Transfers</u> | 12 | NCAC | 02I | .0305* | 22:01 NCR |
| <u>Badges, Uniforms, Vehicles and Officer Identification</u> | 12 | NCAC | 02I | .0306* | 22:01 NCR |
| <u>Agency Retention of Records of Commission</u> | 12 | NCAC | 02I | .0501* | 22:01 NCR |

PRIVATE PROTECTIVE SERVICES BOARD

| | | | | | |
|---|----|------|-----|-------|-----------|
| <u>Training Video and Training Test</u> | 12 | NCAC | 07D | .1109 | 22:02 NCR |
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ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF

| | | | | | |
|--|-----|------|-----|--------|-----------|
| <u>Purpose</u> | 15A | NCAC | 01N | .0101* | 22:03 NCR |
| <u>Definitions</u> | 15A | NCAC | 01N | .0102* | 22:03 NCR |
| <u>Applicable Procedures</u> | 15A | NCAC | 01N | .0103* | 22:03 NCR |
| <u>Availability of Loans</u> | 15A | NCAC | 01N | .0201* | 22:03 NCR |
| <u>Loan Restrictions</u> | 15A | NCAC | 01N | .0202* | 22:03 NCR |
| <u>Determination of Eligibility</u> | 15A | NCAC | 01N | .0301* | 22:03 NCR |
| <u>Eligible Project Costs</u> | 15A | NCAC | 01N | .0303 | 22:03 NCR |
| <u>Filing Deadlines</u> | 15A | NCAC | 01N | .0401* | 22:03 NCR |
| <u>Application Procedures</u> | 15A | NCAC | 01N | .0402* | 22:03 NCR |
| <u>Project Schedule and Resolution</u> | 15A | NCAC | 01N | .0403 | 22:03 NCR |
| <u>Assignment of Priorities</u> | 15A | NCAC | 01N | .0502* | 22:03 NCR |
| <u>General Criteria</u> | 15A | NCAC | 01N | .0601 | 22:03 NCR |
| <u>Public Health and Compliance</u> | 15A | NCAC | 01N | .0602 | 22:03 NCR |
| <u>Consolidation</u> | 15A | NCAC | 01N | .0603 | 22:03 NCR |
| <u>Reliability</u> | 15A | NCAC | 01N | .0604 | 22:03 NCR |
| <u>Affordability</u> | 15A | NCAC | 01N | .0605 | 22:03 NCR |
| <u>Source Protection and Management</u> | 15A | NCAC | 01N | .0606 | 22:03 NCR |
| <u>Determination of Awards and Bypass Procedures</u> | 15A | NCAC | 01N | .0701* | 22:03 NCR |
| <u>Disbursement of Loans</u> | 15A | NCAC | 01N | .0704* | 22:03 NCR |
| <u>Interest Rates</u> | 15A | NCAC | 01N | .0801 | 22:03 NCR |
| <u>Audit</u> | 15A | NCAC | 01N | .0902* | 22:03 NCR |

MARINE FISHERIES COMMISSION

| | | | | | |
|-------------------------------------|-----|------|-----|--------|-----------|
| <u>Prohibited Rakes</u> | 15A | NCAC | 03K | .0102* | 22:05 NCR |
| <u>Shellfish or Seed Management</u> | 15A | NCAC | 03K | .0103* | 22:05 NCR |
| <u>Prohibited Taking</u> | 15A | NCAC | 03K | .0304 | 22:05 NCR |

APPROVED RULES

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| <u>Bay Scallops - Seasons and Harvest Limits</u> | 15A NCAC 03K .0501 | 22:05 NCR |
| <u>Soaked or Swelled Bay Scallops Prohibited</u> | 15A NCAC 03K .0506 | 22:05 NCR |
| <u>Application Process</u> | 15A NCAC 03O .0402* | 22:05 NCR |
| <u>Eligibility Board Review</u> | 15A NCAC 03O .0403* | 22:05 NCR |
| <u>Eligibility Criteria</u> | 15A NCAC 03O .0404* | 22:05 NCR |

COASTAL RESOURCES COMMISSION

| | | |
|------------------------|---------------------|-----------|
| <u>Civil Penalties</u> | 15A NCAC 07J .0409* | 22:05 NCR |
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REVENUE, DEPARTMENT OF

| | | |
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| <u>Pre-Hearing Conference</u> | 17 NCAC 01C .0201* | n/a G.S. 150B-1(d)(4) |
| <u>Procedure of Hearing</u> | 17 NCAC 01C .0202* | n/a G.S. 150B-1(d)(4) |
| <u>Assistance of Counsel</u> | 17 NCAC 01C .0203* | n/a G.S. 150B-1(d)(4) |
| <u>Failure to Appear</u> | 17 NCAC 01C .0205* | n/a G.S. 150B-1(d)(4) |
| <u>Application for Hearing</u> | 17 NCAC 01C .0305* | n/a G.S. 150B-1(d)(4) |
| <u>Waiver of Time Limitation</u> | 17 NCAC 01C .0307* | n/a G.S. 150B-1(d)(4) |
| <u>Claim for Tax Refund</u> | 17 NCAC 01C .0316* | n/a G.S. 150B-1(d)(4) |
| <u>Tax Refund</u> | 17 NCAC 01C .0317* | n/a G.S. 150B-1(d)(4) |
| <u>Computation and Payment of Amusement Gross Receipts Taxes</u> | 17 NCAC 04B .0302* | n/a G.S. 150B-1(d)(4) |
| <u>Overpayments Applied to Next Year Purpose</u> | 17 NCAC 05C .1904* | n/a G.S. 150B-1(d)(4) |
| <u>Who May Submit Request</u> | 17 NCAC 05D .0107* | n/a G.S. 150B-1(d)(4) |
| <u>Request for Alternative Apportionment Formula</u> | 17 NCAC 05D .0108* | n/a G.S. 150B-1(d)(4) |
| <u>Time for Filing</u> | 17 NCAC 05D .0109* | n/a G.S. 150B-1(d)(4) |
| <u>Notice of Conference</u> | 17 NCAC 05D .0110* | n/a G.S. 150B-1(d)(4) |
| <u>Who Shall Attend the Conference</u> | 17 NCAC 05D .0111* | n/a G.S. 150B-1(d)(4) |
| <u>Conduct of the Conference</u> | 17 NCAC 05D .0112* | n/a G.S. 150B-1(d)(4) |
| <u>Final Decision</u> | 17 NCAC 05D .0113* | n/a G.S. 150B-1(d)(4) |
| <u>Additional Fire and Lightning Taxes</u> | 17 NCAC 05D .0115* | n/a G.S. 150B-1(d)(4) |
| <u>Group Premiums</u> | 17 NCAC 05E .0102* | n/a G.S. 150B-1(d)(4) |
| | 17 NCAC 05E .0105* | n/a G.S. 150B-1(d)(4) |

TRANSPORTATION, DEPARTMENT OF

| | | |
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| <u>Prequalifying to Bid: Requalification</u> | 19A NCAC 02D .0801* | 22:06 NCR |
| <u>Invitation to Bid</u> | 19A NCAC 02D .0802 | 22:06 NCR |
| <u>Advertisement and Invitations for Bids</u> | 19A NCAC 02D .0803* | 22:06 NCR |
| <u>Contents of Proposal Forms</u> | 19A NCAC 02D .0804 | 22:06 NCR |
| <u>Combination Bids</u> | 19A NCAC 02D .0805 | 22:06 NCR |
| <u>Interpretation of Quantities in Proposal Form</u> | 19A NCAC 02D .0806 | 22:06 NCR |
| <u>Examination of Plans: Specs: Contract: and Site of Work</u> | 19A NCAC 02D .0807* | 22:06 NCR |
| <u>Preparation and Submission of Bids</u> | 19A NCAC 02D .0808 | 22:06 NCR |
| <u>Bid Bond or Bid Deposit</u> | 19A NCAC 02D .0809 | 22:06 NCR |
| <u>Delivery of Bids</u> | 19A NCAC 02D .0810* | 22:06 NCR |
| <u>Withdrawal or Revision of Bids</u> | 19A NCAC 02D .0811 | 22:06 NCR |
| <u>Receipt and Opening of Bids</u> | 19A NCAC 02D .0812 | 22:06 NCR |

APPROVED RULES

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| <u>Withdraw of Bids – Mistake</u> | 19A NCAC 02D .0813 | 22:06 NCR |
| <u>Correction of Bids Errors</u> | 19A NCAC 02D .0814 | 22:06 NCR |
| <u>Rejection of Bids</u> | 19A NCAC 02D .0815 | 22:06 NCR |
| <u>Disqualification of Bidders</u> | 19A NCAC 02D .0816 | 22:06 NCR |
| <u>Consideration of Bids</u> | 19A NCAC 02D .0817 | 22:06 NCR |
| <u>Non-Collusion Affidavit and Certifications</u> | 19A NCAC 02D .0818 | 22:06 NCR |
| <u>Award of Contract</u> | 19A NCAC 02D .0819 | 22:06 NCR |
| <u>Return of Bid Bond or Bid Request</u> | 19A NCAC 02D .0821 | 22:06 NCR |
| <u>Contract Bonds</u> | 19A NCAC 02D .0822 | 22:06 NCR |
| <u>Execution of Contract</u> | 19A NCAC 02D .0823 | 22:06 NCR |
| <u>Failure to Furnish Contract Bonds</u> | 19A NCAC 02D .0824 | 22:06 NCR |
| <u>Confidentiality of Cost Estimates</u> | 19A NCAC 02D .0825 | 22:06 NCR |
| <u>Subsurface Information</u> | 19A NCAC 02D .0827 | 22:06 NCR |
| <u>Computer Bid Preparation</u> | 19A NCAC 02D .0828 | 22:06 NCR |
| <u>Definitions</u> | 19A NCAC 02D .0830 | 22:06 NCR |
| <u>Purpose and Scope</u> | 19A NCAC 02D .1101 | 22:06 NCR |
| <u>Definitions</u> | 19A NCAC 02D .1102* | 22:06 NCR |
| <u>Certification of Firms</u> | 19A NCAC 02D .1103* | 22:06 NCR |
| <u>Renewal of Certification</u> | 19A NCAC 02D .1104 | 22:06 NCR |
| <u>Change in Ownership or Control</u> | 19A NCAC 02D .1105 | 22:06 NCR |
| <u>Decertification</u> | 19A NCAC 02D .1106* | 22:06 NCR |
| <u>Appeals of Denial of Certification</u> | 19A NCAC 02D .1107* | 22:06 NCR |
| <u>Goals</u> | 19A NCAC 02D .1108* | 22:06 NCR |
| <u>Counting Participation Toward Meeting the Goal</u> | 19A NCAC 02D .1109 | 22:06 NCR |
| <u>Non-Attainment of Goals</u> | 19A NCAC 02D .1110 | 22:06 NCR |
| <u>Performance Related Replacement of Eligible Firms</u> | 19A NCAC 02D .1111 | 22:06 NCR |
| <u>Replacement of a Firm Removed by Decertification</u> | 19A NCAC 02D .1112 | 22:06 NCR |

DENTAL EXAMINERS, BOARD OF

| | | |
|---|--------------------|-----------|
| <u>Location</u> | 21 NCAC 16A .0104 | 22:08 NCR |
| <u>Time for Filing</u> | 21 NCAC 16B .0402 | 22:08 NCR |
| <u>Temporary Volunteer Dental Permit</u> | 21 NCAC 16B .0801* | 22:08 NCR |
| <u>Time for Filing</u> | 21 NCAC 16C .0402 | 22:08 NCR |
| <u>Applications</u> | 21 NCAC 16I .0101* | 22:08 NCR |
| <u>Penalty/Non-Compliance/Continuing Education Requirement</u> | 21 NCAC 16I .0105* | 22:08 NCR |
| <u>Fee for Late Filing and Duplicate Licenses</u> | 21 NCAC 16I .0106 | 22:08 NCR |
| <u>License Void Upon Failure to Renew</u> | 21 NCAC 16I .0107 | 22:08 NCR |
| <u>Sterilization</u> | 21 NCAC 16J .0103* | 22:08 NCR |
| <u>General Anesthesia Credentials and Permit Applications</u> | 21 NCAC 16Q .0201 | 22:08 NCR |
| <u>Fee for Late Filing</u> | 21 NCAC 16R .0101* | 22:08 NCR |
| <u>Fee for Late Filing</u> | 21 NCAC 16R .0102 | 22:08 NCR |
| <u>Penalty/Non-Compliance/Continuing Education</u> | 21 NCAC 16R .0107* | 22:08 NCR |
| <u>Eligibility to Practice Hygiene Outside Direct Supervision</u> | 21 NCAC 16Z .0101* | 22:08 NCR |
| <u>Record Keeping</u> | 21 NCAC 16Z .0102* | 22:08 NCR |
| <u>Inspections</u> | 21 NCAC 16Z .0103* | 22:08 NCR |

MEDICAL BOARD

| | | | | | |
|--|----|------|-----|--------|-----------|
| <u>Ten-Year Qualification</u> | 21 | NCAC | 32B | .1207* | 22:06 NCR |
| <u>Administration of Vaccines by Pharmacists</u> | 21 | NCAC | 32U | .0101* | 22:08 NCR |

PHARMACY, BOARD OF

| | | | | | |
|--|----|------|----|--------|-----------|
| <u>Administration of Vaccines by Pharmacists</u> | 21 | NCAC | 46 | .2507* | 22:08 NCR |
|--|----|------|----|--------|-----------|

STATE PERSONNEL COMMISSION

| | | | | | |
|--|----|------|-----|--------|--------------------|
| <u>Content and Procedure</u> | 25 | NCAC | 01B | .0201* | n/a G.S. 150B-21.5 |
| <u>Presentations</u> | 25 | NCAC | 01B | .0204* | n/a G.S. 150B-21.5 |
| <u>Requests for Declaratory Ruling</u> | 25 | NCAC | 01B | .0213* | n/a G.S. 150B-21.5 |
| <u>Continuances</u> | 25 | NCAC | 01B | .0439* | n/a G.S. 150B-21.5 |
| <u>Policy</u> | 25 | NCAC | 01N | .0501 | 22:06 NCR |
| <u>Administration</u> | 25 | NCAC | 01N | .0502 | 22:06 NCR |
| <u>Wellness Leader</u> | 25 | NCAC | 01N | .0503 | 22:06 NCR |
| <u>Wellness Committees</u> | 25 | NCAC | 01N | .0504 | 22:06 NCR |

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 06R .0501 PLANNING PROGRAM ACTIVITIES

(a) Enrollment Policies and Procedures

- (1) Each adult program shall have enrollment policies. Enrollment policies shall be in writing as a part of the program policies and shall define the population served. These policies serve as the basis for determining who shall be accepted into the program and for planning activities appropriate for the participants. The policies shall be specific to prevent enrolling people whose needs cannot be met by the planned activities and shall provide for discharge of participants whose needs can no longer be met or who can no longer be cared for safely. If a day care program serves semi-ambulatory or non-ambulatory persons, it shall be so stated in the admissions criteria.
- (2) Prior to enrollment, the applicant, family members or other caregiver shall have a minimum of one personal interview with a minimum of one program staff member. During the interview, the staff shall complete initial documentation identifying social and medical care needs, any designated spiritual, religious or cultural needs, and a determination of whether the program can meet the individual's expressed needs. The staff person doing the interviewing shall sign the determination of needs and the applicant,

- (3) family member or other caregiver shall sign the application for enrollment. These signed documents shall be obtained before the individual's first day of attendance as a participant in the program.
- (4) A medical examination report signed by a physician, nurse practitioner or physician's assistant, completed within the prior three months, shall be obtained by the program within 30 days of enrollment. This report must be updated annually no later than the anniversary date of the initial report.
- (5) At enrollment, or in the initial interview, the program policies shall be discussed with the applicant, family member or other caregiver and a copy of the program policies shall be provided.
- (6) Documentation of receipt of and agreement to abide by the program policies by the applicant, family member or other caregiver shall be obtained by the program and kept in the participant's file.
- (7) The program policies shall contain:
 - (A) a discharge policy outlining the criteria for discharge and notification procedures for discharge, the timeframe and procedures for notifying the applicant, family member or other caregiver of discharge, and referral or follow-up procedures;
 - (B) a medication policy as specified in Rule .0505 of this Section;
 - (C) a description of participant's rights;

- (D) grievance policies and procedures for families;
 - (E) advance directives policy;
 - (F) non-discrimination policies;
 - (G) procedure to maintain confidentiality;
 - (H) policy on reporting suspected abuse or neglect;
 - (I) description of the geographical area served by the program; and
 - (J) inclement weather policies.
- (b) Planning Services for Individual Participants
- (1) Within 30 days of enrollment of a new participant, the program shall perform a comprehensive assessment and written service plan for each individual. The assessment shall address the individual's ability to perform activities of daily living and instrumental activities of daily living while in the program. The mental, social, living environment, economic and physical health status of the individual shall also be assessed. The service plan shall be signed and dated by the program director or the director's designee. For adult day health participants the health component of the service plan shall be written and signed by a registered nurse.
 - (2) In developing the written service plan, the program shall include input from the participant, family members, or other caregiver and other agency professionals with knowledge of the individual's needs. The service plan shall be based on strengths, needs and abilities identified in the assessment. The assessment and service plan shall be reviewed at regular intervals, and no less than once every six months. The service plan shall include:
 - (A) the needs and strengths of the participant;
 - (B) the interests of the participant;
 - (C) the measurable service goals and objectives of care for the participant while in the day care program;
 - (D) the type of interventions to be provided by the program in order to reach desired outcomes;
 - (E) the services to be provided by the program to achieve the goals and objectives;
 - (F) the roles of participant, family, caregiver, volunteers and program staff; and
 - (G) the time limit for the plan, with provision for review and renewal.
 - (3) Progress notes in the participant's record shall be updated at least every three months.
 - (4) The participant, caregiver, and other service providers may contribute to the development, implementation and evaluation of the service plan.
- (5) Any unusual behavior, change in mood, change in attitude or need for help or services shall be reported by the program. If the participant is a social services client, the report shall be made to the participant's family, caregiver, or responsible party and the department of social services worker or the social worker designated as consultant to the day care program by the department. If the participant is not a social services client, the report shall be made to the person's family, caregiver or responsible party. A note shall be made in the participant's record of action taken.
 - (6) The participant or the responsible party may choose the days and number of days the participant will attend, with the program director's approval.
 - (7) The reason for any unscheduled participant absence shall be determined by the program staff and documented on the day it occurs. The program shall attempt to contact the absent participant or the responsible party.
 - (8) The adult day care program is responsible for the participant when a participant is registered in attendance. A participant leaving the program for part of a day shall sign out relieving the staff of further responsibility. If a participant has emotional or mental impairment which requires supervision and that person needs or wants to leave the program during the day, the social worker, family, caregiver, friend, or responsible party shall sign the person out.
- (c) Program Activities Plan
- (1) The day care center or home shall have a program activities plan which meets the following criteria:
 - (A) Overall planning of activities are based on elements of the individual service plans.
 - (B) The primary program mode is the group process, both large and small groups, with provision for individual activities and services as needed.
 - (C) Activities are adaptable and modifiable to allow for greater participation and to maintain participant's individual skill level.
 - (D) Activities are consistent with the stated program goals.
 - (E) Activities are planned jointly by staff and participants. Staff shall encourage participants to participate in the planning and operation of the program as much as they are able, and to use their skills, talent and

- knowledge in program planning and operation.
- (F) All program activities are supervised by program staff.
- (G) Participants may refuse to participate in any given activity.
- (2) The activities schedule shall provide for the inclusion of cognitive activities to be available on a daily basis, and be designed to:
 - (A) stimulate thinking and creativity;
 - (B) provide opportunities for learning new ideas and skills;
 - (C) help maintain existing reasoning skills and knowledge base; and
 - (D) provide opportunities to utilize previously learned skills.
- (3) The activities schedule shall provide for the inclusion of physical activities to be available on a daily basis, and be designed to:
 - (A) improve or maintain mobility and overall strength; and
 - (B) increase or maintain joint range of motion.
- (4) The activities schedule shall provide for the inclusion of psychosocial activities to be available on a daily basis, and be designed to:
 - (A) provide opportunities for social interaction;
 - (B) develop a sense of belonging;
 - (C) promote goal-oriented use of time;
 - (D) create feelings of accomplishment;
 - (E) foster dignity and self-esteem;
 - (F) prompt self-expression; and
 - (G) provide fun and enjoyment.
- (5) The activities schedule shall:
 - (A) be in writing, specifying the name of each activity to be provided, the days of the week each activity shall be conducted, and the approximate length of time of each activity;
 - (B) indicate the length of time the schedule is to be followed; and
 - (C) be posted weekly or monthly in a prominent place in the facility.

History Note: Authority G.S. 131D-6; 143B-153; Eff. July 1, 1978; Amended Eff. February 1, 2008; July 1, 2007; July 1, 1990; January 1, 1981.

10A NCAC 06R .0502 NUTRITION

(a) An adult day program shall provide a midday meal to each participant in attendance. The meal shall provide at least one-third of an adult's daily nutritional requirement as specified by the United States Department of Agriculture, Dietary Guidelines for Americans, which are incorporated by reference, including any subsequent amendments or additions to these guidelines. These guidelines may be viewed and downloaded

from the Internet at <http://www.health.gov/dietaryguidelines/>. A licensed dietician/nutritionist shall approve the menu.

- (b) An adult day program shall offer snacks and fluids to meet the participant's nutritional and fluid needs. The adult day program shall offer a mid-morning and mid-afternoon snack daily to participants. Snacks shall be planned to keep sugar, salt and cholesterol intake to a minimum.
- (c) An adult day program shall provide a therapeutic diet, if prescribed in writing by a physician, physician's assistant or nurse practitioner for any participant. If therapeutic diets are prepared by program staff, such staff shall have training in planning and preparing therapeutic diets or shall provide documentation of previous training and education sufficient to assure ability to prepare meals in accordance with a physician's prescription.
- (d) A licensed dietician/nutritionist shall give consultation to the staff on basic and special nutritional needs and proper food handling techniques and the prevention of foodborne illness.
- (e) An adult day care program shall neither admit nor continue to serve a participant whose dietary requirements cannot be accommodated by the program.
- (f) An adult day program shall store, prepare and serve meals in a sanitary manner using safe food handling techniques such as those recommended by the United States Department of Agriculture, at the following website: (http://www.fsis.usda.gov/Fact_Sheets/Safe_Food_Handling_Fact_Sheets/index.asp). The food service provider shall abide by the food safety and sanitation practices required by the Commission for Public Health rules applying to adult day care facilities, including any subsequent amendments or additions, which are incorporated by reference. Copies of the rules may be found at the following website: (<http://www.deh.enr.state.nc.us/ehs/images/rules/t15a-18a.33.pdf>).

History Note: Authority G.S. 131D-6; 143B-153; Eff. July 1, 1978; Amended Eff. February 1, 2008; July 1, 2007; March 1, 1992; October 1, 1981; January 1, 1981.

10A NCAC 06R .0503 TRANSPORTATION

- (a) For programs providing or arranging for public transportation, the adult day care program shall have a transportation policy that includes routine and emergency procedures. Accidents, medical emergencies, weather emergencies and escort issues shall be addressed.
- (b) When the adult day care program provides transportation, the following requirements shall be met to ensure the health and safety of the participants:
 - (1) Each person transported shall have a seat in the vehicle.
 - (2) Participants shall be transported no more than 30 minutes without being offered the opportunity to have a rest stop.
 - (3) Vehicles used to transport participants shall be equipped with seatbelts. Participants shall be instructed to use seatbelts while being transported.

- (4) Vehicles shall be equipped with a first aid kit, consisting of the items listed in 10A NCAC 06S .0301(a), and a fire extinguisher.
- (5) A copy of the transportation policy shall be located in the vehicle used for transport.

History Note: Authority G.S. 131D-6; 143B-153; Eff. July 1, 1978; Amended Eff. January 1, 1981; Temporary Amendment Eff. October 1, 2001; Amended Eff. February 1, 2008; July 1, 2007; August 1, 2002.

10A NCAC 06R .0508 RECORDS

(a) Individual Participant Records. Each adult day care program shall maintain records to document the progress of each participant and to document program operation. These records shall be kept in a locked file. An individual folder for each participant shall be established and maintained and include the following:

- (1) a signed application recording:
 - (A) participant's full name;
 - (B) address and telephone number;
 - (C) date of birth, marital status and living arrangement of participant;
 - (D) time of day participant will arrive and time of day participant will leave the program;
 - (E) travel arrangements to and from the program for the participant;
 - (F) name, address and telephone number of at least two family members or friends who are responsible for the participant and can be contacted in emergencies;
 - (G) name, address and telephone number of a licensed medical service provider who will see the participant on request; and
 - (H) personal concerns and knowledge of the caregiver that may have an impact on the participant's care plan.
- (2) copies of all current and former signed authorizations for the day care program to receive and give out confidential information on the participant. The current authorization shall include the name of the party from whom information is requested and to whom information is given. The current authorization shall be dated within the prior 12 months and obtained each time a request for participant information is made.
- (3) a signed authorization for the participant to receive emergency medical care from any licensed medical practitioner, if emergency care is needed by the participant;
- (4) a medical examination report conducted within three months before enrollment and updated annually, signed by a licensed physician,

physician's assistant or nurse practitioner. The report shall include information on:

- (A) current diseases and chronic conditions and the degree to which these diseases and conditions require observation by day care staff, and restriction of normal activities by the participant;
- (B) presence and degree of psychiatric problems;
- (C) amount of direct supervision the participant requires;
- (D) any limitations on physical activities;
- (E) listing of all medications with dosages and times medications are to be administered; and
- (F) most recent date participant was seen by doctor.

- (5) assessment forms as identified in Rule .0501(a)(2) and (b)(1) and (b)(2) of this Section.
- (6) progress notes which are the written report of staff discussions, conferences, consultation with family or other interested parties, evaluation of a participant's progress and any other information regarding a participant's situation.
- (7) service plans for the participant, including scheduled days of attendance, for the preceding 12 months.
- (8) a signed authorization if the participant or his responsible party will permit photographs, video, audio recordings or slides of the participant to be made by the day care program, whether for medical documentation, publicity, or any other purpose. The authorization shall specify how and where such photographs, videos, audio recordings or slides will be used, and shall be obtained prior to taking any photographs, videos, audio recordings or slides of the participant.
- (9) a statement signed by the participant, a family member or other responsible party (when applicable) acknowledging receipt of the program policies and agreeing to uphold program policies pertaining to the participant.

(b) The adult day program shall keep the following program records a minimum of six years:

- (1) copies of activity schedules;
- (2) monthly records of expenses and income, including fees collected, and fees to be collected;
- (3) all bills, receipts and other information which document expenses and income;
- (4) a daily record of attendance of participants by name;
- (5) accident reports;

- (6) a record of staff absences, annual leave and sick leave, including dates and names of substitutes;
- (7) reports on emergency and fire drills;
- (8) individual personnel records on all staff members including:
 - (A) application for employment;
 - (B) evidence of a state criminal history check on each employee providing direct care;
 - (C) job description;
 - (D) medical certification of absence of a health condition that would pose a risk to others;
 - (E) written note or report on any personnel action taken with the employee;
 - (F) written report of annual employee review;
 - (G) CPR and first aid training documentation; and
 - (H) signed statement to keep all participant information confidential.
- (9) a copy of all written policies, including:
 - (A) program policies;
 - (B) personnel policies;
 - (C) agreements or contracts with other agencies or individuals;
 - (D) plan for emergencies; and
 - (E) evacuation plan;
- (10) program evaluation reports; and
- (11) control file of DSS-5027 (SIS Client Entry Form) for all participants for whom Social Services Block Grant (Title XX) reimbursement is claimed.

- (3) "Computed tomography (CT) scanner" means an imaging machine which combines the information generated by a scanning X-ray source and detector system with a computer to reconstruct a cross-sectional image of the full body, including the head.
- (4) "Computed tomography (CT) service area" means a geographical area defined by the applicant from which the applicant projects to serve patients.
- (5) "CT scan" means one discrete image of a patient produced by a CT scanner.
- (6) "Existing CT scanner" means a computed tomography scanner in operation prior to the beginning of the review period.
- (7) "Fixed CT scanner" means a CT scanner that is used at only one location or campus.
- (8) "HECT unit" means a unit that is equivalent to one CT scan which is derived by applying a weighted conversion factor to a CT scan in accordance with the Head Equivalent Computed Tomography studies formula developed by the National Electric Manufacturers, based on the "Leonard Methodology".
- (9) "Mobile CT scanner" means a CT scanner and transporting equipment which is moved to provide services at two or more host facilities.
- (10) "Related entity" means the parent company of the applicant, a subsidiary company of the applicant (i.e., the applicant owns 50 percent or more of another company), a joint venture in which the applicant is a member, or a company that shares common ownership with the applicant (i.e., the applicant and another company are owned by some of the same persons).

History Note: Authority G.S. 131D-6; 143B-153; Eff. July 1, 1978; Amended Eff. February 1, 2008; July 1, 2007; March 1, 1992; July 1, 1990; January 1, 1981.

10A NCAC 14C .2301 DEFINITIONS

The following definitions shall apply to all rules in this Section:

- (1) "Approved computed tomography (CT) scanner" means a CT scanner which was not operational prior to the beginning of the review period but which had been issued a certificate of need.
- (2) "Computed tomography" means a technique whereby a sharply collimated X-ray beam is passed through the human body from a source which rotates around the body in a specific arc. As the beam passes through the body from its perimeter, its intensity is reduced. The transmitted intensity of the beam varies in accordance with the density of the tissue it passes through and is measured by sensitive

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. February 1, 1994; Amended Eff. February 1, 2008.

10A NCAC 14C .2302 INFORMATION REQUIRED OF APPLICANT

- (a) An applicant proposing to acquire a CT scanner shall use the acute care facility/medical equipment application form.
- (b) An applicant proposing to acquire a CT scanner shall provide the number of CT scans that have been performed on

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each existing CT scanner which the applicant or a related entity owns a controlling interest in and is located in the proposed CT service area for each type of CT scan listed in this Paragraph for the previous 12 month period:

- (1) head scan without contrast;
- (2) head scan with contrast;
- (3) head scan without and with contrast;
- (4) body scan without contrast;
- (5) body scan with contrast;
- (6) body scan without contrast and with contrast;
- (7) biopsy in addition to body scan with or without contrast; and
- (8) abscess drainage in addition to body scan with or without contrast.

(c) The applicant shall project the number of CT scans to be performed on the proposed CT scanner for each type of CT scan

listed in this Paragraph for each of the first three years the new CT scanner is proposed to be operated:

- (1) head scan without contrast;
- (2) head scan with contrast;
- (3) head scan without and with contrast;
- (4) body scan without contrast;
- (5) body scan with contrast;
- (6) body scan without contrast and with contrast;
- (7) biopsy in addition to body scan with or without contrast; and
- (8) abscess drainage in addition to body scan with or without contrast.

(d) The applicant shall convert the historical and projected number of CT scans to HECT units as follows:

| | Type of CT Scan | No. of Scans | | Conversion Factor | | HECT Units |
|---|--|--------------|---|-------------------|---|------------|
| 1 | Head without contrast | | X | 1.00 | = | |
| 2 | Head with contrast | | X | 1.25 | = | |
| 3 | Head without and with contrast | | X | 1.75 | = | |
| 4 | Body without contrast | | X | 1.50 | = | |
| 5 | Body with contrast | | X | 1.75 | = | |
| 6 | Body without contrast and with contrast | | X | 2.75 | = | |
| 7 | Biopsy in addition to body scan with or without contrast | | X | 2.75 | = | |
| 8 | Abscess drainage in addition to body scan with or without contrast | | X | 4.00 | = | |

(e) An applicant proposing to acquire a mobile CT scanner shall provide the information requested in Paragraphs (b), (c), and (d) of this Rule for each proposed host facility.

(f) The applicant shall provide projected charges for each of the 20 most frequent CT scans to be performed for each of the first three years the new CT scanner is proposed to be operated.

(g) If an applicant that has been utilizing a mobile CT scanner proposes to acquire a fixed CT scanner for its facility, the applicant shall demonstrate that its projected charge per CPT code shall not increase more than 10 percent over its current charge per CPT code on the mobile CT scanner.

(h) An applicant proposing to acquire a mobile CT scanner shall provide copies of letters of intent from and proposed contracts with all of the proposed host facilities of the new CT scanner.

(i) An applicant proposing to acquire a CT scanner shall demonstrate that it has a written commitment from a radiologist, licensed to practice medicine in North Carolina, to provide professional interpretation services for the applicant.

(j) An applicant proposing to acquire a CT scanner shall demonstrate that the CT scanner shall be available and staffed for performing CT scan procedures at least 66 hours per week.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. February 1, 1994; Amended Eff. February 1, 2008.

10A NCAC 14C .2303 PERFORMANCE STANDARDS

An applicant proposing to acquire a CT scanner shall demonstrate each of the following:

- (1) each fixed or mobile CT scanner to be acquired shall be projected to perform 5,100 HECT units annually in the third year of operation of the proposed equipment;
- (2) each existing fixed or mobile CT scanner which the applicant or a related entity owns a controlling interest in and is located in the applicant's CT service area shall have performed at least 5,100 HECT units in the 12 month period prior to submittal of the application; and
- (3) each existing and approved fixed or mobile CT scanner which the applicant or a related entity owns a controlling interest in and is located in the applicant's CT service area shall be projected to perform 5,100 HECT units annually in the third year of operation of the proposed equipment.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. February 1, 1994;

Amended Eff. February 1, 2008.

10A NCAC 14C .2304 SUPPORT SERVICES

(a) With the exception of applicants that currently provide CT services, an applicant proposing to acquire a CT scanner shall document the availability of the following diagnostic services:

- (1) diagnostic radiology services;
(2) therapeutic radiology services;
(3) nuclear medicine services; and
(4) diagnostic ultrasound services.

(b) An applicant proposing to acquire a mobile CT scanner shall provide:

- (1) referral agreements between each host site and at least one other provider of CT services in the proposed CT service area to document the availability of CT services if patients require them when the mobile unit is not in service at that host site; and
(2) documentation that each of the services listed in Paragraphs (a) and (b) of this Rule shall be available at each host facility or shall be available through written affiliation or referral agreements.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. February 1, 1994; Amended Eff. February 1, 2008.

10A NCAC 14C .2305 STAFFING AND STAFF TRAINING

(a) With the exception of applicants that currently provide CT services, an applicant proposing to acquire a CT scanner shall demonstrate that it can meet the following staffing requirements:

- (1) one radiologist who is certified by the American Board of Radiologists and has had:
(A) training in computed tomography as an integral part of his or her residency training program; or
(B) six months of supervised CT experience under the direction of a diagnostic radiologist who is certified by the American Board of Radiologists; or
(C) at least six months of fellowship training, or its equivalent, in CT; or
(D) a combination of CT experience and fellowship training equivalent to Parts (a)(1) (A), (B), or (C) of this Rule;
(2) at least one radiology technologist registered by the American Registry of Radiologic Technologists shall be present during the hours of operation of the CT unit; and
(3) a radiation physicist with training in medical physics shall be available for consultation for the calibration and maintenance of the

equipment. The radiation physicist may be an employee or an independent contractor.

(b) With the exception of applicants that currently provide CT services, an applicant proposing to acquire a CT scanner shall demonstrate that the following staff training is provided to clinical personnel:

- (1) certification in cardiopulmonary resuscitation (CPR) and basic cardiac life support; and
(2) an organized program of staff education and training which is integral to the services program and ensures improvements in technique and the proper training of new personnel.

(c) An applicant proposing to acquire a mobile CT scanner shall document that the requirements in Paragraphs (a) and (b) of this Rule shall be met at each host facility.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. February 1, 1994; Amended Eff. February 1, 2008.

10A NCAC 43D .0706 AUTHORIZED WIC VENDORS

(a) Vendor applicants and authorized vendors shall be placed into peer groups as follows:

- (1) When annual WIC supplemental food sales are not yet available, vendor applicants and authorized vendors, excluding chain stores, stores under a WIC corporate agreement, military commissaries, predominantly WIC vendors, and free-standing pharmacies, shall be placed into peer groups based on the number of cash registers in the store until six months WIC supplemental food sales become available. The following are the peer groups based on the number of cash registers in the store:
Peer Group I - - zero to two cash registers;
Peer Group II - - three to five cash registers; and
Peer Group III - - six or more cash registers.

WIC sales figures of new vendors shall be reviewed six months from authorization. A vendor whose first six months of WIC sales exceed twenty five thousand dollars (\$25,000) shall be placed in the peer group designation in accordance with the dollar thresholds of Subparagraph (a)(2) of this Rule.

- (2) Authorized vendors for which annual WIC supplemental food sales is available, excluding chain stores, stores under a WIC corporate agreement, military commissaries, predominantly WIC vendors, and free-

standing pharmacies, shall be placed into peer groups as follows, except as provided in Subparagraph (a)(8) of this Rule.

Peer Group I - - two thousand dollars (\$2,000) to twenty five thousand dollars (\$25,000) annually in WIC supplemental food sales at the store;

Peer Group II - - greater than twenty five thousand dollars (\$25,000) but not exceeding seventy five thousand dollars (\$75,000) annually in WIC supplemental food sales at the store;

Peer Group III - - greater than seventy five thousand dollars (\$75,000) but not exceeding three hundred thousand dollars (\$300,000) annually in WIC supplemental food sales at the store; and

Peer Group IV - - greater than three hundred thousand dollars (\$300,000) annually in WIC supplemental food sales at the store;

- (3) Chain stores, stores under a WIC corporate agreement (20 or more authorized vendors under one agreement), military commissaries, predominantly WIC vendors, and free-standing pharmacies, including free-standing pharmacy chain stores and free-standing pharmacies participating under a WIC corporate agreement, shall be placed into peer groups as follows:

Peer Group IV - - chain stores, stores under a WIC corporate agreement (20 or more authorized vendors under one agreement), military commissaries, and predominantly WIC vendors; and Peer Group V - - free-standing pharmacies, including free-standing pharmacy chain stores and free-standing pharmacies participating under a WIC corporate agreement;

- (4) Annual WIC supplemental food sales is the dollar amount in sales of WIC supplemental foods at the store within a 12-month period.
- (5) If a vendor applicant has at least 30 percent ownership in the applying store and at least 30 percent ownership in a store(s) already authorized, the applying store shall be placed in the peer group of the highest designation of the already authorized stores(s). Upon reauthorization of the WIC Vendor Agreement, all stores held under common ownership shall be placed in the highest peer group among those held commonly. Common ownership is ownership of 30 percent or more in two or more stores.
- (6) In determining a vendor's peer group designation based on annual WIC supplemental food sales under Subparagraph

(a)(2) of this Rule, the state agency shall look at the most recent 12-month period for which sales data is available. If the most recent available 12-month period of WIC sales data ends more than one year prior to the time of designation, the peer group designation shall be based on the number of cash registers in the store in accordance with Subparagraph (a)(1) of this Rule.

- (7) The state agency may reassess an authorized vendor's peer group designation at any time during the vendor's agreement period and place the vendor in a different peer group if upon reassessment the state agency determines that the vendor is no longer in the appropriate peer group.

- (8) A vendor applicant previously authorized in a peer group under Subparagraph (a)(2) of this Rule that is being reauthorized following the nonrenewal or termination of its Agreement or disqualification from the WIC Program shall be placed into the same peer group the vendor applicant was previously in under Subparagraph (a)(2) of this Rule, provided that no more than one year has passed since the nonrenewal, termination or disqualification. If more than one year has passed, the vendor applicant shall be placed into a peer group in accordance with Subparagraph (a)(1) of this Rule.

(b) To become authorized as a WIC vendor, a vendor applicant shall comply with the following vendor selection criteria:

- (1) A vendor applicant shall accurately complete a WIC Vendor Application, a WIC Price List, and a WIC Vendor Agreement. A vendor applicant shall submit its current highest shelf price for each WIC supplemental food listed on the WIC Price List.

- (2) A vendor applicant, at the time of application and throughout the term of authorization, shall submit all completed forms to the local WIC program, except that a corporate entity operating under a WIC corporate agreement shall submit one completed WIC corporate agreement and the WIC Price Lists to the state agency and a separate WIC Vendor Application for each store to the local WIC agency. A corporate entity operating under a WIC corporate agreement may submit a single WIC Price List for those stores that have the same prices for WIC supplemental foods in each store, rather than submitting a separate WIC Price List for each store.

- (3) A vendor applicant shall agree to purchase all infant formula, exempt infant formula, and WIC-eligible medical food directly from:

(A) Infant formula manufacturers registered with the U.S. Food and Drug Administration;

- (B) Food and drug wholesalers registered with the North Carolina Secretary of State and inspected or licensed by the North Carolina Department of Agriculture and Consumer Services;
- (C) Retail food stores that purchase directly from infant formula manufacturers in accordance with Part (b)(3)(A) of this Rule or an approved wholesaler in accordance with Part (b)(3)(B) of this Rule; or
- (D) A supplier on another state's list of approved infant formula suppliers as verified by the state agency.

Authorized vendors shall agree to make available to the state or local WIC agency, upon request, invoices or receipts documenting purchases of all infant formula, exempt infant formula, and WIC-eligible medical food directly from the above listed sources. Acceptable receipts include company letterhead or name of wholesaler/manufacturer, date(s) of purchase and itemization of purchases reflecting infant formula, exempt infant formula, and WIC-eligible medical food purchases.

- (4) A vendor applicant's current highest shelf price for each WIC supplemental food listed on the WIC Price List must not exceed the maximum price set by the state agency for each supplemental food within that vendor applicant's peer group, except as provided in Part (b)(4)(B) of this Rule.

- (A) The most recent WIC Price Lists submitted by authorized vendors within the same peer group shall be used to determine the maximum price for each supplemental food. The WIC Price Lists of predominantly WIC vendors shall be excluded from the maximum price determination. The maximum price shall be the 97th percentile of the current highest shelf prices for each supplemental food within a vendor peer group. The state agency shall reassess the maximum price set for each supplemental food at least four times a year. For two of its price assessments, the state agency shall use the WIC Price Lists which must be submitted by all vendors by April 1 and October 1 each year in accordance with Subparagraph (c)(30) of this Rule. The other two price assessments shall be based on WIC Price Lists requested from a sample of vendors within each peer group in January and July of each

year. The sample of vendors shall exclude predominantly WIC vendors.

- (B) If any of the vendor applicant's price(s) on its WIC Price List exceed the maximum price(s) set by the state agency for that applicant's peer group, the applicant shall be notified in writing. Within 30 days of the date of the written notice, the vendor applicant may resubmit price(s) that it will charge the state WIC Program for those foods that exceeded the maximum price(s). If none of the vendor applicant's resubmitted prices exceed the maximum prices set by the state agency, the vendor applicant shall be deemed to have met the requirements of Subparagraph (b)(4) of this Rule. If any of the vendor applicant's resubmitted prices still exceed the maximum prices set by the state agency, or the vendor applicant does not resubmit prices within 30 days of the date of written notice, the application shall be denied in writing. The vendor applicant must wait 90 days from the date of receipt of the written denial to reapply for authorization.

- (5) A vendor applicant shall pass a monitoring review by the local WIC program to determine whether the store has minimum inventory of supplemental foods as specified in Subparagraph (c)(23) of this Rule. A vendor applicant who fails this review shall be allowed a second opportunity for an unannounced monitoring review within 14 days. If the applicant fails both reviews, the applicant shall wait 90 days from the date of the second monitoring review before submitting a new application.

- (6) A vendor applicant shall attend, or cause a manager or other authorized store representative to attend, WIC Vendor Training provided by the local WIC Program prior to authorization and ensure that the applicant's employees receive instruction in WIC program procedures and requirements.

- (7) An applicant shall mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case at all times.

- (8) The store shall be located at a permanent and fixed location within the State of North Carolina. The store shall be located at the address indicated on the WIC vendor application and shall be the site at which WIC supplemental foods are selected by the WIC customer.

- (9) The store shall be open throughout the year for business with the public at least six days a week for at least 40 hours per week between 8:00 a.m. and 11:00 p.m.
- (10) The store shall not use either the acronym "WIC" or the WIC logo, including close facsimiles, in total or part, either in the official name in which the business is registered or in the name under which it does business, if different.
- (11) A vendor applicant shall not submit false, erroneous, or misleading information in an application to become an authorized WIC vendor or in subsequent documents submitted to the state or local WIC agency.
- (12) The owner(s), officer(s) or manager(s) of a vendor applicant shall not be employed, or have a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the vendor applicant conducts business. A vendor applicant shall not have an employee who handles, transacts, deposits, or stores WIC food instruments who is employed, or has a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the vendor applicant conducts business.
- (13) WIC vendor authorization shall be denied if in the last six years any of the vendor applicant's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity, including, fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice. For purposes of this Subparagraph, "convicted" or "conviction" means and includes a plea of guilty, a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, adjudicating body, tribunal, or official, either civilian or military, or a plea of no contest, nolo contendere, or the equivalent. Entry of a prayer for judgment continued following a conviction as defined in this Rule is the same as a conviction for purposes of this Subparagraph.
- (14) A vendor applicant shall not be authorized if it is currently disqualified from the Food Stamp Program or it has been assessed a Food Stamp Program civil money penalty for hardship and the disqualification period that otherwise would have been imposed has not expired.
- (15) A vendor applicant, excluding chain stores and stores under a WIC corporate agreement that have a separate manager on site for each store, shall not have an owner who holds a financial interest in any of the following:
 - (A) a Food Stamp vendor which is disqualified from participation in the Food Stamp Program or has been assessed a civil money penalty for hardship in lieu of disqualification and the time period during which the disqualification would have run, had a penalty not been paid, is continuing; or
 - (B) another WIC vendor which is disqualified from participation in the WIC Program or which has been assessed an administrative penalty pursuant to G.S. 130A-22(c1), Paragraph (k), or Paragraph (l) of this Rule as the result of violation of Paragraphs (g), (h)(1)(A), (h)(1)(B), (h)(1)(C), (h)(1)(D) or (h)(2)(D) of this Rule, and if assessed a penalty, the time during which the disqualification would have run, had a penalty not been assessed, is continuing.

The requirements of this Subparagraph shall not be met by the transfer or conveyance of financial interest during the period of disqualification. Additionally, the requirements of this Subparagraph shall not be met even if such transfer or conveyance of financial interest in a Food Stamp vendor under Part (b)(15)(A) of this Subparagraph prematurely ends the disqualification period applicable to that Food Stamp vendor. The requirements of this Subparagraph shall apply until the time the Food Stamp vendor disqualification otherwise would have expired.
- (16) A vendor applicant, excluding free-standing pharmacies, must have Food Stamp Program authorization for the store as a prerequisite for WIC vendor authorization and must provide its Food Stamp Program authorization number to the state agency.
- (17) A vendor applicant shall not become authorized as a WIC vendor if the store has been disqualified from participation in the WIC Program and the disqualification period has not expired.
- (c) By signing the WIC Vendor Agreement, the vendor agrees to:
 - (1) Process WIC program food instruments in accordance with the terms of this agreement, state and federal WIC program rules, and applicable law;
 - (2) Accept WIC program food instruments in exchange for WIC supplemental foods. Supplemental foods are those foods which

- satisfy the requirements of 10A NCAC 43D .0501;
- (3) Provide only the authorized supplemental foods listed on the food instrument, accurately determine the charges to the WIC program, and complete the "Pay Exactly" box on the food instrument prior to obtaining the countersignature of the WIC customer. The WIC customer is not required to get all of the supplemental foods listed on the food instrument;
 - (4) Enter in the "Pay Exactly" box on the food instrument only the total amount of the current shelf prices, or less than the current shelf prices, for the supplemental food actually provided and shall not charge or collect sales taxes for the supplemental food provided;
 - (5) Charge no more for supplemental food provided to a WIC customer than to a non-WIC customer or no more than the current shelf price, whichever is less;
 - (6) Accept payment from the state WIC Program only up to the maximum price set by the state agency for each food instrument within that vendor's peer group. The maximum price for each food instrument shall be based on the maximum prices set by the state agency for each supplemental food, as described in Part (b)(4)(A) of this Rule, listed on the food instrument. A food instrument deposited by a vendor for payment which exceeds the maximum price shall be paid at the maximum price set by the state agency for that food instrument. Payment to predominantly WIC vendors for a food instrument shall not exceed the statewide average for that food instrument. This average excludes data from predominantly WIC vendors;
 - (7) Not charge the state WIC Program more than the maximum price set by the state agency under Part (b)(4)(A) of this Rule for each supplemental food within the vendor's peer group;
 - (8) For non-contract brand milk-based and soy-based infant formulas, excluding exempt infant formulas, accept payment from the state WIC Program only up to the maximum price established for contract brand infant formulas under Part (b)(4)(A) of this Rule for the vendor's peer group;
 - (9) For free-standing pharmacies, provide only infant formula and WIC-eligible medical foods;
 - (10) Excluding free-standing pharmacies, redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales. Failure to redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales shall result in termination of the WIC Vendor Agreement. The store must wait 180 days to reapply for authorization;
 - (11) Accept WIC program food instruments only on or between the "Date of Issue" and the "Participant Must Use By" dates;
 - (12) Prior to obtaining the countersignature, enter in the "Date Transacted" box the month, day and year the WIC food instrument is exchanged for supplemental food;
 - (13) Ensure that the food instrument is countersigned in the presence of the cashier;
 - (14) Refuse acceptance of any food instrument on which quantities, signatures or dates have been altered;
 - (15) Not transact food instruments in whole or in part for cash, credit, unauthorized foods, or non-food items;
 - (16) Not provide refunds or permit exchanges for authorized supplemental foods obtained with food instruments, except for exchanges of an identical authorized supplemental food when the original authorized supplemental food is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food. An identical authorized supplemental food means the exact brand, type and size as the original authorized supplemental food obtained and returned by the WIC customer;
 - (17) Imprint the authorized WIC vendor stamp in the "Pay the Authorized WIC Vendor Stamped Here" box on the face of the food instrument to enable the vendor number to be read during the Program editing process;
 - (18) Imprint the vendor's bank deposit stamp or the vendor's name, address and bank account number in the "Authorized WIC Vendor Stamp" box in the endorsement;
 - (19) Promptly deposit WIC program food instruments in the vendor's bank. All North Carolina WIC program food instruments must be deposited in the vendor's bank within 60 days of the "Date of Issue" on the food instrument;
 - (20) Ensure that the authorized WIC vendor stamp is used only for the purpose and in the manner authorized by this agreement and assume full responsibility for the unauthorized use of the authorized WIC vendor stamp;
 - (21) Maintain storage so only the staff designated by the vendor owner or manager have access to the authorized WIC vendor stamp and immediately report loss of this stamp to the local agency;
 - (22) Notify the local WIC agency of misuse (attempted or actual) of the WIC program food instrument(s);
 - (23) Maintain a minimum inventory of supplemental foods in the store for purchase.

APPROVED RULES

Supplemental foods that are outside of the manufacturer's expiration date do not count towards meeting the minimum inventory requirement. The following items and sizes constitute the minimum inventory of supplemental foods for vendors in Peer Groups

I through III of Subparagraph (a)(1) of this Rule, vendors in Peer Groups I through IV of Subparagraph (a)(2) of this Rule and vendors in Peer Group IV of Subparagraph (a)(3) of this Rule:

| Food Item | Type of Inventory | Quantities Required |
|----------------------|---|--------------------------------------|
| Milk | Whole fluid: gallon | Total of 6 gallons fluid milk |
| | -and- | |
| | Skim/lowfat fluid: gallon | |
| | Nonfat dry: quart package | Total of 5 quarts when reconstituted |
| | -or- | |
| | Evaporated: 12 ounce can | 5 cans |
| Cheese | 2 varieties in 8 or 16 ounce package | Total of 6 pounds |
| Cereals | 4 types (minimum package size 12 ounce) | Total of 12 packages |
| Eggs | Grade A, large or extra-large: white or brown: one dozen size carton | 6 dozen |
| Juices | Frozen: 11.5-12 ounce container | 10 containers |
| | Single strength: 46 ounce container | 10 containers |
| | Orange juice must be available in frozen and single strength. A second flavor must be available in frozen or single strength. | |
| Dried Peas and Beans | 2 varieties: one pound package or | 3 packages |
| Peanut Butter | Plain (smooth, crunchy, or whipped; No reduced fat): 18 ounce container | 3 containers |
| Infant Cereal | Plain-no fruit added: 2 cereal grains (one must be rice); 8- ounce box; brand specified in Vendor Agreement | 6 boxes |
| Infant Formula | milk-based concentrate; 13 ounce | 31 cans |
| | -and- | |
| | soy-based concentrate; 13 ounce | 15 cans |
| | -and- | |
| | milk-based powder; 12 – 14.3 ounce | 9 cans |
| | -and- | |
| | soy-based powder; | 4 cans |

APPROVED RULES

| | | |
|---------|---|-----------------|
| | 12 – 14.3 ounce Brand specified in Vendor Agreement | |
| Tuna | Chunk light in water: 6-6.5 ounce can | 4 cans |
| Carrots | Raw, canned or frozen 14.5-16 ounce size | 2 packages/cans |

All vendors in Peer Groups I through III of Subparagraph (a)(1) of this Rule, Peer Groups I through IV of Subparagraph (a)(2) of this Rule and Peer Groups IV and V of Subparagraph (a)(3) of this Rule shall supply milk or soy-based infant formula in 32 ounce ready-to-feed or lactose-free infant formula in 32 ounce ready-to-feed or powder within 48 hours of request by the state or local WIC agency;

- | | | | |
|------|---|------|---|
| (24) | Ensure that all supplemental foods in the store for purchase are within the manufacturer's expiration date; | (31) | Reimburse the state agency within 30 days of written notification of a claim assessed due to a vendor violation that affects payment to the vendor or a claim assessed due to the unauthorized use of the authorized WIC vendor stamp. The state agency shall deny payment or assess a claim in the amount of the full purchase price of each food instrument rendered invalid under Subparagraphs (a)(2), (a)(5), (a)(6) or (a)(7) of Rule .0704 of this Section. Denial of payment by the state agency or payment of a claim by the vendor for a vendor violation(s) shall not absolve the vendor of the violation(s). The vendor shall also be subject to any vendor sanctions authorized under this Rule for the vendor violation(s); |
| (25) | Permit the purchase of supplemental food without requiring other purchases; | | |
| (26) | Attend, or cause a manager or other authorized store representative to attend, annual vendor training class upon notification of class by the local agency; | | |
| (27) | Inform and train vendor's cashiers and other staff on WIC Program requirements; | | |
| (28) | Be accountable for the actions of its owners, officers, managers, agents, and employees who commit vendor violations; | | |
| (29) | Allow monitoring and inspection of the store premises and procedures to ensure compliance with the agreement and state and federal WIC Program rules, regulations and statutes. This includes allowance of access to all WIC food instruments at the store, vendor records pertinent to the purchase and sale of WIC supplemental foods, including invoices, copies of purchase orders, and any other proofs of purchase, federal and state corporate and individual income tax and sales and use tax returns and all records pertinent to these returns, and books and records of all financial and business transactions. These records must be retained by the vendor for a period of three years or until any audit pertaining to these records is resolved, whichever is later. Failure or inability to provide these records or providing false records for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and Subparagraph (g)(1) of this Rule; | (32) | Not seek restitution from the WIC customer for reimbursement paid by the vendor to the state agency or for WIC food instruments not paid or partially paid by the state agency. Additionally, the vendor shall not charge the WIC customer for authorized supplemental foods obtained with food instruments; |
| | | (33) | Not contact a WIC customer outside the store regarding the transaction or redemption of WIC food instruments; |
| | | (34) | Notify the local WIC agency in writing at least 30 days prior to a change of ownership, change in location, cessation of operations, or withdrawal from the WIC Program. Change of ownership, change in location of more than three miles from the vendor's previous location, cessation of operations, withdrawal from the WIC Program or disqualification from the WIC Program shall result in termination of the WIC Vendor Agreement by the state agency. Change of ownership, change in location, ceasing operations, withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement shall not stop a disqualification period applicable to the store; |
| (30) | Submit a current accurately completed WIC Price List when signing this agreement, and by April 1 and October 1 of each year. The vendor also agrees to submit a WIC Price List within one week of any written request by the state or local WIC agency. Failure to submit a WIC Price List as required by this Subparagraph within 30 days of the required submission date shall result in disqualification of the vendor from the WIC Program in accordance with Part (h)(1)(D) of this Rule; | (35) | Return the authorized WIC vendor stamp to the local WIC agency upon termination of this agreement or disqualification from the WIC Program; |

- (36) Offer WIC customers the same courtesies as offered to other customers;
 - (37) Not provide incentive items to WIC customers unless each incentive item is less than two dollars (\$2.00) in cost to the vendor in accordance with federal regulations. If incentive items are offered to WIC customers, no more than one incentive item per visit is permitted. Vendors shall not provide to WIC customers transportation to or from the vendor's premises, delivery of supplemental foods, lottery tickets, nor cash gifts. The limitations of this Subparagraph apply only to predominantly WIC vendors;
 - (38) Reapply to continue to be authorized beyond the period of its current WIC Vendor Agreement. Additionally, a store must reapply to become authorized following the expiration of a disqualification period or termination of the Agreement. In all cases, the vendor applicant shall be subject to the vendor selection criteria of Paragraph (b) of this Rule; and
 - (39) Comply with all the requirements for vendor applicants of Subparagraphs (b)(4) and (b)(7) through (b)(16) of this Rule throughout the term of authorization. The state agency may reassess a vendor at any time during the vendor's period of authorization to determine compliance with these requirements. The state agency shall terminate the WIC Vendor Agreement of any vendor that fails to comply with Subparagraphs (b)(4), (b)(8), (b)(9), (b)(12), (b)(13) or (b)(15) of this Rule during the vendor's period of authorization, and terminate the Agreement of or sanction or both any vendor that fails to comply with Subparagraphs (b)(7), (b)(11), (b)(14) or (b)(16) of this Rule during the vendor's period of authorization.
- (d) By signing the WIC Vendor Agreement, the local agency agrees to the following:
- (1) Provide annual vendor training classes on WIC procedures and rules;
 - (2) Monitor the vendor's performance under this agreement to ensure compliance with the agreement, state and federal WIC program rules, regulations, and applicable law. A minimum of one-third of all authorized vendors shall be monitored within a contract year (October 1 through September 30) and all vendors shall be monitored at least once within three consecutive contract years. Any vendor shall be monitored within one week of written request by the state agency;
 - (3) Provide vendors with the North Carolina WIC Vendor Manual, all Vendor Manual amendments, blank WIC Price Lists, and the authorized WIC vendor stamp indicated on the signature page of the WIC Vendor Agreement;
 - (4) Assist the vendor with questions which may arise under this agreement or the vendor's participation in the WIC Program; and
 - (5) Keep records of the transactions between the parties under this agreement pursuant to 10A NCAC 43D .0206.
- (e) In order for a food retailer or free-standing pharmacy to participate in the WIC Program a current WIC Vendor Agreement must be signed by the vendor, the local WIC agency, and the state agency.
- (f) If an application for status as an authorized WIC vendor is denied, the applicant is entitled to an administrative appeal as described in Section .0800 of this Subchapter.
- (g) Title 7 C.F.R. 246.12(l)(1)(i) through (vi) and (xii) are incorporated by reference with all subsequent amendments and editions. In accordance with 7 CFR 246.12(l)(1)(i), the state agency shall not allow imposition of a civil money penalty in lieu of disqualification for a vendor permanently disqualified. A pattern, as referenced in 7 CFR 246.12 (l)(1)(iii)(B) through (F) and 246.12(l)(1)(iv), shall be established as follows:
- (1) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for six or more days within a 60-day period. The six or more days do not have to be consecutive days within the 60-day period. Failure or inability to provide records or providing false records required under Subparagraph (c)(29) of this Rule for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and this Subparagraph;
 - (2) two occurrences of vendor overcharging within a 12-month period;
 - (3) two occurrences of receiving, transacting or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person within a 12-month period;
 - (4) two occurrences of charging for supplemental food not received by the WIC customer within a 12-month period;
 - (5) two occurrences of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments within a 12-month period; or
 - (6) three occurrences of providing unauthorized food items in exchange for food instruments, including charging for supplemental food provided in excess of those listed on the food instrument within a 12-month period.
- (h) Title 7 C.F.R. Section 246.12(l)(2)(i) is incorporated by reference with all subsequent amendments and editions. Except as provided in 7 C.F.R. 246.12 (l)(1)(xii), a vendor shall be

disqualified from the WIC Program for the following state-established violations in accordance with the sanction system below. The total period of disqualification shall not exceed one year for state-established violations investigated as part of a single investigation, as defined in Paragraph (i) of this Rule:

(1) When a vendor commits any of the following violations, the state-established disqualification period shall be:

- (A) 90 days for each occurrence of failure to properly transact a WIC food instrument by not completing the date or purchase price on the WIC food instrument before obtaining the countersignature, by not obtaining the countersignature in the presence of the cashier, or by accepting a WIC food instrument prior to the "Date of Issue" or after the "Participant Must Use By" dates on the food instrument;
- (B) 60 days for each occurrence of requiring a cash purchase to transact a WIC food instrument;
- (C) 30 days for each occurrence of requiring the purchase of a specific brand when more than one WIC supplemental food brand is available; and
- (D) 30 days for each occurrence of failure to submit a WIC Price List as required by Subparagraph (c)(30) of this Rule.

(2) When a vendor commits any of the following violations, the vendor shall be assessed sanction points as follows for each occurrence:

- (A) 2.5 points for:
 - (i) stocking WIC supplemental foods outside of the manufacturer's expiration date; or
 - (ii) unauthorized use of the "WIC" acronym or the WIC logo in accordance with Paragraph (b)(10) of this Rule.
- (B) 5 points for:
 - (i) failure to attend annual vendor training;
 - (ii) failure to stock minimum inventory;
 - (iii) failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case; or
 - (iv) offering improper incentives, free merchandise, or services by a predominantly WIC vendor in accordance with

Subparagraph (c)(37) of this Rule.

- (C) 7.5 points for:
 - (i) discrimination on the basis of WIC participation (separate WIC lines, denying trading stamps, etc.); or
 - (ii) contacting a WIC customer in an attempt to recoup funds for food instrument(s) or contacting a WIC customer outside the store regarding the transaction or redemption of WIC food instruments.

- (D) 15 points for:
 - (i) failure to allow monitoring of a store by WIC staff when required;
 - (ii) failure to provide WIC food instrument(s) for review when requested;
 - (iii) failure to provide store inventory records when requested by WIC staff, except as provided in Subparagraph (c)(29) and Subparagraph (g)(1) of this Rule for failure or inability to provide records for an inventory audit;
 - (iv) nonpayment of a claim made by the state agency;
 - (v) providing false information on vendor records (application, vendor agreement, price list, WIC food instrument(s), monitoring forms), except as provided in Subparagraph (c)(29) and Subparagraph (g)(1) of this Rule for providing false records for an inventory audit; or
 - (vi) failure to purchase infant formula, exempt infant formula, and WIC-eligible medical food from an authorized supplier.

(3) For the violations listed in Subparagraph (h)(2) of this Rule, all sanction points assessed against a vendor remain on the vendor's record for 12 months or until the vendor is disqualified as a result of those points. If a vendor accumulates 15 or more points, the vendor shall be disqualified. The nature of the violation(s) and the number of violations, as represented by the points assigned in Subparagraph (h)(2) of this Rule, are used to

calculate the period of disqualification. The formula used to calculate the disqualification period is the number of points assigned to the violation carrying the highest number of sanction points multiplied by 18 days. Additionally, if the vendor has accumulated more than 15 points, 18 days shall be added to the disqualification period for each point over 15 points.

(i) For investigations pursuant to this Section, a single investigation is:

(1) Compliance buy(s) conducted by undercover investigators within a 12-month period to detect the following violations:

- (A) buying or selling food instruments for cash (trafficking);
- (B) selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments;
- (C) selling alcohol or alcoholic beverages or tobacco products in exchange for food instruments;
- (D) vendor overcharging;
- (E) receiving, transacting, or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person;
- (F) charging for supplemental food not received by the WIC customer;
- (G) providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments;
- (H) providing unauthorized food items in exchange for food instruments, including charging for supplemental food provided in excess of those listed on the food instrument;
- (I) failure to properly transact a WIC food instrument;
- (J) requiring a cash purchase to transact a WIC food instrument; or
- (K) requiring the purchase of a specific brand when more than one WIC supplemental food brand is available.

(2) Monitoring reviews of a vendor conducted by WIC staff within a 12-month period which detect the following violations:

- (A) failure to stock minimum inventory;
- (B) stocking WIC supplemental food outside of the manufacturer's expiration date;
- (C) failure to allow monitoring of a store by WIC staff when required;

- (D) failure to provide WIC food instrument(s) for review when requested;
- (E) failure to provide store inventory records when requested by WIC staff; or
- (F) failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case.

(3) Any other method used by the state or local agency to detect the following violations by a vendor within a 12-month period:

- (A) failure to attend annual vendor training;
- (B) failure to submit a WIC Price List as required by Subparagraph (c)(30) of this Rule;
- (C) discrimination on the basis of WIC participation (separate WIC lines, denying trading stamps, etc.);
- (D) contacting a WIC customer in an attempt to recoup funds or food instrument(s) or contacting a WIC customer outside the store regarding the transaction or redemption of WIC food instruments;
- (E) nonpayment of a claim made by the state agency;
- (F) providing false information on vendor records (application, vendor agreement, price list, WIC food instrument(s), monitoring forms); or
- (G) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time, or failure or inability to provide records or providing false records required under Subparagraph (c)(29) of this Rule for an inventory audit.

(j) The Food Stamp Program disqualification provisions in 7 C.F.R. 246.12(l)(1)(vii) are incorporated by reference with all subsequent amendments and editions.

(k) The participant access provisions of 7 C.F.R. 246.12(l)(1)(ix) and 246.12(l)(8) are incorporated by reference with all subsequent amendments and editions. The existence of any of the factors listed in Parts (l)(3)(A), (l)(3)(B) or (l)(3)(C) of this Rule shall conclusively show lack of inadequate participant access provided there is no geographic barrier, such as an impassable mountain or river, to using the other authorized WIC vendors referenced in these Subparagraphs. The agency shall not consider other indicators of inadequate participant access when any of these factors exist.

(l) The following provisions apply to civil money penalties assessed in lieu of disqualification of a vendor:

- (1) The civil money penalty formula in 7 C.F.R. 246.12(l)(1)(x) is incorporated by reference with all subsequent amendments and editions, provided that the vendor's average monthly redemptions shall be calculated by using the six-month period ending with the month immediately preceding the month during which the notice of administrative action is dated.
- (2) The state agency may also impose civil money penalties in accordance with G.S. 130A-22(c1) in lieu of disqualification of a vendor for the state-established violations listed in Paragraph (h) of this Rule when the state agency determines that disqualification of a vendor would result in participant hardship in accordance with Subparagraph (l)(3) of this Rule.
- (3) In determining whether to disqualify a WIC vendor for the state-established violations listed in Paragraph (h) of this Rule, the agency shall not consider other indicators of hardship if any of the following factors, which conclusively show lack of hardship, are found to exist:
 - (A) the noncomplying vendor is located outside of the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within seven miles of the noncomplying vendor;
 - (B) the noncomplying vendor is located within the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within three miles of the noncomplying vendor; or
 - (C) a WIC vendor, other than the noncomplying vendor, is located within one mile of the local agency at which WIC participants pick up their food instruments.
- (4) The provisions for failure to pay a civil money penalty in 7 C.F.R. 246.12(l)(6) are incorporated by reference with all subsequent amendments and editions.
- (m) The provisions of 7 C.F.R. 246.12(l)(1)(viii) prohibiting voluntary withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement as an alternative to disqualification are incorporated by reference with all subsequent amendments and editions.
- (n) The provision in 7 C.F.R. 246.12(l)(3) regarding prior warning to vendors is incorporated by reference with all subsequent amendments and editions.
- (o) The state agency may set off payments to an authorized vendor if the vendor fails to reimburse the state agency in accordance with Subparagraph (c)(31) of this Rule.
- (p) In accordance with 7 C.F.R. 246.12(l)(7) or 246.12(u)(5) or both, North Carolina's procedures for dealing with abuse of the WIC program by authorized WIC vendors do not exclude or

replace any criminal or civil sanctions or other remedies that may be applicable under any federal and state law.

(q) Notwithstanding other provisions of this Rule, for the purpose of providing a one-time payment to a non-authorized store for WIC food instruments accepted by the store, an agreement for a one-time payment need only be signed by the store manager and the state agency. The store may request such one-time payment directly from the state agency. The store manager shall sign an agreement indicating that the store has provided foods as prescribed on the food instrument, charged current shelf prices or less than current shelf prices, not charged sales tax, and verified the identity of the WIC customer. Any agreement entered into in this manner shall automatically terminate upon payment of the food instrument in question. After entering into an agreement for a one-time payment, a non-authorized store shall not be allowed to enter into any further one-time payment agreements for WIC food instruments accepted thereafter.

(r) Except as provided in 7 C.F.R. 246.18(a)(2), an authorized WIC vendor shall be given at least 15 days advance written notice of any adverse action which affects the vendor's participation in the WIC Program. The vendor appeal procedures shall be in accordance with 10A NCAC 43D .0800.

History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786; Eff. July 1, 1981; Amended Eff. August 1, 1995; October 1, 1993; May 1, 1991; December 1, 1990; Temporary Amendment Eff. June 23, 2000; May 17, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. September 1, 2002; July 1, 2002; Amended Eff. November 1, 2005; August 1, 2004; Temporary Amendment Eff. July 1, 2006; Amended Eff. February 1, 2008; April 1, 2007.

TITLE 11 – DEPARTMENT OF INSURANCE

11 NCAC 06A .0101 DEFINITIONS

- (a) In this Chapter, unless the context otherwise requires:
- (1) "Adjusting company" means any insurance company, independent adjusting company, or public adjusting company adjusting claims in this State.
 - (2) "Agent Services Division" or "Division" means the Agent Services Division of the North Carolina Department of Insurance, the Division responsible for the licensing, education and regulation of agents and other licensees.
 - (3) "Professional Testing Service" or "Service" means the organization specializing in the development and administration of licensing examinations on a contract basis.
 - (4) "State Licensing Examination" or "Examination" means a collection of items designed to test the applicant's knowledge of

the basic concepts, principles and laws relevant to the insurance profession to determine the competence to be licensed in North Carolina.

(b) The definitions contained in G.S. 58-33-10 are incorporated in this Chapter by reference.

History Note: Authority G.S. 58-2-40; 58-33-30(e)(h); Eff. February 1, 1976; Readopted Eff. June 12, 1978; Amended Eff. February 1, 2008; October 1, 1990; February 1, 1989; July 1, 1986.

11 NCAC 06A .0211 N.C. NON-RESIDENT BROKER'S INSURANCE BOND

History Note: Authority G.S. 58-33-30(f)(1); Eff. February 1, 1976; Readopted Eff. June 12, 1978; Amended Eff. February 1, 1989; Repealed Eff. February 1, 2008.

11 NCAC 06A .0217 NORTH CAROLINA NOTICE OF CANCELLATION

History Note: Authority G.S. 58-33-55(a)(b); Eff. February 1, 1976; Readopted Eff. June 12, 1978; Amended Eff. February 1, 1989; Repealed Eff. February 1, 2008.

11 NCAC 06A .0304 RESPONSIBILITY OF APPLICANT AT EXAMINATION SITE

(a) Applicants who have not previously failed the same examination shall bring to the examination site the Examination Admission Ticket/Certificate of Course Completion, their confirmation numbers obtained from the testing service at the time of registration, and two forms of proof of identity, one of which must be photo bearing.

(b) Applicants who have previously failed an examination may retake the examination and shall pay applicable fees for each administration.

(c) Applicants taking the life, accident and health or sickness, Medicare supplement, long term care, personal lines, property, or casualty examination shall bring to the examination site an Examination Admission Ticket/Certificate of Course Completion, validated by an approved prelicensing school or by the Division indicating that the applicant has successfully completed the mandatory prelicensing education requirements as specified in G.S. 58-33-30(d)(2). The Examination Admission Ticket/Certificate of Course Completion is valid for 90 days from the date of course completion or a maximum of five examination sittings, whichever occurs first.

(d) No applications shall be supplied at the examination site for completion by applicants; nor shall required supplies be furnished to applicants.

(e) Applicants shall arrive at the examination site at the time specified in the current examination schedule.

History Note: Authority G.S. 58-2-40; 58-33-30(d)(2); 58-33-31; 58-33-30(e); 58-33-125; Eff. February 1, 1976; Readopted Eff. June 12, 1978; Amended Eff. February 1, 2008; April 1, 2003; April 1, 1996; October 1, 1990; February 1, 1989.

11 NCAC 06A .0402 LICENSING OF RESIDENT AGENT, LTD REPRESENTATIVE AND ADJUSTER

(a) An applicant shall hold a life license before making application for a variable life and variable annuity product license. An agent licensed to sell variable life and variable annuity products shall be appointed by a company authorized to sell variable annuities and variable life insurance products in North Carolina. The company shall verify that the agent has met the requirements of the NASD or its successor organization.

(b) A limited representative shall be appointed with each company for which he will solicit business for the following kinds of insurance:

- (1) Dental services;
- (2) Limited line credit insurance;
- (3) Motor club;
- (4) Prearrangement insurance, as defined in G.S. 58-60-35(a)(2), when offered or sold by a preneed sales licensee licensed under Article 13D of Chapter 90 of the General Statutes;
- (5) Travel, accident and baggage; or
- (6) Vehicle service agreements and mechanical breakdown insurance.

(c) Responsibility of insurance companies for forms:

- (1) Companies shall have on file with the Division the address of one central licensing office and the individual within such office to which all correspondence, licenses, and invoices will be forwarded.
- (2) Companies shall have on file with the Division the name of the individual responsible for all agent appointments and termination of agent appointments submitted by the company to the Division.
- (3) A company shall verify the licensure of an agent before the company appoints the agent.
- (4) Companies shall notify the Division within 10 days after any change of address of the central licensing office and of any change of the individual within such office to which all correspondence, licenses, and invoices will be forwarded.

(d) Responsibility of the agent, limited representative and adjuster:

- (1) An applicant who must take the examination shall comply with Section .0300 of this Subchapter.
- (2) A person, after surrender or termination of a license for such period of time that he is no longer eligible for waiver of the examination, shall meet all legal requirements for previously unlicensed persons.

- (3) Every licensee shall, upon demand from the Division, furnish in writing any information relating to the licensee's insurance business within 10 business days after the demand.

(e) An applicant for a resident license shall, if applicable, obtain an original letter of clearance from his former state of residency certifying the kinds of insurance for which the applicant was licensed, that all licenses held in that state have been canceled and that the applicant was in good standing in that state at the time of the cancellation of licenses. A letter of clearance is valid for 90 days from date of issuance.

(f) A person who applies for a license before January 1, 2008, shall receive the license in accordance with G.S. 58-33-26(c1) without paying an additional registration fee if the license is issued on or after January 1, 2008.

(g) Only individuals may apply for limited representative and adjuster licenses.

History Note: Authority G.S. 58-2-40; 58-2-195(a); 58-33-26; 58-33-30; 58-33-66;

*Eff. February 1, 1976;
Readopted Eff. June 12, 1978;*

Amended Eff. February 1, 2008; April 1, 2003; February 1, 1996; October 1, 1990; February 1, 1989.

11 NCAC 06A .0404 LICENSING OF BROKER

(a) An applicant shall be a licensed agent in North Carolina for each kind of insurance to be brokered.

(b) A broker's license gives the holder authority to broker only those kinds of insurance for which he holds an agent's license. Brokering shall be done through a licensed and appointed agent of the company with which the business is being placed. A broker's license does not confer binding authority; it only gives authority to share in commissions with a writing agent.

(c) Each applicant shall file with his application a surety bond or cash, certificates of deposit, or securities as provided by statute. Any cash, certificate of deposit, or securities deposited in lieu of the surety bond shall be held in accordance with 11 NCAC 11B .0100.

*History Note: Authority G.S. 58-2-40; 58-33-30(f),(h)(1);
Eff. February 1, 1976;*

Readopted Eff. June 12, 1978;

*Amended Eff. October 1, 1990; February 1, 1989; July 1, 1986;
Temporary Amendment Eff. October 3, 1991 For a Period of 180 Days to Expire on March 30, 1992;
Amended Eff. February 1, 2008; March 1, 1992.*

11 NCAC 06A .0405 LICENSING OF NONRESIDENT BROKER

History Note: Filed as a Temporary Amendment Eff. October 3, 1991 For a Period of 180 Days to Expire on March 30, 1992;

*Authority G.S. 58-2-40; 58-33-30(f),(h)(2); 58-33-125(a);
Eff. February 1, 1976;*

Readopted Eff. June 12, 1978;

Amended Eff. March 1, 1992; October 1, 1990; February 1, 1989;

Repealed Eff. February 1, 2008.

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

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

Eff. February 1, 1976;

Readopted Eff. June 12, 1978;

Amended Eff. October 1, 1990; February 1, 1989; July 1, 1986;

Repealed Eff. February 1, 2008.

11 NCAC 06A .0414 ADJUSTER'S LEARNER'S PERMIT

History Note: Authority G.S. 58-2-40; 58-33-70;

Eff. October 1, 1990;

Amended Eff. April 1, 2003;

Repealed Eff. February 1, 2008.

11 NCAC 06A .0604 PERSONAL INTERVIEWS

History Note: Authority G.S. 58-33-45;

Eff. February 1, 1976;

Readopted Eff. June 12, 1978;

Amended Eff. February 1, 1989;

Repealed Eff. February 1, 2008.

11 NCAC 06A .0701 GENERAL REQUIREMENTS

(a) This Section applies to individuals attempting to obtain a resident license to solicit property, casualty, personal lines, life, accident and health, or sickness insurance in North Carolina except as specifically exempted by Paragraphs (b) and (c) of this Rule.

(b) Individuals who are exempt from the requirement for a written examination pursuant to G.S. 58-33-35 are exempt from prelicensing education requirements.

(c) Individuals holding one or more of the following insurance designations are exempt from prelicensing education requirements:

- (1) Accident and health or sickness:
 - (A) Registered Health Underwriter (RHU);
 - (B) Certified Employee Benefits Specialist (CEBS);
 - (C) Registered Employee Benefits Consultant (REBC); and
 - (D) Health Insurance Associate (HIA).
- (2) Life:
 - (A) Certified Insurance Counselor (CIC);
 - (B) Certified Employee Benefits Specialist (CEBS); and
 - (C) Certified Financial Planner (CFP).
- (3) Property:
 - (A) Accredited Advisor in Insurance (AAI);
 - (B) Associate in Risk Management (ARM); and
 - (C) Certified Insurance Counselor (CIC).

- (4) Casualty:
 - (A) Accredited Advisor in Insurance (AAI);
 - (B) Associate in Risk Management (ARM); and
 - (C) Certified Insurance Counselor (CIC).
- (5) Personal lines:
 - (A) Accredited Advisor in Insurance (AAI);
 - (B) Associate in Risk Management (ARM); and
 - (C) Certified Insurance Counselor (CIC).
- (6) Property, casualty, personal lines, life, accident and health or sickness:
 - (A) Holder of degree in insurance (associate or bachelors);
 - (B) An individual whose license in another state or jurisdiction for the same kind of insurance as that for which applied has been cancelled within 60 days of the Division's receipt of the letter of clearance and the individual's request for waiver of prelicensing education; and
 - (C) An individual who is licensed in another state or jurisdiction for the same kind of insurance as that for which applied.

school's students, and who prepares a final course examination; and
 (B) in a correspondence school to assist and supervise students in the completion of an approved correspondence or Internet course.

(6) "Outline" means an instructor/examination content outline prepared and published by the Department in the "State of North Carolina Insurance Licensure Examination Candidate Guide".

(7) "Program Director" means the individual associated with an approved classroom or correspondence school who is responsible for the administration of that school according to Rule .0702(1) of this Section.

History Note: Authority G.S. 58-2-40; 58-33-30(d); 58-33-35; 58-33-132; Eff. February 1, 1989; Amended Eff. April 1, 1996; October 1, 1990; Amended Eff. February 1, 2008.

11 NCAC 06A .0702 PRELICENSING EDUCATION SCHOOLS

(a) This Rule applies to all classroom and correspondence schools offering a prelicensing course prescribed by G.S. 58-33-30. All schools desiring to conduct a prelicensing course shall be approved by the Commissioner before commencement of the courses.

(b) A school seeking approval to conduct a prelicensing course shall make written application to the Commissioner.

(c) The Division shall approve a school when:

- (1) the school has submitted all information required by the Rules in this Section;
- (2) the course to be conducted complies with Rule .0704 of this Section;
- (3) the program director has been approved by the Commissioner in accordance with Rule .0703 of this Section; and
- (4) the school has a qualified instructor to teach each kind of insurance for which it is seeking approval.

(d) The Commissioner shall deny, revoke, suspend, or terminate approval of any school upon finding that:

- (1) the school has refused or failed to comply with any of the provisions of this Section;
- (2) any school official or instructor has obtained or used, or attempted to obtain or use, in any manner or form, licensing examination questions;
- (3) the school's students have a first-time licensing examination performance record that is below the average examination performance record of all first-time examination candidates;
- (4) the school has not conducted at least one prelicensing course during any 12-month period; or

(d) If an applicant exempted from prelicensing education under the provisions of Paragraph (c) of this Rule fails the examination, the applicant must successfully meet North Carolina's mandatory prelicensing education requirement prior to retaking the examination.

(e) In this Section, unless otherwise noted the following definitions apply:

- (1) "Classroom School" means an entity that provides prelicensing education sponsored by a company, agency, association or educational institution by an instructor utilizing a teaching curriculum based on the outline.
- (2) "Correspondence Course" means home, self, individual, Internet or correspondence study utilizing programmed text instructions.
- (3) "Correspondence School" means an entity that provides prelicensing education sponsored by a company, agency, association or educational institution through completion of a correspondence course that has been approved by the Commissioner, with students individually supervised by an approved instructor.
- (4) "Instructional Hour" means a 50-minute hour.
- (5) "Instructor" means an individual who meets the qualifications required by Rule .0705 of this Section:
 - (A) to instruct in a classroom school, who is responsible for preparation and presentation of lesson plans to assure that the outline is taught to that

- (5) the school has refused or failed to submit information or properly completed forms prescribed by the Commissioner.
- (e) In all proceedings to deny, revoke, suspend, or terminate approval of a school, the provisions of Chapter 150B of the General Statutes are applicable.
- (f) When a school's approval is discontinued, the procedure for reinstatement is to apply as a new school, with a statement of the reasons that the school is now eligible for reconsideration.
- (g) If a school's approval has been suspended upon the Commissioner's finding that the school has not conducted at least one preclicensing course during any 12-month period that school may reapply after one year of suspension. At such time, the Commissioner shall give the school six months to conduct at least one preclicensing course.
- (h) A school shall notify the Commissioner of any change of course location or schedule information no fewer than five business days before the change. Notification of the changes shall be in writing.
- (i) An approved school that intends to terminate its preclicensing program shall notify the Commissioner in writing.
- (j) A school shall notify the Commissioner in writing of a change of textbook.
- (k) An approved school may use, for advertising or promotional purposes, examination performance data made available to the school by the Commissioner, provided that any data disclosed by the school shall be accurate, shall be presented in a manner that is not misleading, and shall:
- (1) be limited to the annual examination performance data for the particular school and for all examination candidates in the State; and
 - (2) include the type of examination, the time period covered, the number of first-time candidates examined, and either the number or percentage of first-time candidates passing the examination.
- (l) A classroom school's facilities and equipment shall have been found by appropriate local code inspectors to be in compliance with all applicable local, State and federal laws and regulations regarding safety, sanitation, and access by persons with disabilities.
- (m) The school shall designate one person as the program director. The program director shall be responsible for administrative matters such as recruiting, evaluating and certifying the qualifications of instructors, developing programs, scheduling of classes, advertising, maintaining facilities and equipment, recordkeeping and supervising of the preclicensing program.
- (n) A school shall publish and provide to all preclicensing students before enrollment a publication of that school that contains the following information:
- (1) name of school and publication date;
 - (2) name of sponsor;
 - (3) all associated costs; and
 - (4) an outline or description of all preclicensing courses offered.
- (o) With the exception of correspondence or Internet courses, a school shall file with the Commissioner information giving exact dates, times, locations, and instructor name for each scheduled

preclicensing course. This information may be submitted either at the beginning of each quarter or semester or no later than one week before the first class meeting of each preclicensing course.

(p) Classroom schools shall retain the following material on file at one location for at least three years:

- (1) class schedules;
- (2) advertisements;
- (3) bulletins, catalogues, and other official publications;
- (4) grade reports, showing a numeric grade for each student;
- (5) attendance records;
- (6) master copy of each final course examination, indicating the answer key, the school name, course location, course dates and name of instructor;
- (7) list of student names and their license identifying numbers for each course, and the name of the instructor; and
- (8) student registration information.

All files shall be made available to the Commissioner upon request.

(q) Correspondence and Internet schools shall retain the following material on file at one location for at least three years:

- (1) advertisements;
- (2) bulletins, catalogues and other official publications;
- (3) grade reports;
- (4) list of student names and their license identifying numbers for each course, and the name of the instructor;
- (5) student registration information that shall be obtained prior to the distribution of course material; and
- (6) student records to validate the integrity of the security measures utilized by the provider.

All files shall be made available to the Commissioner upon request.

(r) In the event of illness, injury or death of an instructor, the program director may use a qualified instructor to complete a course.

History Note: Authority G.S. 58-2-40; 58-33-30(d); 58-33-132; Eff. February 1, 1989; Amended Eff. February 1, 2008; April 1, 2003; April 1, 1996; November 1, 1990.

11 NCAC 06A .0703 PROGRAM DIRECTORS

- (a) All program directors shall be approved by the Commissioner in accordance with the provisions of this Section.
- (b) A person desiring approval as a program director shall make written application to the Commissioner upon a form prescribed by the Commissioner.
- (c) Applications must be endorsed by the president/chief operating officer of the sponsoring educational institution, company, agency or association. If the employing school is not currently approved by the Commissioner, an application for

school approval shall be submitted along with the application for program director approval.

(d) The Commissioner shall approve an applicant as a program director upon finding that the applicant is recommended by the president/chief operating officer of the sponsoring educational institution, company, agency or association; has submitted all information required by the Commissioner; possesses good character and reputation; and:

- (1) Holds a baccalaureate or higher degree and has at least two years of experience as an instructor of insurance or as an educational administrator;
- (2) Holds a baccalaureate or higher degree and has at least six years of experience in the insurance industry with a minimum of two years of experience in insurance management;
- (3) Is a full-time college or faculty member who regularly teaches risk management or insurance courses; or
- (4) Has education and experience that are found by the Commissioner to be equivalent to the qualifications described in Subparagraphs (d)(1) and (d)(2) of this Rule.

(e) Program director approval shall be valid for an indefinite period, subject to future changes in laws or regulations regarding approval of program directors.

(f) The Commissioner shall deny, revoke, or suspend the approval of any program director upon finding that:

- (1) The program director fails to meet the criteria for approval provided by this Rule;
- (2) The program director has failed to comply with any provisions of this Section;
- (3) The program director's employment has been terminated by any sponsoring educational institution/company;
- (4) The program director provided false information to the Commissioner when making application for approval;
- (5) The program director has at any time had an insurance license denied, suspended or revoked by the North Carolina Department of Insurance or any other insurance department, or has ever been required to return a license while under investigation; or
- (6) The program director has obtained or used, or attempted to obtain or use, in any manner or form, examination questions.

(g) In all proceedings to deny, revoke, or suspend approval, the provisions of Chapter 150B of the General Statutes shall be applicable.

(h) When a program director's approval is discontinued, the procedure for reinstatement is to apply as a new program director, with a statement of the reasons that he is now eligible for reconsideration. The Commissioner may require an investigation before new approval is granted.

(i) An approved program director shall inform the Commissioner of any change in program affiliation by filing an application for program director approval prior to directing a new program.

(j) The program director is responsible for the actions of the approved school's instructors.

History Note: Authority G.S. 58-2-40; 58-33-30(d); 58-33-132;

Eff. February 1, 1989;

Amended Eff. February 1, 2008; October 1, 1990.

11 NCAC 06A .0704 COURSES

(a) This Rule establishes minimum standards for property, casualty, personal lines, life, accident and health or sickness and Medicare supplement, and long term care insurance preclicensing courses required under G.S. 58-33-30.

(b) Insurance preclicensing programs shall comprise courses in the following subjects:

- (1) Accident and health or sickness;
- (2) Casualty;
- (3) Life;
- (4) Medicare supplement insurance and long-term care insurance;
- (5) Personal lines; and
- (6) Property.

(c) A school shall not offer a property, casualty, personal lines, life, accident and health or sickness course comprising fewer than 20 hours or a Medicare supplement and long term care course comprising fewer than 10 hours.

(d) The following requirements are course standards:

- (1) All courses shall consist of instruction in the subject areas described in G.S. 58-33-30(d)(2) and 58-33-30(d)(3).
- (2) Courses may also include coverage of related subject areas not prescribed by the Commissioner; however, such courses must provide additional class time, above the minimum requirement stated in Paragraph (c) of this Rule, for the coverage of such subject areas.
- (3) Preclicensing courses shall be for instructional purposes only and not for promoting the interests of or recruiting employees for any particular insurance agency or company.
- (4) Schools shall establish and enforce academic standards for course completion that assure that students receiving a passing grade possess knowledge and understanding of the subject areas prescribed for the course. In any course for which college credit is awarded, the passing grade for such course shall be the same as the grade that is considered passing under the school's uniform grading system.
- (5) Schools shall conduct a final comprehensive course examination that covers all subject areas prescribed by the Commissioner for each course. Schools may allow a student to make up a missed examination or to retake a failed examination in accordance with policies adopted by the school. No final examination shall be given until a student has completed the instructional requirement.

- (6) Students shall attend a minimum of 20 hours of property, casualty, personal lines, life, accident and health or sickness instruction or a minimum of 10 hours of Medicare supplement and long term care instruction. Time set aside for breaks, pop-tests, quizzes, the final comprehensive course examination and other non-instructional activities shall not count toward the minimum instructional requirement. If a property, casualty, personal lines, life, accident and health or sickness course is scheduled for 25 or more instructional hours, a student shall attend at least 80 percent of the total hours offered by the course.
- (e) The following requirements shall be met for scheduling purposes:
 - (1) Class meetings or correspondence courses shall be limited to a maximum of eight hours of instruction in any given day.
 - (2) Classroom courses shall have fixed beginning and ending dates and may not be conducted on an open-entry/open-exit basis.
 - (3) Correspondence or Internet courses shall not have fixed beginning and ending dates and shall be conducted on an open-entry basis.
- (f) The following shall apply to the use of text books:
 - (1) Choice of classroom course text is at the discretion of each school.
 - (2) Text books used in correspondence or Internet courses shall be approved by the Commissioner before use. No text book used in a correspondence course shall be approved unless it contains instruction in the subject areas described in G.S. 58-33-30(d)(2) and 58-33-30(d)(3).
- (g) All prelicensing classroom school courses shall be taught by instructors who meet the qualifications described in Rule .0705 of this Section.
- (h) All prelicensing correspondence courses shall be monitored by instructors who meet the qualifications described in Rule .0705 of this Section. An instructor shall be designated for each correspondence or Internet course student.
- (i) The following certification of course completion procedures shall apply:
 - (1) Schools shall validate each student who successfully completes a prelicensing course with an Examination Admission Ticket/Certificate of Course Completion. The Examination Admission Ticket/Certificate of Course Completion shall not be validated for a student prior to completion of all course requirements and the passing of the course's comprehensive final examination.
 - (2) An Examination Admission Ticket/Certificate of Course Completion shall be validated for each course successfully completed by a student. An Examination Admission Ticket/Certificate of Course Completion

presented at the examination site that indicates completion of more than one course shall be invalid.

- (3) An Examination Admission Ticket/Certificate of Course Completion shall be valid for access to the examination for 90 days or a maximum of five examination attempts, whichever occurs first. If an applicant for a license does not successfully pass the examination within 90 days or five examination attempts in the 90-day period, the applicant shall again meet the prelicensing education requirement to be eligible for the examination.

History Note: Authority G.S. 58-2-40; 58-33-30(d); 58-33-132; Eff. February 1, 1989; Amended Eff. February 1, 2008; April 1, 1996; October 1, 1990.

11 NCAC 06A .0705 INSTRUCTORS

(a) Each instructor shall have the following qualifications which shall be verified by the instructor's prelicensing education school:

- (1) Accident and health or sickness; Medicare supplement insurance and long-term care insurance:
 - (A) Registered Health Underwriter (RHU);
 - (B) Certified Employee Benefits Specialist (CEBS);
 - (C) Registered Employee Benefits Consultant (REBC);
 - (D) Health Insurance Associate (HIA);
 - (E) Five years of full-time experience as an employee, agent, or broker interpreting or explaining policies covering accident and health or sickness insurance, Medicare supplement insurance or long term care insurance;
 - (F) Holds an associate degree or bachelor's degree in insurance; or
 - (G) Has education and experience that are found by the Commissioner to be equivalent to the qualifications described in Rule .0703(d)(1) and (d)(2) of this Section.
- (2) Life insurance and annuities:
 - (A) Chartered Life Underwriter (CLU);
 - (B) Chartered Financial Consultant (ChFC);
 - (C) Fellow Life Management Institute (FLMI);
 - (D) Life Underwriter Training Council Fellow (LUTCF);
 - (E) Certified Employee Benefits Specialist (CEBS);
 - (F) Certified Financial Planner (CFP);

- (G) Five years of full-time experience as an employee, agent, or broker interpreting or explaining life insurance policies, or annuities;
 - (H) Holds an associate degree or bachelor's degree in insurance; or
 - (I) Has education and experience that are found by the Commissioner to be equivalent to the qualifications described in Rule .0703(d)(1) and (d)(2) of this Section.
- (3) Property insurance, casualty insurance, and personal lines:
- (A) Chartered Property and Casualty Underwriter (CPCU);
 - (B) Accredited Advisor in Insurance (AAI);
 - (C) Associate in Risk Management (ARM);
 - (D) Certified Insurance Counselor (CIC);
 - (E) Five years of full-time experience as an employee, agent, or broker interpreting or explaining property insurance, casualty insurance, or personal lines policies;
 - (F) Holds an associate degree or bachelor's degree in insurance; or
 - (G) Has education and experience that are found by the Commissioner to be equivalent to the qualifications described in Rule .0703(d)(1) and (d)(2) of this Section.

(b) An applicant for instructor shall be determined qualified by the prelicensing education school for each course taught in the prelicensing curriculum.

(c) The Commissioner shall deny, revoke, suspend, or terminate the approval of an instructor upon finding that:

- (1) The instructor fails to meet the criteria for approval provided by this Rule;
- (2) The instructor has failed to comply with statutes or rules regarding prelicensing courses or schools;
- (3) The instructor's employment has been terminated by any approved school on the grounds of incompetence or failure to comply with institutional policies and procedures;
- (4) The instructor provided false information to the Commissioner;
- (5) The instructor has at any time had an insurance license denied, suspended, revoked, or terminated, by the Commissioner or any other state insurance regulator, or has ever been required to return a license while under investigation;
- (6) The instructor has obtained or used, or attempted to obtain or use, in any manner or form, examination questions; or
- (7) The instructor's students have a first-time licensing examination performance record that

is below the average examination performance record of all first-time examination candidates.

(d) In all proceedings to deny, revoke, suspend, or terminate approval of an instructor, the provisions of Chapter 150B of the General Statutes shall be applicable.

(e) When an instructor's approval is discontinued, the procedure for reinstatement shall be to apply as a new instructor, with a statement of reasons that he is now eligible for reconsideration. The Commissioner may require an investigation before new approval is granted.

(f) Instructors shall meet the requirements in 11 NCAC 06A .0808.

History Note: Authority G.S. 58-2-40; 58-33-30(d); 58-33-132; Eff. February 1, 1989; Amended Eff. February 1, 2008; April 1, 1996; October 1, 1990.

11 NCAC 06A .0801 DEFINITIONS

As used in this Section:

- (1) "Biennial compliance period" means the 24-month period during which an agent or adjuster shall comply with continuing education requirements.
- (2) "Cluster of courses" means a number of courses, each of which is less than 100 minutes in length, but altogether 100 minutes or more in length, that are offered within one state or national program or convention.
- (3) "Compliance year" means the second year of the biennial compliance period.
- (4) "Continuing Education Administrator" or "Administrator" means the entity with which the Commissioner contracts for continuing education administration, including the approval of providers and courses and the retention of ICEC records for licensees.
- (5) "Course" means a continuing education course directly related to insurance principles and practices or a course designed and approved specifically for licensees; but does not mean a business course of a general nature or an insurance marketing or sales course.
- (6) "Disinterested third party" means a person not concerned, with respect to possible gain or loss, in the result of a pending course final examination.
- (7) "Distance learning" means an educational program in which the licensee and the instructor are in different physical locations and interact with each other through various methods of telecommunication.
- (8) "Ethics course" means a continuing education course that deals with usage and customs among members of the insurance profession involving their moral and professional duties toward one another, toward clients, toward insureds, and toward insurers.

- (9) "Insurance continuing education credit or "ICEC"" means a value assigned to a course by the Commissioner after review and approval of a course information. This term means the same as "credit hour" as used in G.S. 58-33-130.
- (10) "Instructor" means an individual who teaches, lectures, leads, or otherwise instructs a course.
- (11) "Licensee" means a licensed adjuster, a licensed broker, or a licensed agent with any of the following lines of authority: property, casualty, personal lines, life, or accident and health or sickness.
- (12) "Supervised examination" means a timed, closed book examination that is monitored and graded by a disinterested third party.
- (13) "Supervised individual study" means learning through the use of audio tapes, video tapes, computer programs, programmed learning courses, and other types of electronic media that are completed in the presence of an instructor.

(g) Licensees shall maintain records of all ICECs for three years after obtaining those ICECs, which records shall be available for inspection by the Commissioner.

(h) Nonresident licensees who meet continuing education requirements in their home states meet the continuing education requirements of this Section. Nonresident adjusters who qualify for licensure by passing the North Carolina adjuster examination pursuant to G.S. 58-33-30(h)(2)a shall meet the same continuing education requirements as a resident adjuster including mandatory flood and ethics courses. Nonresident adjusters who qualify for licensure by passing an adjuster examination in another state pursuant to G.S. 58-33-30(h)(2)b and are in good standing in that state shall be credited with having met the same continuing education requirements as resident adjusters, including mandatory flood and ethics courses.

(i) A licensee is exempt from the requirements of this Section, other than ethics and flood courses as described in Paragraph (j) of this Rule, if the licensee:

- (1) is age 65 or older; and
- (2) has been continuously licensed in the line of insurance for at least 25 years; and
- (3) either:
 - (A) holds a professional designation specified in 11 NCAC 06A .0803; or
 - (B) certifies to the Commissioner annually that the licensee is an inactive agent who neither solicits applications for insurance nor takes part in the day to day operation of an agency.

(j) Any licensee who qualifies for exemption under Paragraph (i) of this Rule shall meet the ethics and flood courses as required in Paragraph (a) and (b) of this Rule and in Rule .0812 of this Section.

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

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

(m) Each person with an even numbered birth year shall meet continuing education requirements in an even numbered compliance year. Each person with an odd numbered birth year shall meet continuing education requirements in an odd numbered compliance year. The licensee shall complete 24 hours of continuing education by the last day of the licensee's birth month in the compliance year.

(n) An existing licensee requiring continuing education is an individual who holds any of the following licenses on or before December 31, 2007: life and health, property and liability, personal lines, or adjuster. The licensee's birth year determines if an individual must satisfy continuing education requirements in an even-numbered or odd-numbered year. (Example: 1960 is an even-numbered year; 1961 is an odd-numbered year.) The licensee's birth month determines the month that continuing education is due. (Example: An individual born in October would need to complete 24 hours of continuing education by the end of October in the licensee's compliance year.) The number of ICECs required by this Rule are prorated based on one ICEC per month, up to 24 months. This conversion shall be completed within four years. (Example: An individual with a birth date of

History Note: Authority G.S. 58-2-40; 58-33-130; Temporary Adoption Eff. June 22, 1990, for a period of 180 days to expire on December 19, 1990; ARRC Objection Lodged July 19, 1990; Eff. December 1, 1990; Amended Eff. February 1, 2008; February 1, 1995; June 1, 1992.

11 NCAC 06A .0802 LICENSEE REQUIREMENTS

(a) Each person holding a life, accident and health or sickness, property, casualty, personal lines, or adjuster license shall obtain 24 ICECs during each biennial compliance period. Each person holding one or more life, accident and health or sickness, property, casualty, personal lines, variable life and variable annuity products or adjuster license shall complete an ethics course or courses within two years after January 1, 2008, and every biennial compliance period thereafter as defined in this Section. The course or courses shall comprise three ICECs.

(b) Each person holding one or more property, personal lines, or adjuster license, shall complete a continuing education course or courses on flood insurance and the National Flood Insurance Program, or any successor programs, within the first biennial compliance period after January 1, 2008, and every other biennial compliance period thereafter. The course or courses shall comprise three ICECs.

(c) Each licensee shall, before the end of that licensee's biennial compliance year, furnish evidence as set forth in this Section that the continuing education requirements have been satisfied.

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

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

(f) Licensees shall receive ICECs for a course only for the biennial compliance period in which the course is completed. Any course requiring an examination shall not be considered completed until the licensee passes the examination.

February 16, 1960, would have the following two compliance periods during the continuing education conversion: 1st – two ICECs by the end of February 2008; the 2nd – 24 ICECs by the end of February 2010. An individual with a birth date of April 4, 1957, would have the following two compliance periods

during the continuing education conversion: 1st – 16 ICECs by the end of April 2009; the 2nd – 24 ICECs by the end of April 2011.) The chart below reflects the number of hours an existing licensee requiring continuing education must have during the four-year conversion.

| Compliance Year | EXISTING LICENSEE MONTH OF BIRTH EVEN/ODD YEAR OF BIRTH | | | | | | | | | | | | | | | | | | | | | | | |
|-----------------|--|-----|------|-----|------|-----|------|-----|------|-----|------|-----|------|-----|------|-----|------|-----|------|-----|------|-----|------|-----|
| | JAN | | FEB | | MAR | | APR | | MAY | | JUN | | JUL | | AUG | | SEPT | | OCT | | NOV | | DEC | |
| | even | odd | even | odd | even | odd | even | odd | even | odd | even | odd | even | odd | even | odd | even | odd | even | odd | even | odd | even | odd |
| 2008 | 1 | | 2 | | 3 | | 4 | | 5 | | 6 | | 7 | | 8 | | 9 | | 10 | | 11 | | 12 | |
| 2009 | | 13 | | 14 | | 15 | | 16 | | 17 | | 18 | | 19 | | 20 | | 21 | | 22 | | 23 | | 24 |
| 2010 | 24 | | 24 | | 24 | | 24 | | 24 | | 24 | | 24 | | 24 | | 24 | | 24 | | 24 | | 24 | |
| 2011 | | 24 | | 24 | | 24 | | 24 | | 24 | | 24 | | 24 | | 24 | | 24 | | 24 | | 24 | | 24 |

(o) A new licensee requiring continuing education is an individual who is issued any of the following licenses on or after January 1, 2008: life, accident and health or sickness, property, casualty, personal lines or adjuster. The licensee's birth year determines if an individual must satisfy continuing education requirements in an even-numbered or odd-numbered year. (Example: 1960 is an even-numbered year; 1961 is an odd-numbered year.) The licensee's birth month determines the month that continuing education is due. (Examples: An individual born in October would need to complete 24 hours of continuing education by the end of October in the licensee's compliance year. An individual with a birth date of December 1, 1960, licensed in 2008, is required to meet 24 hours of continuing education by December 31, 2010. An individual with a birth date of October 1, 1957, licensed in 2008, is required to meet 24 hours of continuing education by October 31, 2011.) The chart below shows the first deadline by which a new licensee would be required to complete 24 hours of continuing education.

| License Issue Year | NEW LICENSEE MONTH OF BIRTH EVEN/ODD YEAR OF BIRTH | | | | | | | | | | | | | | | | | | | | | | | |
|--------------------|---|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| | JAN | | FEB | | MAR | | APR | | MAY | | JUN | | JUL | | AUG | | SEPT | | OCT | | NOV | | DEC | |
| | even | odd | even | odd | even | odd | even | odd | even | odd | even | odd | even | odd | even | odd | even | odd | even | odd | even | odd | even | odd |
| 2008 | 2010 | 2011 | 2010 | 2011 | 2010 | 2011 | 2010 | 2011 | 2010 | 2011 | 2010 | 2011 | 2010 | 2011 | 2010 | 2011 | 2010 | 2011 | 2010 | 2011 | 2010 | 2011 | 2010 | 2011 |
| 2009 | 2012 | 2011 | 2012 | 2011 | 2012 | 2011 | 2012 | 2011 | 2012 | 2011 | 2012 | 2011 | 2012 | 2011 | 2012 | 2011 | 2012 | 2011 | 2012 | 2011 | 2012 | 2011 | 2012 | 2011 |
| 2010 | 2012 | 2013 | 2012 | 2013 | 2012 | 2013 | 2012 | 2013 | 2012 | 2013 | 2012 | 2013 | 2012 | 2013 | 2012 | 2013 | 2012 | 2013 | 2012 | 2013 | 2012 | 2013 | 2012 | 2013 |
| 2011 | 2014 | 2013 | 2014 | 2013 | 2014 | 2013 | 2014 | 2013 | 2014 | 2013 | 2014 | 2013 | 2014 | 2013 | 2014 | 2013 | 2014 | 2013 | 2014 | 2013 | 2014 | 2013 | 2014 | 2013 |

(p) A member of a professional insurance association may receive no more than two ICECs during the biennial compliance period based solely on membership in the association. The professional insurance association shall be approved as a continuing education provider, shall have been in existence for at least five years, and shall have been formed for purposes other than providing continuing education. The professional insurance association shall:

- (1) Provide the Commissioner or the Administrator with the association's Articles of Incorporation on file with the N.C. Secretary of State;

- (2) Certify to the Commissioner or Administrator that the licensee's membership is active during the biennial compliance period;
- (3) Certify to the Commissioner or Administrator that the licensee attended 50 percent of the regular meetings;
- (4) Certify to the Commissioner or Administrator that the licensee attended a statewide or intrastate regional educational meeting on an annual basis, where the regional meeting covered an area of at least 25 counties of the State; and
- (5) Pay the one dollar (\$1.00) per ICEC to the Commissioner or Administrator.

*History Note: Authority G.S. 58-2-40; 58-2-185; 58-2-195; 58-33-130; 58-33-133;
 Temporary Adoption Eff. June 22, 1990, for a period of 180 days to expire on December 19, 1990;
 ARRC Objection Lodged July 19, 1990;
 Eff. December 1, 1990;
 Temporary Amendment Eff. October 3, 1991 for a period of 180 days to expire on March 30, 1992;
 Amended Eff. February 1, 2008; January 1, 2007; February 1, 1995; August 1, 1994; February 1, 1994; January 1, 1993.*

11 NCAC 06A .0804 CARRYOVER CREDIT

Only whole ICECs may be carried over from one biennial compliance period to the next biennial compliance period. There is no limit on the number of ICECs that can be carried over.

*History Note: Authority G.S. 58-2-40; 58-33-130;
 Temporary Adoption Eff. June 22, 1990, for a period of 180 days to expire on December 19, 1990;
 ARRC Objection Lodged July 19, 1990;
 Eff. December 1, 1990;
 Temporary Amendment Eff. October 3, 1991 for a period of 180 days to expire on March 30, 1992;
 Amended Eff. February 1, 2008; February 1, 1995; June 1, 1992; March 1, 1992.*

11 NCAC 06A .0805 CALCULATION OF ICECS

The following standards are used to evaluate courses submitted for continuing education approval:

- (1) Programs requiring meeting or classroom attendance:
 - (a) Courses or clusters of courses of less than 50 minutes shall not be evaluated for continuing education ICECs.
 - (b) Courses shall not be approved for less than one ICEC.
 - (c) One ICEC shall be awarded for each 50 minutes of instruction unless the Commissioner assigns fewer ICECs based upon the evaluation of the submitted course materials. Courses shall only be approved for whole ICECs.
 - (d) Course providers shall monitor participants for attendance and attention.
- (2) Independent study programs:
 - (a) Independent study programs qualify for continuing education only when there is a supervised examination. No examination administered or graded by insurance company personnel for its own employees is considered to be administered by a

disinterested third party. The examination supervisor shall submit to the provider a sworn affidavit that certifies the authenticity of the examination. The provider shall retain the affidavit and examination records.

- (b) Each course shall be assigned ICECs, which shall be awarded upon the passing of the supervised examination.
- (3) Distance Learning Programs:
 - (a) Distance learning qualifies only when an instructor is available to respond to questions and to maintain attendance records.
 - (b) Any organization sponsoring a teleconference shall have an on-site instructor.
- (4) Internet programs qualify only when there is a secure examination required at the end of the licensee's study of the course material and when periodic security measures have been used throughout the course material before the final examination.
- (5) Webinar courses qualify only when there is a method of monitoring attendance, by way of a random question and answer segment throughout the course, or a monitor at each location. Examinations are not required in Webinar courses.

*History Note: Authority G.S. 58-2-40; 58-33-130;
 Temporary Adoption Eff. June 22, 1990, for a period of 180 days to expire on December 19, 1990;
 ARRC Objection Lodged July 19, 1990;
 Eff. December 1, 1990;
 Amended Eff. February 1, 2008; April 1, 2003; February 1, 1995; June 1, 1992.*

11 NCAC 06A .0807 HARDSHIP

A licensee may request in writing an extension of time under G.S. 58-33-130(c) during or before the last month of the licensee's compliance year.

History Note: Authority G.S. 58-2-40; 58-33-130; Temporary Adoption Eff. June 22, 1990, for a period of 180 days to expire on December 19, 1990; ARRC Objection Lodged July 19, 1990; Eff. December 1, 1990; Amended Eff. February 1, 2008; January 1, 2007; June 1, 1992.

11 NCAC 06A .0808 INSTRUCTOR QUALIFICATION

- (a) Continuing education providers shall certify that continuing education instructors meet the qualification requirements, which are the same as those for instructors as provided in 11 NCAC 06A .0705(c), except that the Commissioner may approve instructors possessing specific areas of expertise to instruct courses comprising those areas of expertise.
- (b) Insurance company trainers as instructors shall be full time salaried employees of the insurance company sponsoring the course and shall have as part of their full time responsibilities the duty to provider insurance company training.
- (c) College and university instructors may be full time or adjunct faculty of the college or university, and shall be teaching a curriculum course in his or her field of expertise.
- (d) The Commissioner shall require applicants and current instructors to submit to a personal interview, provide a video or audio tape, a written history of courses taught or any other documentation that will verify the applicant's qualifications to instruct approved insurance courses.
- (e) Temporary instructor authority shall be given to each qualified applicant. The instructor authority shall become permanent after six months unless otherwise denied, suspended, terminated or revoked by the Commissioner.
- (f) As a condition to continued instructor qualification, providers shall insure that each instructor teaches one prelicensing or continuing education course each calendar year.

History Note: Authority G.S. 58-2-40; 58-33-130; 58-33-132; Temporary Adoption Eff. June 22, 1990, for a period of 180 days to expire on December 19, 1990; ARRC Objection Lodged July 19, 1990; Eff. December 1, 1990; Amended Eff. February 1, 2008; February 1, 1996.

11 NCAC 06A .0809 APPROVAL OF COURSES

- (a) Providers of all courses specifically approved under Rule .0803 of this Section shall file with the Commissioner or Administrator copies of program catalogs, course outlines, copies of advertising literature, and pay the fee prescribed in G.S. 58-33-133(b).
- (b) All providers of courses not specifically approved under Rule .0803 of this Section shall do the following:
 - (1) Any individual, school, insurance company, insurance industry association, or other organization intending to provide classes, seminars, or other forms of instruction as approved courses shall apply on forms provided by the Commissioner or Administrator; pay the fee prescribed in G.S. 58-33-133(b), provide detailed outlines of the

- subject matter to be covered, and copies of handouts to be given.
- (2) Providers of supervised individual study programs shall file copies of the study programs and the examination, and Internet course security procedures.
- (c) The Commissioner shall indicate the number of ICECs that have been assigned to the course that has been approved. If a course is not approved or disapproved within 60 days after receipt of all required information, the course is deemed to be approved at the end of the 60-day period.
- (d) If a course approval application is denied, a written explanation of the reason for such action shall be furnished with the denial.
- (e) Course approval applications shall include the following:
 - (1) A statement for whom the course is designed;
 - (2) The course objectives;
 - (3) The names and duties of all persons who will be affiliated in an official capacity with the course;
 - (4) The course provider's tuition and fee refund policy;
 - (5) An outline that shall include:
 - (A) a statement of whether there will be a written examination, a written report, or a certification of attendance only;
 - (B) the method of presentation;
 - (C) a course content outline with instruction hours assigned to the major topics; and
 - (D) the schedule of dates, beginning and ending times and places the course will be offered, along with the names of instructors for each course session, submitted at least 30 days before any subsequent course offerings;
 - (6) A copy of the course completion certificate;
 - (7) A course rating form;
 - (8) A course bibliography; and
 - (9) An electronic copy of the course content and course examination for Internet courses.
- (f) A provider may request that its materials be kept confidential if they are of a proprietary nature.
- (g) Courses awarded more than six ICECs shall have an examination approved by the Commissioner in order for the licensee to get full credit.
- (h) A provider shall not cancel a course unless the provider gives written notification to all students on the roster and to the Commissioner or Administrator at least five days before the date of the course.
- (i) A provider shall submit course attendance records electronically within 15 business days after course completion.
- (j) An error on the licensee's record that is caused by the provider in submitting the course attendance records shall be resolved by the provider within 15 days after the discovery of the error by the provider.

History Note: Authority G.S. 58-2-40; 58-33-130; 58-33-132;

Temporary Adoption Eff. June 22, 1990, for a period of 180 days to expire on December 19, 1990; ARRC Objection Lodged July 19, 1990; Eff. December 1, 1990; Amended Eff. February 1, 2008; February 1, 1996; June 1, 1992.

11 NCAC 06A .0811 SANCTIONS FOR NONCOMPLIANCE

(a) If the license of any person lapses under G.S. 58-33-130(c), the license shall be reinstated when the person has completed the continuing education requirements. If the person does not satisfy the requirements for licensure reinstatement within 120 days after the end of the person's previous compliance year, the person shall complete the appropriate prelicensing education requirement and pass the appropriate licensing examination, at which time the Commissioner shall reinstate the person's license.

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

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

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

- (1) Advertising that a course is approved before the Commissioner has granted such approval in writing.
(2) Submitting a course outline with material inaccuracies, either in length, presentation time, or topic content.
(3) Presenting or using unapproved material in providing an approved course.
(4) Failing to conduct a course for the full time specified in the approval request submitted to the Commissioner.
(5) Preparing and distributing certificates of attendance or completion before the course has been approved.
(6) Issuing certificates of attendance or completion before the completion of the course.
(7) Failing to issue certificates of attendance or completion to any licensee who satisfactorily completes a course.
(8) Failing to notify the Commissioner in writing of suspected or known violations of the North Carolina General Statutes or Administrative Code within 30 days after suspecting or knowing about the violations.
(9) Violating the North Carolina General Statutes or Administrative Code.

(10) Failing to monitor attendance and attention of attendees.

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

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

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

(f) Each year, the Commissioner shall verify each nonresident licensee's record through the NAIC Producer Data Base to ensure that the licensee has complied with the continuing education requirements in the licensee's home state. If the license lapses under G.S. 58-33-32, the Commissioner shall cancel the license.

History Note: Authority G.S. 58-2-40; 58-33-125(a); 58-33-130; 58-33-132; Temporary Adoption Eff. June 22, 1990, for a period of 180 days to expire on December 19, 1990; ARRC Objection Lodged July 19, 1990; Eff. December 1, 1990; Amended Eff. February 1, 2008; January 1, 2007; June 1, 1992.

11 NCAC 06A .0813 ISSUANCE/CONTINUATION OF PROVIDER APPROVAL

(a) Any individual or entity intending to provide classes, seminars, or other forms of instruction as approved courses shall submit:

- (1) an application prescribed by the Commissioner for provider approval; and
(2) a course approval application in accordance with Rule .0809 of this Section.

(b) The Commissioner or the Administrator shall approve or deny the provider and course approval application.

(c) Any provider approval that is denied shall be furnished a written explanation for the denial in accordance with Rule .0809(4) of this Section.

(d) Any provider receiving a provider approval denial shall have 15 business days to respond to the denial.

(e) As a condition to continued provider approval, providers shall conduct a minimum of one course within the State of North Carolina each calendar year.

(f) Providers shall retain continuing education records for three years and shall provide these records upon request to the Commissioner or to the Administrator.

History Note: Authority G.S. 58-2-40; 58-33-130; 58-33-132; Eff. February 1, 1996; Amended Eff. February 1, 2008.

11 NCAC 12 .0604 EXEMPTIONS

(a) Unless otherwise stated in Chapter 58 of the North Carolina General Statutes, this Section shall not apply to transactions involving:

- (1) Credit life insurance;
- (2) Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation does not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual. Group life insurance or group annuity certificates marketed through direct response solicitation is subject to the provisions of 11 NCAC 12 .0608;
- (3) Group life insurance and annuities used to fund prearranged funeral contracts;
- (4) An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the Commissioner; or, when a term conversion privilege is exercised among corporate affiliates;
- (5) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;
- (6) Policies or contracts used to fund:
 - (A) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
 - (B) A plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;
 - (C) A governmental or church plan defined in Section 414 of the Internal Revenue Code, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the Internal Revenue Code; or
 - (D) As described in the Internal Revenue Code, a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.
- (7) Where new coverage is provided under a life insurance policy or annuity contract and the

cost is borne wholly by the insured's employer or by an association of which the insured is a member;

- (8) Existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed;
- (9) Immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempt from the rules in this Section; or
- (10) Structured settlements.

(b) Notwithstanding 11 NCAC 12 .0604(a)(6), the rules in this Section apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after tax-basis, and where the insurer has been notified that plan participants may chose from among two or more insurers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in this Paragraph, direct solicitation does not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement, or when initiated by an individual employee, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual employee.

(c) Registered contracts are exempt from the requirements of 11 NCAC 12 .0606(2) and 12 .0612(a)(2) with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular are required instead.

History Note: Authority G.S. 58-2-40; 58-3-115; 58-58-1; 58-58-40; Eff. October 1, 1985; Amended Eff. February 1, 2008; August 1, 2004; April 8, 2002; November 1, 1989.

TITLE 12 – DEPARTMENT OF JUSTICE

12 NCAC 021 .0203 APPLICATION FOR COMPANY POLICE AGENCY

(a) Each company police agency shall complete and submit to the Company Police Administrator the following items and documentation:

- (1) an application form;
- (2) articles of incorporation or other agency originating documentation, which specifies the agency's law enforcement functions;
- (3) names and addresses for all corporate officers and directors;
- (4) a copy of the company police agency's insurance policy, or if self insured, the

certificate of self insurance (applicable to non-public entities only);

- (5) a criminal history record check on each corporate officer and director of the corporation through the clerk of superior court in each county where the individual resided, maintained a residence and place of business over a five year period prior to such application. However, this Subparagraph does not require the agency to submit a criminal history record check on currently commissioned company police officers;
- (6) the appropriate fees as required by 12 NCAC 02I .0206;
- (7) a listing of the names and addresses of all employing businesses and institutions for which the company police agency has contracted with to provide services;
- (8) notification form signed by the local District Attorney, Sheriff and if applicable, local Police Chief, for the location where the primary business will be conducted stating the agency's intent to operate as a company police agency;
- (9) at least two affidavits signed by other individuals within the community who have personal knowledge stating that the corporate officers and directors of the corporation are of good moral character as defined in 12 NCAC 02I .0202(a)(9).

(b) Upon submission of the information required in Paragraph (a) of this Rule, the Company Police Administrator may issue a probationary agency certification which will remain in effect for six months, during which time the agency must obtain certification of at least one company police officer and secure a contract for police services with at least one entity. If the company police agency has not otherwise violated the provisions of the rules in this Subchapter or of G.S. 74E, the agency shall be awarded agency certification at the end of the six month period. Should the agency fail to employ at least one company police officer and at least one contract for services, the probationary certification shall automatically expire at the end of the six month period. Upon re-application, the agency shall resubmit all materials required pursuant to this Rule.

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

12 NCAC 02I .0305 TRANSFERS

- (a) No individual commissioned as a company police officer may transfer his company police commission from one employing company police agency to another.
- (b) Prior to receiving a company police commission, a person who has been previously commissioned as a company police officer shall meet all those requirements for transfer set out in 12 NCAC 09C .0306(b).
- (c) Officers previously commissioned who were not previously required to meet the educational or basic training requirements

are not required to meet such requirements when applying for commission to another agency with less than a 12-month break in law enforcement service. If an individual has been separated from a company police agency for greater than 12 months, that individual must comply with the rules for application for company police commission.

History Note: Authority G.S. 74E-4; 74E-6; Eff. February 1, 1976; Amended Eff. September 9, 1976; Readopted Eff. January 5, 1978; Amended Eff. February 1, 2008; August 2, 1993.

12 NCAC 02I .0306 BADGES, UNIFORMS, VEHICLES AND OFFICER IDENTIFICATION

- (a) Badges:
 - (1) All company police officers shall, when on duty, wear a badge bearing the name of the certified company police agency and the general title of Company Police Officer or the specific title of:
 - (A) Railroad Police officer;
 - (B) Campus Police Officer; or
 - (C) Special Police Officer.
 - (2) The badge shall be carried at all times by the company police officer. The badge shall be worn in plain view, except in situations where the officer's weapon is concealed under the provisions set forth in Rule .0304 of this Section.
 - (3) No identification card indicating the person is a company police officer shall be issued to or possessed by any company police officer except in the form of identification issued to the officer by the Attorney General.
- (b) Uniforms:
 - (1) All company police officers shall, when on duty, wear the uniform of the company police agency unless directed to wear other attire by the Department Head.
 - (2) Those company police agencies which employ both company police commissioned and non-commissioned security personnel shall provide the commissioned company police officers with a uniform of a different color that would distinguish the company police officer from other employees of the agency.
 - (3) The uniform of the company police officer shall bear shoulder patches that contain:
 - (A) the terms "Railroad Police Officer," "Campus Police Officer," "Special Police Officer," or "Company Police Officer"; and
 - (B) the name of the company police agency.
- (c) Vehicles:
 - (1) Each marked vehicle used by a company police agency subject to this Rule shall display the agency name and one of the following

agency classifications: "Railroad Police," "Campus Police," "Special Police," or "Company Police".

- (2) The agency classifications required by Subparagraph (a)(1) of this Rule shall be of uniform size with any other writing on the company police vehicle.
- (3) The Department Head shall ensure that employees who have not been commissioned as company police officers do not operate any marked vehicle used by the company police agency.
- (4) The Department Head shall ensure that employees who are not commissioned as a company police officer do not operate any company police vehicle with a blue light contained therein.
- (5) The Department Head shall ensure that any marked company police agency vehicle is not operated outside of those property jurisdiction limitations set forth in G.S. 74E-6, unless such operation is performed by an on-duty officer in the performance of his official duties and authorized by the Department Head.

(d) Except as provided in Paragraph (e) of this Rule, all company police agencies shall comply with the provisions of this rule for badges, vehicles, uniforms, and other equipment no later than January 1, 2008.

(e) The requirements contained in this Rule shall not apply to those agencies and commissioned officers who are regulated by the Tennessee Valley Authority, United States Nuclear Regulatory Commission, or the Railroad Police Certification Act of 1990.

History Note: Authority G.S. 74E-4; 74E-7; Eff. August 2, 1993; Amended Eff. February 1, 2008.

12 NCAC 02I .0501 AGENCY RETENTION OF RECORDS OF COMMISSION

Each company police agency shall place in personnel files the official notification from the Company Police Administrator of either probationary or general certification for each company police officer employed or appointed by the agency. The personnel files shall contain the following documents:

- (1) Commission certificate;
- (2) Probationary or general certification;
- (3) Oath of office;
- (4) Firearms qualification (annual F-9A forms);
- (5) Annual state mandated in-service verification (ex: certificates, transcripts, etc.);
- (6) Notice of appointment (form F-5A); and
- (7) Notice of separation (form F-5B).

History Note: Authority G.S. 74E-4; Eff. February 1, 2008.

12 NCAC 07D .1109 TRAINING VIDEO AND TRAINING TEST

History Note: Authority G.S. 74C-5(2); Eff. July 1, 1994; Repealed Eff. February 1, 2008.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 01N .0101 PURPOSE

Loans for public water systems from the Drinking Water State Revolving Fund established by the Water Infrastructure Act S.L. 2005-454 (HB 1095) shall be made in accordance with this Subchapter.

History Note: Authority G.S. 159G-22; 159G-35; 159G-44; Temporary Adoption Eff. January 31, 1998; Eff. April 1, 1999; Amended Eff. February 1, 2008.

15A NCAC 01N .0102 DEFINITIONS

The following definitions shall apply to this Subchapter:

- (1) "Act" means the N.C. Drinking Water Act, G.S. 130A-311 et. seq;
- (2) "Division" means the Division of Environmental Health, Department of Environment and Natural Resources;
- (3) "Fund" means the Drinking Water State Revolving Fund established by G.S. 159G-22;
- (4) "Intended Use Plan" (IUP) means an annual plan to identify the proposed uses of the amount available in the Fund;
- (5) "MCL" means maximum contaminant level which is the permissible level of a contaminant in water which is delivered to any user of a public water system; and
- (6) "Receiving agency" means the Division.

History Note: Authority G.S. 159G-2; 159G-35; 159G-44; Temporary Adoption Eff. January 31, 1998; Eff. April 1, 1999; Amended Eff. February 1, 2008.

15A NCAC 01N .0103 APPLICABLE PROCEDURES

Loans from the Fund shall be made in accordance with 40 CFR Part 9 and 35, Subpart L which are hereby incorporated by reference including any subsequent amendments and additions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Free copies may be obtained from the U.S. Environmental Protection Agency by telephoning 1-800-426-4791. Copies are also available on-line at <http://www.deh.enr.state.nc.us/pws/srf/rules/072506-operating-agreement.doc> and <http://www.epa.gov/fedrgstr/EPA-WATER/2000/August/Day-07/w19783.htm>.

History Note: Authority G.S. 159G-22; 159G-35; 159G-44; Temporary Adoption Eff. January 31, 1998; Eff. April 1, 1999; Amended Eff. February 1, 2008.

15A NCAC 01N .0201 AVAILABILITY OF LOANS

- (a) Loans shall be available only for projects that appear on the state approved intended use plan submitted to the U.S. Environmental Protection Agency and that comply with the requirements of this Subchapter.
- (b) Proposed projects may be added to the IUP to address emergency situations. The qualifying criteria is that a serious public health hazard or a drought emergency is present or imminent for a public water supply system. Such actions will be reported in the Annual Report.
- (c) Fifteen percent of the annual allocation shall be available to public water systems which regularly serve fewer than 10,000 persons to the extent such funds can be obligated in accordance with Rule .0701 of this Subchapter.
- (d) During any fiscal year a maximum of five percent of the annual allocation may be used for loans for project planning purposes only.

History Note: Authority G.S. 159G-22; 159G-35; 159G-44; Temporary Adoption Eff. January 31, 1998; Eff. April 1, 1999; Amended Eff. February 1, 2008; August 1, 2004.

15A NCAC 01N .0202 LOANS RESTRICTIONS

- (a) Loans shall not be used for the acquisition of real property or interests therein, unless the acquisition is integral to a project authorized under this Subchapter and the purchase is from a willing seller.
- (b) Except as provided in Paragraph (c) of this Rule no assistance shall be provided to a public water system that does not have the technical, managerial, and financial capacity to ensure compliance with the requirements of the Act or to a public water system that is in significant non-compliance with any requirement of the Act or with a variance authorized under the Act as evidenced by administrative penalty, administrative order or court action against the water system. A determination of technical, managerial, and financial capacity shall be based upon a review of finances; compliance with applicable public health, environmental and utility laws; and the experience and certification level of the water system operator as evidenced by the submission of a water system management plan as required by Section .0400 of this Subchapter.
- (c) A public water system in significant non-compliance with the Act may receive assistance if the assistance shall ensure compliance with the Act. A public water system that does not have technical, managerial, and financial capacity may receive assistance if the owner or operator shall agree to undertake changes in operation of the water system that will ensure the system will achieve technical, managerial, and financial capacity over the long-term.
- (d) Each applicant shall establish a dedicated source of revenue or demonstrate that there is adequate security for repayment of the loan.

- (e) Funding shall be limited to the most cost-effective solution for the compliance or public health problem identified in a proposed project.
- (f) Funding shall be limited to the eligible portions of a project containing ineligible segments.
- (g) Funding shall not be available for federally owned public water systems.

History Note: Authority G.S. 159G-22; 159G-35; 159G-44; Temporary Adoption Eff. January 31, 1998; Eff. April 1, 1999; Amended Eff. February 1, 2008.

15A NCAC 01N .0301 DETERMINATION OF ELIGIBILITY

- (a) Eligibility of applicants shall be determined in accordance with G.S. 159G-31.
- (b) Applications shall be returned to ineligible applicants.
- (c) An application may not be filed after the award of a construction contract on a project, except when an applicant is subject to an administrative order or deadline issued by the Division or the project qualifies as an emergency situation.

History Note: Authority G.S. 159G-22; 159G-35; 159G-44; Temporary Adoption Eff. January 31, 1998; Eff. April 1, 1999; Amended Eff. February 1, 2008.

15A NCAC 01N .0303 ELIGIBLE PROJECT COSTS

- (a) Project construction costs eligible for a loan under this Subchapter are limited to:
 - (1) Planning, including system and needs assessment, the preparation of a local water supply plan and the preparation of a water system management plan;
 - (2) Environmental assessment reports, including all federal cross-cutters;
 - (3) Design;
 - (4) Construction;
 - (5) Legal, fiscal, and administrative costs;
 - (6) Contingency costs; and
 - (7) Land acquisition integral to the project and acquired from a willing seller.
- (b) Loans may be up to 100 percent of allowable construction project costs.

History Note: Authority G.S. 159G-22; 159G-35; 159G-44; Temporary Adoption Eff. January 31, 1998; Eff. April 1, 1999; Amended Eff. February 1, 2008.

15A NCAC 01N .0401 FILING DEADLINES

Complete applications for loans shall be postmarked or delivered to the Division of Environmental Health on or before September 30 of each year in order to be considered for loan funds available during the following fiscal year except those applications for emergency projects as defined in Rule .0201(b) of this Subchapter may be submitted at any time.

History Note: Authority G.S. 159G-22; 159G-35; 159G-44; Temporary Adoption Eff. January 31, 1998; Eff. April 1, 1999; Amended Eff. February 1, 2008.

15A NCAC 01N .0402 APPLICATION PROCEDURES

- (a) Applications for loans shall be submitted on forms provided by the Division and shall be accompanied by all documents such as the Preliminary Engineering Report (PER), assurances, and other information required by the instructions for completing and filing the applications. Information concerning any grant or loan funds from any other source for which the applicant has applied shall be disclosed on the application.
- (b) Every application shall be accompanied by an adopted resolution or other documentation as required by G.S. 159G-37. The resolution or documentation shall be certified or attested to as a true and correct copy as adopted.
- (c) An applicant shall furnish additional information upon the request of the Division as required by these Rules.
- (d) A project shall not receive a priority rating unless the application contains sufficient information on the day of rating for the receiving agency to review and assign priority points.
- (e) An application may be withdrawn from consideration upon request of the applicant but if it is resubmitted it shall be considered as a new application subject to Rule .0401 of this Subchapter.

History Note: Authority G.S. 159G-22; 159G-35; 159G-44; Temporary Adoption Eff. January 31, 1998; Eff. April 1, 1999; Amended Eff. February 1, 2008.

15A NCAC 01N .0403 PROJECT SCHEDULE AND RESOLUTION

History Note Authority G.S. 159G-44; Temporary Adoption Eff. January 31, 1998; Eff. April 1, 1999; Repealed Eff. February 1, 2008.

15A NCAC 01N .0502 ASSIGNMENT OF PRIORITIES

- (a) During each review period the Division shall assign a priority rating to each eligible application for inclusion in the state intended use plan; the priority rating shall be determined in accordance with the rating criteria and points established pursuant to G.S. 159G-35.
- (b) The Division may establish a priority rating when two or more applications receive the same number of priority points. The project receiving more points for affordability shall receive the higher priority. If the affordability points awarded the projects are equal, the project with the smaller population shall receive the greater priority.
- (c) Only the eligible portions of a project shall receive a priority rating.
- (d) The Division may assign a different priority rating to each substantially independent part of a proposed project.
- (e) Any applications that are not awarded assistance during a review period shall be held over and considered for a second review in accordance with G.S. 159G-39(c).

History Note: Authority G.S. 159G-35; 159G-44; Temporary Adoption Eff. January 31, 1998; Eff. April 1, 1999; Amended Eff. February 1, 2008.

SECTION .0600 - PRIORITY CRITERIA

- 15A NCAC 01N .0601 GENERAL CRITERIA**
- 15A NCAC 01N .0602 PUBLIC HEALTH AND COMPLIANCE**
- 15A NCAC 01N .0603 CONSOLIDATION**
- 15A NCAC 01N .0604 RELIABILITY**
- 15A NCAC 01N .0605 AFFORDABILITY**
- 15A NCAC 01N .0606 SOURCE PROTECTION AND MANAGEMENT**

History Note: Authority G.S. 159G-35; 159G-44; Temporary Adoption Eff. January 31, 1998; Eff. April 1, 1999; Amended Eff. August 1, 2004; Repealed Eff. February 1, 2008.

15A NCAC 01N .0701 DETERMINATION OF AWARDS AND BYPASS PROCEDURES

- (a) All funds appropriated for a fiscal year and all other funds accruing from loan principal repayments, interest payments, interest earned on funds, excess funds not awarded in the previous priority review period, and any other source shall be available for loans during the priority review period.
- (b) The funds available in a priority review period shall be awarded in the form of a binding commitment in descending order of priority rating upon EPA approval of that IUP considering Rule .0201 of this Subchapter to those eligible projects that are ready to proceed. A project is defined as ready to proceed when the following conditions have been met:
 - (1) Project plans and specifications are approved by the Division;
 - (2) Any environmental review required is complete;
 - (3) One hundred percent funding necessary for the project is committed; and
 - (4) Authorization To Construct is issued by the Division.
- (c) Except as provided in Paragraph (d) of this Rule, the maximum principal amount of loan commitment from any fiscal year's allocation made to an applicant shall be three million dollars (\$3,000,000) for a construction project or twenty-five thousand dollars (\$25,000) for project planning purposes.
- (d) Any funds remaining after the initial allocation of Paragraphs (b) and (c) of this Rule shall be awarded in descending order of priority rating to those eligible projects in any approved IUP subject to the limitation of Paragraph (c) of this Rule for each 'pass' through the remaining available funding.

History Note; Authority G.S. 159G-36; Temporary Adoption Eff. January 31, 1998; Eff. April 1, 1999; Amended Eff. February 1, 2008; August 1, 2004.

15A NCAC 01N .0704 DISBURSEMENT OF LOANS

- (a) Disbursement of loan monies shall be made at intervals as work progresses and expenses are incurred. No disbursement shall be made until the receiving agency receives documentation of incurred costs. At no time shall disbursement exceed the allowable costs which have been incurred at that time.
- (b) No disbursement shall be made until the receiving agency receives documentation of compliance with applicable federal and state laws.
- (c) The receiving agency shall authorize the Controller's Office of the Department of Environment and Natural Resources to make loan disbursements.

History Note: Authority G.S. 159G-22; 159G-35; 159G-44; Temporary Adoption Eff. January 31, 1998; Eff. April 1, 1999; Amended Eff. February 1, 2008.

15A NCAC 01N .0801 INTEREST RATES

The interest rate to be charged on loans under this Subchapter shall be set in each priority review period at the lesser of four percent per annum or one half the prevailing national market rate as derived from the Bond Buyer's 20-Bond Index in accordance with G.S. 159G-40.

History Note: Authority G.S. 159G-22; 159G-35; 159G-44; Temporary Adoption Eff. January 31, 1998; Eff. April 1, 1999; Amended Eff. February 1, 2008.

15A NCAC 01N .0902 AUDIT

All projects to which a loan has been committed shall be audited in accordance with G.S. 159G-35 and G.S. 159-40.

History Note: Authority G.S. 159G-22(c); Temporary Adoption Eff. January 31, 1998; Eff. April 1, 1999; Amended Eff. February 1, 2008.

15A NCAC 03K .0102 PROHIBITED RAKES

It is unlawful to use a rake more than 12 inches wide or weighing more than six pounds to take:

- (1) oysters or scallops;
- (2) clams in any live oyster bed, in any established bed of submerged aquatic vegetation as described in 15A NCAC 03I .0101(b)(20), or in any established bed of salt water cordgrass (*Spartina alterniflora*).

History Note: Authority G.S. 113-134; 113-182; 143B-289.52; Eff. January 1, 1991; Amended Eff. February 1, 2008.

15A NCAC 03K .0103 SHELLFISH OR SEED MANAGEMENT AREAS

(a) The Fisheries Director may, by proclamation, designate Shellfish Management Areas which meet either of the following criteria. The area has:

- (1) conditions of bottom type, salinity, currents, cover or cultch necessary for shellfish growth;
- (2) shellfish populations or shellfish enhancement projects that may:
 - (A) produce commercial quantities of shellfish at 10 bushels or more per acre;
 - (B) produce shellfish suitable for transplanting as seed or for relaying from prohibited (polluted) areas; or
 - (C) serve as sanctuaries to increase spawning and disease resistance or to prevent predation.

(b) It is unlawful to use a trawl net, long haul seine, or swipe net in any designated Shellfish or Seed Management area. These areas shall be marked with signs or buoys. Unmarked and undesignated tributaries shall be the same designation as the designated waters to which they connect or into which they flow. No unauthorized removal or relocation of any such marker shall have the effect of changing the designation of any such body of water or portion thereof, nor shall any such unauthorized removal or relocation or the absence of any marker affect the applicability of any rule pertaining to any such body of water or portion thereof.

(c) It is unlawful to take shellfish from any Shellfish Management Area which has been closed and posted, except that the Fisheries Director may, by proclamation, open specific areas to allow the taking of shellfish and may designate time, place, character, or dimensions of any method or equipment that may be employed.

(d) It is unlawful to take oysters from Seed Management Areas for planting on shellfish leases or franchises without first obtaining a Permit to Transplant Oysters from Seed Management Areas from the Fisheries Director. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52; Eff. January 1, 1991; Amended Eff. March 1, 1994; Temporary Amendment Eff. October 1, 2001; Amended Eff. February 1, 2008; April 1, 2003.

15A NCAC 03K .0304 PROHIBITED TAKING

(a) It is unlawful to take clams by any method, other than by hand tongs, hand rakes, or by hand, except as provided in 15A NCAC 03K .0302 and .0303. Regardless of the areas which may be opened, it is unlawful to take clams by hand tongs in any established bed of submerged aquatic vegetation as described in 15A NCAC 03I .0101(b)(20) or salt water cordgrass (*Spartina alterniflora*).

(b) It is unlawful to possess clam trawls or cages aboard a vessel at any time, or have kick/deflector plates normally used in the

mechanical harvest of clams affixed to a vessel at any time, except during the time period specified for a mechanical clam harvest season in internal waters in accordance with 15A NCAC 03K .0302(a). A period of 14 days before and after the season as specified by proclamation will be allowed for the installation and removal of kick/deflector plates and clam trawls or cages. Vessels with permits for activities provided for in 15A NCAC 03K .0104, .0107, .0303(a), and .0401 shall be exempt from this Rule during the times such activities are permitted.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52; Eff. January 1, 1991; Amended Eff. February 1, 2008; May 1, 1997; July 1, 1993.

15A NCAC 03K .0501 BAY SCALLOPS - SEASONS AND HARVEST LIMITS

(a) The Fisheries Director may, by proclamation, specify open seasons and methods for the taking of bay scallops during the following periods:

- (1) From the last Monday in January through the last Friday in May; and
- (2) From August 1 through September 15 by hand harvest methods only as described by proclamation.

(b) The Fisheries Director may, by proclamation, impose any or all of the following restrictions for any commercial or recreational open season:

- (1) Specify number of days;
- (2) Specify areas;
- (3) Specify means and methods which may be employed in the taking;
- (4) Specify time period; and
- (5) Specify the quantity, but shall not exceed possession of more than 20 standard U.S. bushels per person per day or a total of 40 standard U.S. bushels in any combined commercial fishing operation per day.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52; Eff. January 1, 1991; Amended Eff. February 1, 2008.

15A NCAC 03K .0506 SOAKED OR SWELLED BAY SCALLOPS PROHIBITED

History Note: Authority G.S. 113-134; 113-182; 143B-289.52; Eff. January 1, 1991; Amended Eff. July 1, 1993; Repealed Eff. February 1, 2008.

15A NCAC 03O .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) 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 have only one entry in the eligibility pool at any one time.

(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.

(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.

(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.

(f) Applicants shall notify the Division of Marine Fisheries within 30 days of a change of address.

History Note: Authority G.S. 113-134; 143B-289.52; S.L. 1998-225, s. 4:24; Temporary Adoption Eff. April 1, 1999; Eff. August 1, 2000; Amended Eff. February 1, 2008.

15A NCAC 03O .0403 ELIGIBILITY BOARD REVIEW

(a) After determination by the Eligibility Board, applicants will be notified in writing as to the applicant's meeting or not meeting required eligibility criteria for the Standard Commercial Fishing License Eligibility Pool.

(b) The Marine Fisheries Commission shall determine the number of licenses available from the pool at their first scheduled meeting following July 1 of each year.

(c) The Eligibility Board shall meet to review applications as often as deemed necessary by the Chairman of the Eligibility Board.

History Note: Authority G.S. 113-134; 143B-289.52; S.L. 1998-225, s. 4:24; Temporary Adoption Eff. April 1, 1999; Eff. August 1, 2000; Amended Eff. February 1, 2008.

15A NCAC 03O .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) In the case of an applicant who is under 16 years of age, significant involvement in commercial fishing

for two out of the last five years with a parent, legal guardian, grandparent or other adult; or

- (d) Significant involvement of the applicant's family in commercial 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 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. 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 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 and any rule implementing or authorized by such statutes; any conviction for violation of any provision of Article 7 of G.S. 143B 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) All applicants for the Standard Commercial Fishing License Eligibility Pool must meet all other statutory eligibility requirements for the Standard Commercial Fishing License.

History Note: Authority G.S. 113-134; 113-168.1; 113-168.2; 143B-289.52; S.L. 1998-225, s. 4.24; Temporary Adoption Eff. April 1, 1999; Eff. August 1, 2000; Amended Eff. February 1, 2008.

15A NCAC 07J .0409 CIVIL PENALTIES

(a) Purpose and Scope. These Rules provide the procedures and standards governing the assessment, remission, settlement and appeal of civil penalties assessed by the Coastal Resources Commission and the Director pursuant to G.S. 113A-126(d).

(b) Definitions. The terms used herein shall be as defined in G.S. 113A-103 and as follows:

- (1) "Act" means the Coastal Area Management Act of 1974, G.S. 113A-100 through 134, plus amendments.
(2) "Delegate" means the Director or other employees of the Division of Coastal Management, or local permit officers to whom the Commission has delegated authority to act in its stead pursuant to this Rule.
(3) "Director" means the Director, Division of Coastal Management.
(4) "Respondent" means the person to whom a notice of violation has been issued or against whom a penalty has been assessed.
(5) "Person" is defined in the Coastal Area Management Act, G.S. 113A-103(9).

(c) Civil penalties may be assessed against any person who commits a violation as provided for in G.S. 113A-126(d)(1) and (2).

(d) Investigative costs. Pursuant to G.S. 113A-126(d)(4a) the Commission or Director may also assess a respondent for the costs incurred by the Division for investigation, inspection, and monitoring associated with assessment the civil penalty. Investigative costs shall be in addition to any civil penalty assessed. For a minor development violation, investigative costs shall not exceed one-half of the amount of the civil penalty assessed or one thousand dollars (\$1,000), whichever is less. For a major development violation, investigative costs shall not exceed one-half of the amount of the civil penalty assessed or two thousand five hundred dollars (\$2,500), whichever is less. The Division shall determine the amount of investigative costs to assess based upon factors including the amount of staff time required for site visits, investigation, enforcement action, interagency coordination, and for monitoring restoration of the site.

(e) Notice of Violation. The Commission hereby authorizes employees of the Division of Coastal Management to issue in the name of the Commission notices of violation to any person engaged in an activity which constitutes a violation for which a civil penalty may be assessed. Such notices shall set forth the nature of the alleged violation, shall order that the illegal activity be ceased and affected resources be restored in accordance with 15A NCAC 07J .0410. The notice shall specify the time by which the restoration shall be completed as ordered by the Division. The notice shall be delivered personally or by registered mail, return receipt requested.

(f) Civil Penalty Assessment.

- (1) The Commission hereby delegates to the Director the authority to assess civil penalties according to the procedures set forth in Paragraph (g) of this Rule.
- (2) The Director shall issue a notice of assessment within 30 days after the Division determines that restoration of the adversely impacted resources is complete.
- (3) The notice of assessment shall specify the reason for assessment, how the assessment was calculated, when and where payment shall be made, and shall inform the respondent of the right to appeal the assessment by filing a petition for a contested case hearing with the Office of Administrative Hearings pursuant to G.S. 150B-23. The notice shall be delivered

personally or by registered mail, return receipt requested.

(g) Amount of Assessment.

- (1) Civil penalties shall not exceed the maximum amounts established by G.S. 113A-126(d).
- (2) If any respondent willfully continues to violate by action or inaction any rule or order of the Commission after the date specified in a notice of violation, each day the violation continues or is repeated shall be considered a separate violation as provided in G.S. 113A-126(d)(2).
- (3) In determining the amount of the penalty, the Commission or Director shall consider the factors contained in G.S. 113A-126(d)(4).
- (4) Pursuant to Subparagraph (g)(3) of this Rule, penalties for major development violations, including violations of permit conditions, shall be assessed in accordance with the following criteria.
 - (A) Major development which could have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed a penalty equal to two times the relevant CAMA permit application fee, plus investigative costs.
 - (B) Major development which could not have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed an amount equal to the relevant CAMA permit application fee, plus a penalty pursuant to Schedule A of this Rule, plus investigative costs. If a violation affects more than one area of environmental concern (AEC) or coastal resource as listed within Schedule A of this Rule, the penalties for each affected AEC shall be combined. Any structure or part of a structure that is constructed in violation of existing Commission rules shall be removed or modified as necessary to bring the structure into compliance with the Commission's rules.

SCHEDULE A
Major Development Violations

Size of Violation (sq. ft.)

| AREA OF ENVIRONMENTAL CONCERN AFFECTED | ≤ 100 | 101-500 | 501-1,000 | 1001-3000 | 3001-5000 | 5001-8000 | 8001-11,000 | 11,001-15,000 | 15,001-20,000 | 20,001-25,000 | >25,000 |
|--|-------|---------|-----------|-----------|-----------|-----------|-------------|---------------|---------------|---------------|---------|
| | | | | | | | | | | | |

APPROVED RULES

| | | | | | | | | | | | |
|---|-------|-------|-------|---------|---------|---------|---------|---------|---------|----------|----------|
| ESTUARINE WATERS OR PUBLIC TRUST AREAS (1) | \$250 | \$375 | \$500 | \$1,500 | \$2,000 | \$3,500 | \$5,000 | \$7,000 | \$9,000 | \$10,000 | \$10,000 |
| Primary Nursery Areas | \$100 | \$225 | \$350 | \$850 | \$1,350 | \$2,850 | \$4,350 | \$3,000 | \$1,000 | n/a | n/a |
| Mudflats and Shell Bottom | \$100 | \$225 | \$350 | \$850 | \$1,350 | \$2,850 | \$4,350 | \$3,000 | \$1,000 | n/a | n/a |
| Submerged Aquatic Vegetation | \$100 | \$225 | \$350 | \$850 | \$1,350 | \$2,850 | \$4,350 | \$3,000 | \$1,000 | n/a | n/a |
| Coastal Wetlands | \$250 | \$375 | \$500 | \$1,500 | \$2,000 | \$3,500 | \$5,000 | \$7,000 | \$9,000 | \$10,000 | \$10,000 |
| Coastal Shorelines | \$250 | \$350 | \$450 | \$850 | \$1,250 | \$2,450 | \$3,650 | \$5,250 | \$7,250 | \$9,250 | \$10,000 |
| Wetlands (2) | \$100 | \$200 | \$300 | \$700 | \$1,100 | \$2,300 | \$3,500 | \$4,750 | \$2,750 | \$750 | n/a |
| ORW- Adjacent Areas | \$100 | \$200 | \$300 | \$700 | \$1,100 | \$2,300 | \$3,500 | \$4,750 | \$2,750 | \$750 | n/a |
| OCEAN HAZARD SYSTEM (3)(4) | \$250 | \$350 | \$450 | \$850 | \$1,250 | \$2,450 | \$3,650 | \$5,250 | \$7,250 | \$9,250 | \$10,000 |
| Primary or Frontal Dune | \$100 | \$200 | \$300 | \$700 | \$1,100 | \$2,300 | \$3,500 | \$4,750 | \$2,750 | \$750 | n/a |
| PUBLIC WATER SUPPLIES (5) | \$250 | \$350 | \$450 | \$850 | \$1,250 | \$2,450 | \$3,650 | \$5,250 | \$7,250 | \$9,250 | \$10,000 |
| NATURAL AND CULTURAL RESOURCE AREAS (6) | \$250 | \$350 | \$450 | \$850 | \$1,250 | \$2,450 | \$3,650 | \$5,250 | \$7,250 | \$9,250 | \$10,000 |

- (1) Includes the Atlantic Ocean from the normal high water mark to three miles offshore.
- (2) Wetlands that are jurisdictional by the Federal Clean Water Act.
- (3) If the AEC physically overlaps another AEC, use the greater penalty schedule.
- (4) Includes the Ocean Erodible, High Hazard Flood Area, Inlet Hazard Area, and Unvegetated Beach Area.
- (5) Includes Small Surface Water Supply, Watershed and Public Water Supply Well Fields.
- (6) Includes Coastal Complex Natural Areas, Coastal Areas Sustaining Remnant Species, Unique Geological Formations, Significant Coastal Archaeological Resources, and Significant Coastal Historical Architectural Resources.
 - (C) Assessments for violations by public agencies (i.e. towns, counties and state agencies) shall be determined in accordance with Parts (g)(4)(A) and (B) of this Rule.
 - (D) Willful and intentional violations. The penalty assessed under Parts

- (g)(4)(A) and (B) of this Rule shall be doubled for willful and intentional violations except that the doubled penalties assessed under this Subparagraph shall not exceed ten thousand dollars (\$10,000) or be less than two thousand dollars (\$2,000) for each separate violation. A violation shall be considered to be willful and intentional when:
 - (i) The person received written instructions from one of the Commission's delegates that a permit would be required for the development and subsequently undertook development without a permit; or
 - (ii) The person received written instructions from one of the Commission's delegates that the proposed development was not permissible under the Commission's rules, or received denial of a permit

- (iii) The person committed previous violations of the Commission's rules; or
- (iv) The person refused or failed to restore a damaged area as ordered by one of the Commission's delegates. If necessary, the Commission or Division shall seek a court order to require restoration.

(E) Assessments against contractors. Any contractor or subcontractor or person or group functioning as a contractor shall be subject to a notice of violation and assessment of a civil penalty in accordance with Paragraph (f) of this Rule. Such penalty shall be in addition to that assessed against the landowner. When a penalty is being doubled pursuant to Part (g)(4)(D) and the element of willfulness is present only on the part of the contractor, the landowner shall be assessed the standard penalty and the contractor shall be assessed the doubled penalty.

- (F) Continuing violations.
- (i) Pursuant to G.S. 113A-126(d)(2), each day that the violation continues after the date specified in the notice of violation for the unauthorized activity to cease or restoration to be completed shall be considered a separate violation and shall be assessed an additional penalty.
 - (ii) Refusal or failure to restore a damaged area as ordered shall be considered a continuing violation and shall be assessed an additional penalty. When resources continue to be affected by the violation, the amount of the penalty shall be determined according to Part (g)(4)(B) of this Rule. The continuing penalty period shall be calculated from the date specified in the notice of violation for the unauthorized activity to

cease or restoration to be completed and run until:

- (I) the Division's order is satisfied, or
- (II) the respondent enters into good faith negotiations with the Division, or
- (III) the respondent contests the Division's order in a judicial proceeding by raising a justiciable issue of law or fact therein.

The continuing penalty period shall resume if the respondent terminates negotiations without reaching an agreement with the Division, fails to comply with court ordered restoration, or fails to meet a deadline for restoration that was negotiated with the Division.

(5) Pursuant to Subparagraph (g)(3) of this Rule, civil penalties for minor development violations, including violations of permit conditions, shall be assessed in accordance with the following criteria:

- (A) Minor development which could have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed a penalty equal to two times the relevant CAMA permit application fee, plus investigative costs.
- (B) Minor development which could not have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed an amount equal to the relevant CAMA permit application fee, plus a penalty pursuant to Schedule B of this Rule, plus investigative costs. If a violation affects more than one area of environmental concern (AEC) or coastal resource as listed within Schedule B of this Rule, the penalties for each affected AEC shall be combined. Any structure or part of a structure that is constructed in violation of existing Commission rules shall be removed or modified as necessary to bring the structure into compliance with the Commission's rules.

**SCHEDULE B
Minor Development Violations**

Size of Violation (sq. ft.)

| AREA OF ENVIRONMENTAL CONCERN AFFECTED | ≤ 100 | 101-500 | 501-1,000 | 1001-3000 | 3001-5000 | 5001-8000 | 8001-11,000 | 11,001 - 15,000 | 15,001 - 20,000 | 20,001 - 25,000 | >25,000 |
|--|-------|---------|-----------|-----------|-----------|-----------|-------------|-----------------|-----------------|-----------------|---------|
| Coastal Shorelines | \$225 | \$250 | \$275 | \$325 | \$375 | \$450 | \$525 | \$625 | \$750 | \$875 | \$1,000 |
| ORW- Adjacent Areas | \$125 | \$150 | \$175 | \$225 | \$275 | \$350 | \$425 | \$375 | \$250 | \$125 | n/a |
| OCEAN HAZARD SYSTEM (1)(2) | \$225 | \$250 | \$275 | \$325 | \$375 | \$450 | \$525 | \$625 | \$750 | \$875 | \$1,000 |
| Primary or Frontal Dune | \$125 | \$150 | \$175 | \$225 | \$275 | \$350 | \$425 | \$375 | \$250 | \$125 | n/a |
| PUBLIC WATER SUPPLIES (3) | \$225 | \$250 | \$275 | \$325 | \$375 | \$450 | \$525 | \$625 | \$750 | \$875 | \$1,000 |
| NATURAL AND CULTURAL RESOURCE AREAS (4) | \$225 | \$250 | \$275 | \$325 | \$375 | \$450 | \$525 | \$625 | \$750 | \$875 | \$1,000 |

- (1) Includes the Ocean Erodible, High Hazard Flood Area, Inlet Hazard Area, and Unvegetated Beach Area.
- (2) If the AEC physically overlaps another AEC, use the greater penalty schedule.
- (3) Includes Small Surface Water Supply, Watershed and Public Water Supply Well Fields.
- (4) Includes Coastal Complex Natural Areas, Coastal Areas Sustaining Remnant Species, Unique Geological Formations, Significant Coastal Archaeological Resources, and Significant Coastal Historical Architectural Resources.
- (C) Violations by public agencies (e.g. towns, counties and state agencies) shall be handled by the local permit officer or one of the Commission's delegates within their respective jurisdictions except that in no case shall a local permit officer handle a violation committed by the local government they represent. Penalties shall be assessed in accordance with Parts (g)(5)(A) and (B) of this Rule.
- (D) Willful and intentional violations. The penalty assessed under Parts (g)(5)(A) and (B) of this Rule shall be doubled for willful and intentional violations except that the doubled penalties assessed under this

Subparagraph shall not exceed one thousand dollars (\$1,000.00) for each separate violation. A violation shall be considered to be willful and intentional when:

- (i) The person received written instructions from the local permit officer or one of the Commission's delegates that a permit would be required for the development and subsequently undertook development without a permit; or
- (ii) The person received written instructions from the local permit officer or one of the Commission's delegates that the proposed development was not permissible under the Commission's rules, or received denial of a permit application for the proposed activity, and subsequently undertook the development without a permit; or
- (iii) The person committed previous violations of the Commission's rules; or
- (iv) The person refused or failed to restore a damaged area as

ordered by the local permit officer or one of the Commission's delegates. If necessary, a court order shall be sought to require restoration.

(E) Assessments against contractors. Any contractor or subcontractor or person or group functioning as a contractor shall be subject to a notice of violation and assessment of a civil penalty in accordance with Paragraph (f) of this Rule. Such penalty shall be in addition to that assessed against the landowner. When a penalty is being doubled pursuant to Part (g)(5)(D) and the element of willfulness is present only on the part of the contractor, the landowner shall be assessed the standard penalty and the contractor shall be assessed the doubled penalty.

(F) Continuing violations.

(i) Pursuant to G.S. 113A-126(d)(2), each day that the violation continues after the date specified in the notice of violation for the unauthorized activity to cease and restoration to be completed shall be considered a separate violation and shall be assessed an additional penalty.

(ii) Refusal or failure to restore a damaged area as ordered shall be considered a continuing violation and shall be assessed an additional penalty. The amount of the penalty shall be determined according to Part (g)(5)(B) of this Rule. The continuing penalty period shall be calculated from the date specified in the notice of violation for the unauthorized activity to cease and restoration to be completed and run until:

- (I) the Commission delegate's order is satisfied, or
- (II) the respondent enters into good faith negotiations with the local

(III) permit officer or the Division, or the respondent contests the local permit officer's or the Division's order in a judicial proceeding by raising a justiciable issue of law or fact therein.

The continuing penalty period shall resume if the respondent terminates negotiations without reaching an agreement with the local permit officer or the Division, fails to comply with court ordered restoration, or fails to meet a deadline for restoration that was negotiated with the local permit officer or the Division.

(h) Hearings and Final Assessment. Final decisions in contested case hearings concerning assessments shall be made by the Commission. The final decision shall be based on evidence in the official record of the contested case hearing, the administrative law judge's recommended decision, any exceptions filed by the parties and oral arguments. Oral arguments shall be limited to the facts in the official record.

(i) Referral. If any civil penalty as finally assessed is not paid, the Director on behalf of the Commission shall request the Attorney General to commence an action to recover the amount of the assessment.

(j) Reports to the Commission. Action taken by the Director shall be reported to the Commission at the next meeting. Such reports shall include information on the following:

- (1) respondent(s) against whom penalties have been assessed;
- (2) respondent(s) who have paid a penalty, requested remission, or requested an administrative hearing;
- (3) respondent(s) who have failed to pay; and
- (4) cases referred to the Attorney General for collection.

(k) Settlements. The Commission hereby delegates to the Director the authority to enter into a settlement of a civil penalty appeal at any time prior to decision in an administrative contested case hearing. Such settlements shall not require the approval of the Commission and shall not be considered a final Commission decision for purposes of G.S. 113A-123.

(l) Any settlement agreement proposed subsequent to a final Commission decision in the contested case shall be submitted to the Commission for approval.

History Note: Authority G.S. 113A-124; 113A-126(d); Eff. January 24, 1980; ARRC Objection August 18, 1988; Amended Eff. January 1, 1989; November 1, 1986; November 1, 1984; ARRC Objection Lodged Eff. January 18, 1991;

Amended Eff. February 1, 2008; July 1, 1991; June 1, 1991.

TITLE 17 – DEPARTMENT OF REVENUE

17 NCAC 01C .0201 PRE-HEARING CONFERENCE
17 NCAC 01C .0202 PROCEDURE OF HEARING
17 NCAC 01C .0203 ASSISTANCE OF COUNSEL

History Note: Authority G.S. 105-241.1; 105-262;
Eff. February 1, 1976;
Amended Eff. January 1, 1994;
Repealed Eff. February 1, 2008.

17 NCAC 01C .0205 FAILURE TO APPEAR

History Note: Authority G.S. 105-241.1; 105-262;
Eff. February 1, 1976;
Repealed Eff. February 1, 2008.

17 NCAC 01C .0305 APPLICATION FOR HEARING

History Note: Authority G.S. 105-241.1; 105-262;
Eff. February 1, 1976;
Repealed Eff. February 1, 2008.

17 NCAC 01C .0307 WAIVER OF TIME
LIMITATION

Pursuant to G.S. 105-241.9 a taxpayer may make a written
waiver of any time limitations for assessments under G.S. 105-
241.8 by filing a waiver of time limitation (Gen. Form 59). Such
waiver shall contain the date for such waiver and the signatures
of the secretary and the taxpayer or his agent or fiduciary.

History Note: Authority G.S. 105-241.9; 105-262;
Eff. February 1, 1976;
Amended Eff. February 1, 2008.

17 NCAC 01C .0316 CLAIM FOR TAX REFUND

If a taxpayer believes he has overpaid his taxes, he may file a
claim for refund (Form NC-19) within the period established
under G.S. 105-241.6. The taxpayer shall therein provide the
department with the basis of his claim and any other necessary
information.

History Note: Authority G.S. 105-241.7; 105-262;
Eff. February 1, 1976;
Amended Eff. February 1, 2008; January 1, 1994.

17 NCAC 01C .0317 TAX REFUND

History Note: Authority G.S. 105-266.1; 105-262;
Eff. February 1, 1976;
Repealed Eff. February 1, 2008.

17 NCAC 04B .0302 COMPUTATION AND
PAYMENT OF AMUSEMENT GROSS RECEIPTS TAXES

(a) Computation. - The gross receipts taxes on amusements
imposed by G.S. 105-37.1 and 105-38.1 are computed on the
admission price of the amusements, less any federal tax included
in the admission price. Gross receipts taxes are not deducted
from the admission price to determine the tax base.

(b) Payment. - The gross receipts taxes imposed on amusements
must be reported to the Secretary on Form B-205. The return and
the taxes payable with the return are due by the date set in G.S.
105-37.1.

History Note: Authority G.S. 105-37.1; 105-38.1; 105-262;
Eff. February 1, 1976;
Amended Eff. February 1, 2008; July 1, 2000.

17 NCAC 05C .1904 OVERPAYMENTS APPLIED TO
NEXT YEAR

(a) A corporation may elect to have an income tax refund
applied to estimated income tax for the following tax year. A
return reflecting an election to apply a refund to estimated tax
for the following year must be filed by the last allowable date for
making estimated tax payments for that year for the election to
be valid.

(b) If a corporation makes a valid election, that corporation may
not revoke the election after the return has been filed in order to
have the amount refunded or applied in any other manner, such
as an offset against any subsequently determined tax liability.

History Note: Authority G.S. 105-163.39; 105-163.40; 105-
262;
Eff. March 1, 2006;
Amended Eff. February 1, 2008.

17 NCAC 05D .0107 PURPOSE

The Secretary of Revenue or his designee will consider requests
from corporate taxpayers for use of an alternative apportionment
formula in determining tax bases for franchise and income taxes.

History Note: Authority G.S. 105-122(c1)(2); 105-130.4(t1);
105-262;
Eff. February 1, 2008.

17 NCAC 05D .0108 WHO MAY SUBMIT REQUEST

(a) Any C-Corporation, S-Corporation, or Limited Liability
Company electing to be treated as either a C-Corporation or S-
Corporation for federal income tax purposes, which believes that
the method of allocation or apportionment as administered by
the Secretary of Revenue has operated or will so operate as to
subject it to taxation on a greater portion of its income than is
reasonably attributable to business or earnings may request an
alternative apportionment method.

(b) Any C-Corporation, S-Corporation, or Limited Liability
Company electing to be treated as a C-Corporation for federal
income tax purposes, which believes that the method of
allocation or apportionment as administered by the Secretary of
Revenue has operated or will so operate as to subject it to

taxation on a greater portion of its capital stock, surplus and undivided profits than is reasonably attributed to business within the state may also request an alternative apportionment method.

History Note: Authority G.S. 105-122(c1)(2); 105-130.4(t1); 105-262; Eff. February 1, 2008.

17 NCAC 05D .0109 REQUEST FOR ALTERNATIVE APPORTIONMENT FORMULA

The corporation shall file a request with the Secretary setting forth the facts upon which its belief is based and its argument with respect to the application of the allocation formula. The request:

- (1) shall be in a form generally used in legal presentations.
- (2) shall be subscribed to by an officer of the corporation having knowledge of the facts.
- (3) must summarize the business operation of the corporation both within and without North Carolina.
- (4) must state whether the request is for income tax purposes, for franchise tax purposes, or for both.
- (5) must include the corporation's argument and contentions respecting the application of the formula prescribed by statute and the method of allocation requested referring to any legal references and other grounds upon which the corporation is basing its position(s).
- (6) must disclose the alternative apportionment method of allocation and apportionment being requested and indicate the effect of its application on the corporation's tax liability together with any supporting and supplementing information which will enable the Secretary to fully understand and consider the method of allocation and apportionment requested.
- (7) must state the taxable periods to be reviewed.
- (8) must, for income tax purposes, include statements of income and expenses, showing the net income of the corporation subject to apportionment for each taxable period to be reviewed.
- (9) must, for franchise tax purposes, include statements showing the total capital stock, surplus and undivided profits subject to apportionment for each taxable period to be reviewed.
- (10) must include schedules for each taxable period showing the computation of the property, payroll and sales factors as prescribed by statute in the determination of the apportionment factor as required by G.S. 105-130.4 and rules published by the Department of Revenue.
- (11) must, for a separate accounting method of reporting the corporation's business operations

in this State, submit as support operating statements showing the results of the corporation's operations within North Carolina computed on the separate accounting basis together with similar statements showing the results of the corporation's operations outside North Carolina for each taxable period to be reviewed. A full explanation and/or description of the separate accounting method employed in the computation must accompany the statements. If there are items of expense or income that are indirectly attributed to the separated operations, the basis for apportioning such items must be disclosed. General overhead expenses must be clearly documented and explained when any portion of this expense is allocated to the separate net income attributed to this State under the requested method.

- (12) must, for a separate accounting method, submit as support schedules reflecting the apportionment factors applicable to the operations which are conducted in whole or part in this State and the apportionment factor applicable to the business conducted outside of this State. The computations are made without regard to nexus requirements that would be considered if the operations were legal separate entities.
- (13) must contain any other information relevant to the apportionment formula or the requested method of allocation that the corporation deems appropriate under the circumstances.

History Note: Authority G.S. 105-122(c1)(2); 105-130.4(t1); 105-262; Eff. February 1, 2008.

17 NCAC 05D .0110 TIME FOR FILING

The request shall be filed with the Secretary not later than 90 days after the regular or extended due date of the tax return.

History Note: Authority G.S. 105-122(c1)(2); 105-130.4(t1); 105-262; Eff. February 1, 2008.

17 NCAC 05D .0111 NOTICE OF CONFERENCE

The Secretary shall schedule a conference to hear the corporation's request and will give notice of the time, date and place of the conference to the taxpayer at least 30 days prior thereto. Notice will be by United States Mail sent to the taxpayer's last known address. The date set for the conference must be within 90 days after the timely request of the conference or at a later date mutually agreed upon by the Taxpayer and the Secretary. The date set for the conference may be postponed once at the request of the Taxpayer and once at the request of the Secretary for up to 90 days or for a longer period mutually agreed upon by the Taxpayer and the Secretary.

History Note: Authority G.S. 105-122(c1)(2); 105-130.4(t1); 105-262; Eff. February 1, 2008.

17 NCAC 05D .0112 WHO SHALL ATTEND THE CONFERENCE

The Secretary or his/her designee and the Director of the Corporate, Excise and Insurance Tax Division or his/her designee, along with any other Department personnel the Secretary or Director shall deem appropriate, shall attend any conference pursuant to a request for an alternative apportionment formula. The taxpayer is not required to personally appear or be represented at the conference. Legal counsel or other tax practitioner may appear with or without the taxpayer on the taxpayer's behalf.

History Note: Authority G.S. 105-122(c1)(2); 105-130.4(t1); 105-262; Eff. February 1, 2008.

17 NCAC 05D .0113 CONDUCT OF THE CONFERENCE

- (a) If the corporation or its representative fails to appear after proper service of notice, the Secretary may proceed with the conference and make his decision in the absence of the party.
- (b) The taxpayer shall be given an opportunity to present arguments on issues of law and policy and an opportunity to present evidence on issues of fact.
- (c) The rules of evidence as applied in the trial division of the General Court of Justice do not apply.
- (d) An informal record containing in substance the evidence, contentions and arguments presented at the conference shall be made.

History Note: Authority G.S. 105-122(c1)(2); 105-130.4(t1); 105-262; Eff. February 1, 2008.

17 NCAC 05D .0115 FINAL DECISION

A final decision shall be furnished to the requesting corporation within 60 days from the date of the conference or within 60 days after the date any additional information requested by the Secretary during the conference is provided.

History Note: Authority G.S. 105-122(c1)(2); 105-130.4(t1); 105-262; Eff. February 1, 2008.

17 NCAC 05E .0102 ADDITIONAL FIRE AND LIGHTNING TAXES

History Note: Authority G.S. 105-228.5; 105-262; Eff. February 1, 1976; Readopted Eff. February 28, 1978; Transferred and Recodified from 11 NCAC 11E .0202 Eff. January 15, 1998; Amended Eff. August 1, 1998; Repealed Eff. February 1, 2008.

17 NCAC 05E .0105 GROUP PREMIUMS

History Note: Authority G.S. 105-228.5; 105-262; Eff. February 1, 1976; Readopted Eff. February 28, 1978; Transferred and Recodified from 11 NCAC 11E .0304 Eff. January 15, 1998; Amended Eff. August 1, 1998; Repealed Eff. February 1, 2008.

TITLE 19A – DEPARTMENT OF TRANSPORTATION

19A NCAC 02D .0801 PREQUALIFYING TO BID: REQUALIFICATION

- (a) In order to ensure that contracts let pursuant to G.S. 136-28.1(a) are awarded to responsible bidders, prospective bidders and contractors shall comply with the rules set forth in this Section except as otherwise provided by law. For highway construction, maintenance and repair contracts other than those specified in G.S. 136-28.1(a), specific project prequalification requirements to satisfy Paragraph (c) of this Rule shall be specified in the bid documents for specific project contracts.
- (b) In order to be eligible to contract with the Department pursuant to G.S. 136-28.1(a), all prospective bidders and subcontractors shall be prequalified with the Department to ensure that they are responsible bidders and reputable contractors capable of effectively and efficiently performing the work awarded to them.
- (c) The requirements of prequalification are as follows:
 - (1) Applicants shall demonstrate the necessary experience, knowledge, and expertise to safely perform and timely complete highway construction projects in which they bid or subcontract;
 - (2) Applicants shall demonstrate that they have sufficient financial resources, including available equipment and qualified personnel, to adequately perform and timely complete highway construction projects in which they bid or subcontract;
 - (3) Applicants shall demonstrate that they have the necessary knowledge and expertise to comply with all state and federal environmental laws relating to highway construction, maintenance and repair contracts; and
 - (4) Applicants shall certify they are independent and not affiliated with other bidders of the same project.
- (d) Bidders shall comply with all applicable laws regulating the practice of general contracting as contained in G.S. 87.
- (e) Prospective bidders and subcontractors shall update their prequalification status annually and shall requalify every three years.
- (f) A prequalified bidder or subcontractor must maintain compliance with the rules in this section at all times in order to be eligible to contract with the Department pursuant to G.S.

136.28.1(a). If at any time a bidder or subcontractor fails to comply with these rules, the Department shall disqualify the bidder or subcontractor from any further bidding until he is able to demonstrate compliance with these requirements by requalifying.

History Note: Authority G.S. 136-18(1); 136-28.1; 136-44.1; 136-45; 143B-350(f);
Eff. April 3, 1981;
Amended Eff. February 1, 2008; October 1, 1995; December 1, 1994; December 29, 1993; November 1, 1991.

19A NCAC 02D .0802 INVITATION TO BID

History Note: Authority G.S. 136-18(1); 136-28.1; 143B-350(g);
Eff. April 3, 1981;
Amended Eff. December 1, 1993;
Repealed Eff. February 1, 2008.

19A NCAC 02D .0803 ADVERTISEMENT AND INVITATIONS FOR BIDS

- (a) All projects shall be advertised in daily newspapers throughout the state prior to the bid opening.
- (b) On the date of advertisement, an invitation to bid shall be made available to interested parties on the Department's web site.
- (c) The invitation to bid shall indicate the contract identification number and description of the projects to be let, a general summary of the items and approximate quantities of work to be performed, and the time and place for the public opening and reading of the bids received. Information concerning the cost and the availability of bid documents shall also be provided in the invitation to bid.
- (d) Prospective bidders who desire to bid on projects identified in the invitation to bid shall purchase the project specific bid documents from the Department containing information necessary to submit the bid. Other interested parties may also purchase project specific bid documents from the Department. Documents may be purchased at cost from the Department.

History Note: Authority G.S. 136-28.1; 143-129;
Eff. April 3, 1981;
Amended Eff. February 1, 2008; December 1, 1993; November 1, 1991.

19A NCAC 02D .0804 CONTENTS OF PROPOSAL FORMS

History Note: Authority G.S. 136-18(1); 136-28.1;
Eff. April 3, 1981;
Repealed Eff. February 1, 2008.

19A NCAC 02D .0805 COMBINATION BIDS

The Department may issue proposals for projects in combination or separately, so that bids may be submitted either on the combination or on separate units of the combination. The Department shall make awards on combination bids or separate bids to the best advantage of the Department. No combination

bids, other than those specified by the Department in the proposals, shall be considered.

History Note: Authority G.S. 136-18(1); 136-28.1;
Eff. April 3, 1981;
Amended Eff. February 1, 2008.

19A NCAC 02D .0806 INTERPRETATION OF QUANTITIES IN PROPOSAL FORM

- (a) The quantities appearing in the proposal are approximate only and shall be used for the comparison of bids. Payment to the contractor shall be made only for the actual quantities of the various items that are completed and accepted in accordance with the terms of the contract.
- (b) When quantities are shown for items to be bid on a lump sum basis, these quantities are furnished for the convenience of bidders, and the Department shall not be responsible for, nor guarantee as correct, any quantity given.

History Note: Authority G.S. 136-18(1); 136-28.1;
Eff. April 3, 1981;
Amended Eff. February 1, 2008.

19A NCAC 02D .0807 EXAMINATION OF PLANS: SPECS: CONTRACT: AND SITE OF WORK

A bidder shall examine the site of the work contemplated, the plans and specifications, and the proposal therefor. A bidder or contractor shall make such independent investigation and examination as he deems necessary to satisfy himself as to conditions to be encountered in the performance of the work and with respect to possible local material sources, the quality and quantity of material available from such property, and the type and extent of processing that may be required in order to produce material conforming to the requirements of the contract. Upon submission of the bid, the Department shall deem that the bidder has completed the requirements set out in the bid documents as to the conditions to be encountered, the character, quality, and scope of work to be performed, the quantities of materials to be furnished and as to the conditions and requirements of the proposal and plans under which his bid is offered.

History Note: Authority G.S. 136-18(1); 136-28.1;
Eff. April 3, 1981;
Temporary Amendment Eff. March 15, 1982, for a period of 47 days to expire on May 1, 1982;
Amended Eff. February 1, 2008; October 1, 1993; March 1, 1984; May 1, 1982.

19A NCAC 02D .0808 PREPARATION AND SUBMISSION OF BIDS

19A NCAC 02D .0809 BID BOND OR BID DEPOSIT

History Note: Authority G.S. 136-18(1); 136-28.1; 143-129;
Eff. April 3, 1981;
Amended Eff. October 1, 1993; November 1, 1991, July 1, 1982;
Repealed Eff. February 1, 2008.

19A NCAC 02D .0810 DELIVERY OF BIDS

(a) All bidders shall submit bids in accordance with the bid documents to the Department.
 (b) Any bid not delivered within the time or manner specified in the bid documents shall not be accepted and shall be returned to the bidder unopened or, in the case of electronic bids, not read publicly.

History Note: Authority G.S. 136-18(1); 136-28.1; Eff. April 3, 1981; Temporary Amendment Eff. March 15, 1982, for a period of 47 days to expire on May 1, 1982; Amended Eff. February 1, 2008; November 1, 1991; July 1, 1982; May 1, 1982.

19A NCAC 02D .0811 WITHDRAWAL OR REVISION OF BIDS

History Note: Authority G.S. 136-18(1); 136-28.1; 143-29.1; Eff. April 3, 1981; Amended Eff. October 1, 1993; November 1, 1991; Repealed Eff. February 1, 2008.

19A NCAC 02D .0812 RECEIPT AND OPENING OF BIDS

(a) The Department shall open and read bids publicly at the time and place indicated in the invitation to bid. Bidders, their authorized agents, and other interested parties may be present.
 (b) Bid evaluation, including bid rejection, waiver of irregularities, or award shall be conducted in accordance with the terms of the bid documents.
 (c) Bid revisions by the Department or bid withdrawal by the bidder shall be made in accordance with the terms of the bid documents.

History Note: Authority G.S. 136-18(1); 136-28.1; Eff. April 3, 1981; Amended Eff. February 1, 2008; July 1, 1982.

19A NCAC 02D .0813 WITHDRAW OF BIDS – MISTAKE

19A NCAC 02D .0814 CORRECTION OF BID ERRORS

History Note: Authority G.S. 136-18(1); 143B-350(f); Eff. May 1, 1984; Amended Eff.; October 1, 1993; November 1, 1991; Repealed Eff. February 1, 2008.

19A NCAC 02D .0815 REJECTION OF BIDS

19A NCAC 02D .0816 DISQUALIFICATION OF BIDDERS

19A NCAC 02D .0817 CONSIDERATION OF BIDS

History Note: Authority G.S. 136-18(1); 136-28.1; 143B-350(f); Eff. April 3, 1981; Recodified from 19A NCAC 02D .0813 (Rule .0815); Recodified from 19A NCAC 02D .0814 (Rule .0816); Recodified from 19A NCAC 02D .0815 (Rule .0817);

Amended Eff. April 1, 1999; December 1, 1994; October 1, 1993; November 1, 1991; May 1, 1984; March 1, 1984; Repealed Eff. February 1, 2008.

19A NCAC 02D .0818 NON-COLLUSION AFFIDAVIT AND CERTIFICATIONS

(a) Every bidder and subcontractor shall furnish to the Department non-collusion affidavits certifying that the bidder has not entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with his bid on the project. The affidavit shall also indicate that the bidder intends to do the work with its own employees or subcontractors and is not bidding for the benefit of another contractor.
 (b) The prospective bidder and subcontractors shall also furnish executed debarment certification forms to the Department. In the event the prospective bidder or subcontractor cannot certify that he is not disbarred, the prospective bidder or subcontractor shall provide a written explanation, which the Department shall review and evaluate to determine if the bidder or subcontractor is still prequalified for bidding, contracting or subcontracting on Department projects.

History Note: Authority G.S. 136-18(1); 136-28.1; 143-54; Eff. April 3, 1981; Recodified from 19A NCAC 2D .0816; Amended Eff. February 1, 2008; October 1, 1993; November 1, 1991; October 1, 1991; July 1, 1982.

19A NCAC 02D .0819 AWARD OF CONTRACT

History Note: Authority G.S. 136-18(1); 136-28.1; Eff. April 3, 1981; Recodified from 19A NCAC 2D .0817; Amended Eff. October 1, 1993; November 1, 1991; Repealed Eff. February 1, 2008.

19A NCAC 02D .0821 RETURN OF BID BOND OR BID DEPOSIT

19A NCAC 02D .0822 CONTRACT BONDS

19A NCAC 02D .0823 EXECUTION OF CONTRACT

19A NCAC 02D .0824 FAILURE TO FURNISH CONTRACT BONDS

History Note: Authority G.S. 44A-33; 136-18(1); 136-28.1; Eff. April 3, 1981; Recodified from 19A NCAC 2D .0819 (Rule .0821); Recodified from 19A NCAC 2D .0820 (Rule .0822); Recodified from 19A NCAC 2D .0821 (Rule .0823); Recodified from 19A NCAC 2D .0822 (Rule .0824); Amended Eff. December 1, 1993; December 1, 1992; November 1, 1991; Repealed Eff. February 1, 2008.

19A NCAC 02D .0825 CONFIDENTIALITY OF COST ESTIMATES

All cost estimates prepared by the Department for the purpose of comparing bids shall be confidential and not disclosed until after the opening of bids.

*History Note: Authority G.S. 133-33;
Eff. September 1, 1981;
Amended Eff. May 1, 1983;
Recodified from 19A NCAC 2D .0823;
Amended Eff. February 1, 2008; February 1, 1995; October 1, 1993; October 1, 1991.*

19A NCAC 02D .0827 SUBSURFACE INFORMATION

- (a) If a subsurface investigation report is available on a project, a copy may be obtained from the Department by the prospective bidders upon request.
- (b) The subsurface investigation is made for the purpose of study, planning, and design, and not for construction or pay purposes. The various field boring logs, rock cores, and soil test data available may be reviewed or inspected in Raleigh at the office of the Geotechnical Unit. Neither the subsurface investigation report nor the field boring logs, rock cores, or soil test data shall be part of the contract.
- (c) General soil and rock strata description and indicated boundaries are based on geotechnical interpretation of all available subsurface data and may not necessarily reflect the actual subsurface conditions between borings or between sample strata within the borehole. The laboratory sample and the in situ (in-place) test data can be relied on only to the degree of reliability inherent in the test. The observed water levels or soil moisture conditions indicated in the subsurface investigation are as recorded at the time of the investigation. These water levels or soil moisture conditions may vary considerably with time according to climatic conditions including temperature, precipitation and wind, as well as other nonclimatic factors.
- (d) Details shown on the subsurface investigation reports are preliminary only; the final design details may be different. For bidding and construction purposes, the contract contains the documents for final design information on this project. The Department shall not warrant or guarantee the sufficiency or accuracy of the investigation made, nor the interpretations made or opinions of the Department as to the type of materials and conditions that may be encountered. The bidder or subcontractor shall make such independent subsurface investigations as he deems necessary to satisfy himself as to conditions to be encountered on this project. The contractor shall have no claim for additional compensation or for an extension of time for any reason resulting from the actual conditions encountered at the site differing from those indicated in the subsurface information.

*History Note: Authority G.S. 136-18(1); 143B-350(f)(3);
Eff. March 1, 1984;
Amended Eff. April 1, 1984;
Recodified from 19A NCAC 2D .0825;
Amended Eff. February 1, 2008; October 1, 1993.*

19A NCAC 02D .0828 COMPUTER BID PREPARATION

*History Note: Authority G.S. 136-18(1); 136-28.1;
Eff. November 1, 1991;
Amended Eff. October 1, 1993;
Repealed Eff. February 1, 2008.*

19A NCAC 02D .0830 DEFINITIONS

This Section establishes the Department's rules for letting of contracts pursuant to G.S. 136-28.1(a). For purposes of this Section, the following definitions shall apply:

- (1) "Bid" means the offer of a bidder on the proposal furnished by the Department to perform work and furnish labor and materials at the prices quoted.
- (2) "Bidder" means an individual, partnership, firm, corporation, or joint venture formally submitting a bid for the work contemplated.
- (3) "Bid documents" means the package of materials, in paper or electronic form, containing all project specific contract information including the plans and proposals furnished by the Department.
- (4) "Contract" means the executed agreement between the Department of Transportation and the successful bidder, covering the performance of the work and the compensation for work.
- (5) "Department" means the North Carolina Department of Transportation.
- (6) "Debarment certification form" means a certification form provided by the Department for execution by the prospective bidder or subcontractor certifying that he is not, nor has been, debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from certain transactions and has not been charged, indicted or convicted of debarment related activities and shall otherwise assume debarment certification responsibilities as part of any contract with the Department.
- (7) "Invitation to bid" means the notification that bids will be received for the construction of specific projects.

*History Note: Authority G.S. 136-28.1;
Eff. October 1, 1993;
Amended Eff. February 1, 2008.*

19A NCAC 02D .1101 PURPOSE AND SCOPE

- (a) The North Carolina Department of Transportation shall ensure that Disadvantaged Business Enterprises (DBE) have opportunity to participate in the performance of contracts financed in whole or in part with Federal funds.
- (b) The North Carolina Department of Transportation shall ensure that Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) have opportunity to participate in the performance of contracts financed with non-Federal funds.
- (c) Contracts financed with federal funds shall comply with 49 CFR 23 and 26. Contracts financed with non-federal funds shall comply with G.S. 136-28.4 and 49 CFR 23 and 26.
- (d) 49 CFR 23 and 26 are incorporated by reference, including all subsequent amendments and editions.

(e) Information referenced in this Section may be viewed or obtained from the following sources:

- (1) 49 CFR 23 and 26 is available at website <http://www.gpoaccess.gov/cfr/index.html> or may be purchased at a cost of twenty three dollars (\$23.00) from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington, DC 20402-9238, telephone number 202-512-1800.
- (2) DBE written appeals: U.S. Department of Transportation, Office of Civil Rights, 400 7th Street, SW, Room 5414, Washington, DC 20590.
- (3) The Department's State Contractor Utilization Engineer, 1509 Mail Service Center, Raleigh, NC 27699-1509, telephone number 919-733-7174.
- (4) Disadvantaged/Minority/Women Business Enterprise Directory: <http://apps.dot.state.nc.us/vendor/directory/>.
- (5) Unified Certification Application: <http://www.ncdot.org> or may be obtained at no cost from the State Contractor Management Engineer, Telephone number, (919) 733-7174.

History Note: Authority G.S. 136-28.4; 143B-348; Eff. April 30, 1997; Amended Eff. February 1, 2008.

19A NCAC 02D .1102 DEFINITIONS

For Purposes of the rules in this Section, the following terms shall apply:

- (1) Disadvantaged Business Enterprise shall have the same meaning as shown in 49 CFR 26 Subpart A.
- (2) Minority shall be defined in accordance with G.S. 136-28.4.
- (3) Women shall be defined in accordance with G.S. 136-28.4.
- (4) Disadvantaged Minority-owned Business/Business Enterprise shall have the same meaning as a Disadvantaged Business Enterprise as shown in 49 CFR 26 Subpart A.
- (5) Disadvantaged Women-owned Business/Business Enterprise shall have the same meaning as a Disadvantaged Business Enterprise as shown in 49 CFR 26 Subpart A.
- (6) The Department's Unified Certification Program (UCP) shall have the same meaning as shown in 49 CFR 26 Subpart E.

History Note: Authority G.S. 143B-348; Eff. April 30, 1997; Amended Eff. February 1, 2008.

19A NCAC 02D .1103 CERTIFICATION OF FIRMS

(a) The Department's Unified Certification Program shall be responsible for the certification of all Disadvantaged Business

Enterprise, Minority Business Enterprise, and Women Business Enterprise program participants.

(b) Any Disadvantaged Business Enterprise, Minority Business Enterprise, or Women Business Enterprise firms wishing to participate in the goals programs of the Department shall be certified by the Department.

(c) The Department shall conduct a certification review after it receives a completed Unified Certification Application and required supporting documentation. The certification review shall be conducted in accordance with the 49 CFR 23 and 26.

(d) Eligibility shall be in accordance with the 49 CFR 26 Subparts D and E.

History Note: Authority G.S. 136-28.4; 143B-348; Eff. April 30, 1997; Amended Eff. February 1, 2008.

19A NCAC 02D .1104 RENEWAL OF CERTIFICATION

(a) Each firm certified as a Disadvantaged Business Enterprise, Minority Business Enterprise, or Women Business Enterprise shall review its certification annually. The annual review shall be conducted in accordance with the 49 CFR 26.

(b) Each firm certified as a Disadvantaged Business Enterprise, Minority Business Enterprise, or Women Business Enterprise shall be recertified every three years in accordance with the 49 CFR 26.

History Note: Authority G.S. 143B-348; Eff. April 30, 1997; Amended Eff. February 1, 2008.

19A NCAC 02D .1105 CHANGE IN OWNERSHIP OR CONTROL

Any time a firm certified with the Department has a change of ownership, control, business size, type of work, or other factors that affect the firm's eligibility as set out in 49 CFR 26 Subparts D and E as a Disadvantaged Business Enterprise, Minority Business Enterprise, or Women Business Enterprise, the firm shall inform the Department in writing within 30 days of the change.

History Note: Authority G.S. 143B-348; Eff. April 30, 1997; Amended Eff. February 1, 2008.

19A NCAC 02D .1106 DECERTIFICATION

If the Department finds a firm in non-compliance with the standards of eligibility, that firm shall be decertified in accordance with 49 CFR 23 and 26.

History Note: Authority G.S. 143B-348; Eff. April 30, 1997; Amended Eff. February 1, 2008.

19A NCAC 02D .1107 APPEALS OF DENIAL OF CERTIFICATION

(a) Any Minority Business Enterprise firm or Women Business Enterprise firm denied certification or decertified may file an

appeal of that action to the Department's State Contractor Management Engineer as follows:

- (1) The appeal shall be received by the Department within 30 calendar days of the notice of denial. Upon receipt of the appeal, the State Contractor Management Engineer shall schedule a hearing for the firm with the Department's Disadvantaged Business Enterprise, Minority Business Enterprise, Women Business Enterprise Appeals Committee.
- (2) If the denial of certification or decertification is upheld by the Department's appeals committee, the Minority Business Enterprise firm or Women Business Enterprise firm may file a written appeal to the Secretary of Transportation within 30 days of the committee's decision.
- (3) If the denial of certification is upheld by the Secretary of Transportation, the decision shall be final.

(b) Any Disadvantaged Business Enterprise firm denied certification or decertified may file an appeal of that action as follows:

- (1) The Disadvantaged Business Enterprise firm may file an appeal to the Department's State Contractor Management Engineer. The appeal shall be received by the Department within 30 calendar days of the notice of denial. Upon receipt of the appeal, the State Contractor Management Engineer shall schedule a hearing for the firm with the Department's appeals committee.
- (2) The Disadvantaged Business Enterprise firm may file a written appeal within 90 days of notice of appeal directly to the U.S. Department of Transportation, Office of Civil Rights in accordance with the 49 CFR 26.
- (3) The appeals may be filed simultaneously.

*History Note: Authority G.S. 143B-348;
Eff. April 30, 1997;
Amended Eff. February 1, 2008.*

19A NCAC 02D .1108 GOALS

(a) The Department shall perform an analysis to determine the availability of ready, willing and able Disadvantaged Business Enterprise, Minority Business Enterprise, and Women Business Enterprise firms relative to all businesses ready, willing and able to participate in Department projects. Goals for disadvantaged business enterprises, minority business enterprises, and women business enterprises shall be established in accordance with 49 CFR 26 and G.S. 136-28.4(b1). The goal or goals shall be prescribed in the project proposal as a percent of the bidder's construction bid price.

(b) The Contractor shall exercise all necessary and reasonable steps to ensure that eligible firms participate in at least the percentage of the contract as required by the project proposal.

*History Note: Authority G.S. 136-28.4; 143B-348;
Eff. April 30, 1997;
Amended Eff. February 1, 2008.*

19A NCAC 02D .1109 COUNTING PARTICIPATION TOWARD MEETING THE GOAL

Participation of Disadvantaged Business Enterprise, Minority Business Enterprise, and Women Business Enterprise firms for federally funded and non-federally funded projects shall be counted in accordance with 49 CFR 26 Subpart C and G.S. 136-28.4.

*History Note: Authority G.S. 136-28.4; 143B-348;
Eff. April 30, 1997;
Amended Eff. February 1, 2008.*

19A NCAC 02D .1110 NON-ATTAINMENT OF GOALS

A contractor who does not meet the goals established shall be considered in non-attainment and shall comply with good faith requirements set forth in 49 CFR 26 Subpart C and G.S. 136-28.4.

*History Note: Authority G.S. 136-28.4; 143B-348;
Eff. April 30, 1997;
Amended Eff. February 1, 2008.*

19A NCAC 02D .1111 PERFORMANCE RELATED REPLACEMENT OF ELIGIBLE FIRMS

(a) Certified firms who are utilized to meet the goal(s) established and who are not performing their contractual obligation may be replaced.

(b) Performance related replacement of eligible firms for federally funded projects and non-federally funded projects shall meet the requirements of 49 CFR 26 Subpart C.

*History Note: Authority G.S. 136-28.4; 143B-348;
Eff. April 30, 1997;
Amended Eff. February 1, 2008.*

19A NCAC 02D .1112 REPLACEMENT OF A FIRM REMOVED BY DECERTIFICATION

(a) Certified firms who are utilized to meet the goals(s) established and become decertified may be replaced.

(b) Replacement of a firm removed by decertification for federally funded projects and non-federally funded projects shall meet the requirements of 49 CFR 26 Subpart E.

*History Note: Authority G.S. 136-28.4; 143B-348;
Eff. April 30, 1997;
Amended Eff. February 1, 2008.*

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

21 NCAC 16A .0104 LOCATION

- (a) The Board maintains its offices at 507 Airport Boulevard, Suite 105, Morrisville, N.C. 27560.
- (b) The Board's telephone number is (919) 678-8223. The Board's offices are open from 8:30 a.m. to 5:30 p.m., Monday through Friday.

History Note: Authority G.S. 90-26; 90-43; 90-48; Eff. May 1, 1989; Amended Eff. February 1, 2008; September 1, 2001; May 1, 1991.

21 NCAC 16B .0402 TIME FOR FILING

The completed application, fee, photographs, and undergraduate college and dental school transcripts must be received in the Board's office at least 90 days prior to the date of examination. Dental school transcripts for those still in dental school must be sent upon graduation. All data received by the Board concerning the applicant shall be part of the application and shall be retained as part of the record.

History Note: Authority G.S. 90-28; 90-30; 90-48; Eff. March 1, 2006; Amended Eff. February 1, 2008.

21 NCAC 16B .0801 TEMPORARY VOLUNTEER DENTAL PERMIT

(a) An applicant for a Temporary Volunteer Dental License shall submit to the Board:

- (1) A completed, notarized application form provided by the Board;
- (2) A statement from all jurisdictions in which the applicant is now or has ever been licensed, disclosing the applicant's disciplinary history and current status of the applicant's license;
- (3) A statement signed by a N.C. licensed dentist agreeing to provide supervision or direction to the temporary volunteer dentist, stating where, within the next calendar year, such supervision or direction will occur, and affirming that no fee or monetary compensation of any kind will be paid to the applicant for dental services performed; and
- (4) A statement signed by the applicant stating where the applicant will practice, the type of facility where the practice will occur, the duration of the practice, the name of the supervising dentist, and affirming that no fee will be charged or accepted. The applicant must update the information within five days of any changes in the practice location or facility.

(b) All information required must be completed and received in the Board office as a complete package at least two weeks prior to the issuance of the license. If all required information is not received, the application shall be returned to the applicant. The applicant must report any changes to submitted information within five days of when the applicant knew or should have known of the changes.

(c) To renew the Temporary Volunteer Dental License the licensee must:

- (1) Submit an affidavit stating that all information on the original application is correct and requires no update or correction;
- (2) A certificate of licensure from all jurisdictions in which the applicant is currently licensed certifying that the applicant holds a valid unrestricted license to practice general dentistry, is currently in good standing, and has never been disciplined;
- (3) A statement signed by a NC licensed dentist agreeing to provide supervision or direction to the temporary volunteer dentist, where, within the next calendar year, such supervision or direction is to occur, and affirming that no fee or monetary compensation of any kind will be paid to the licensee for dental services performed; and
- (4) A statement signed by the applicant stating where the applicant will practice, the type of facility where the practice will occur, the duration of the practice, the name of the supervising dentist, and affirming that no fee will be charged or accepted. The applicant must update the information within five days of any changes in the practice location or facility.

(d) All required information must be completed and received in the Board office as a complete package at least two weeks prior to the renewal of the license. If all required information is not received, the renewal application shall be returned to the applicant. The licensee must report any changes to submitted information within five days of when the licensee knew or should have known of the changes.

History Note: Authority G.S. 90-29; 90-37.1; Eff. February 1, 2008.

21 NCAC 16C .0402 TIME FOR FILING

The completed application, fee, photographs, and sealed proof of graduation from the school as required by G.S. 90-224(a) must be received in the Board's office at least 90 days prior to the date of the examination conducted by the Board. Sealed proof of graduation from dental hygiene school for those still in dental hygiene school at the time of the application must be sent in upon graduation. All data received by the Board concerning the applicant shall be part of the application and shall be retained as part of the record.

History Note: Authority G.S. 90-223; 90-224; Eff. June 1, 2006; Amended Eff. February 1, 2008.

21 NCAC 16I .0101 APPLICATIONS

A renewal application must be received in the Board's office by the close of business on January 31 of each year for renewal without a fee for late filing. All applications submitted to the Board must be completed in full.

History Note: Authority G.S. 90-227;
 Eff. September 3, 1976;
 Readopted Eff. September 26, 1977;
 Amended Eff. February 1, 2008; April 1, 2003; August 1, 1998;
 May 1, 1989.

21 NCAC 16I .0105 PENALTY/NON-COMPLIANCE/CONTINUING EDUCATION REQUIREMENT

If the applicant for a renewal certificate fails to provide proof of completion of reported continuing education hours for the current year as required by 21 NCAC 16 I .0102 and .0104 of this Subchapter, the Board may refuse to issue a renewal certificate for the year for which renewal is sought until such time as the licensee completes the required hours of education for the current year and meets all other qualifications for renewal. If the applicant applies for credit for continuing education hours or a reduction of continuing education hours and fails to provide the required documentation upon request, the Board may refuse to issue a certificate of renewal until such time as the applicant meets the qualifications for credit.

If an applicant fails to meet the qualifications for renewal, including completing the required hours of continuing education and delivering the required documentation to the Board's office before the close of business on March 31 of each year, the license becomes void and must be reinstated.

History Note: Authority G.S. 90-225.1;
 Eff. May 1, 1994;
 Amended Eff. February 1, 2008; April 1, 2001.

21 NCAC 16I .0106 FEE FOR LATE FILING AND DUPLICATE LICENSE

- (a) If the application for a renewal certificate, accompanied by the fee required, is not received in the Board's office before the close of business on January 31 of each year, an additional fee of fifty dollars (\$50.00) shall be charged for the renewal certificate.
- (b) A fee of twenty-five dollars (\$25.00) shall be charged for each duplicate of any license or certificate issued by the Board.

History Note: Authority G.S. 90-39; 90-227; 90-232;
 Eff. September 3, 1976;
 Readopted Eff. September 26, 1977;
 Amended Eff. May 1, 1989;
 Transferred and Recodified from 21 NCAC 16I .0002 Eff. May 1, 1994;
 Amended Eff. February 1, 2008; April 1, 2003; August 1, 1998.

21 NCAC 16I .0107 LICENSE VOID UPON FAILURE TO RENEW

If an application for a renewal certificate accompanied by the renewal fee, plus the additional late filing fee, is not received in the Board's office before the close of business on March 31 of each year, the license becomes void. Should the license become void due to failure to timely renew, the applicant must apply for reinstatement.

History Note: Authority G.S. 90-227;

Eff. September 3, 1976;
Readopted Eff. September 26, 1977;
Transferred and Recodified from 21 NCAC 16I .0003 Eff. May 1, 1994;
Amended Eff. February 1, 2008; April 1, 2003; August 1, 2002.

21 NCAC 16J .0103 STERILIZATION

All instruments or equipment used in the treatment of dental patients shall be sterilized according to usage. All dental health care settings shall follow the most current guidelines on infection control for the dental office and the dental laboratory adopted by the American Dental Association. Effective control techniques and precautions to prevent the cross contamination and transmission of infection to all persons is the professional responsibility of all dentists. All licensees are required to maintain and provide a safe, therapeutic environment for patients and employees and to follow a comprehensive and practical infection control program at all times.

History Note: Authority G.S. 90-28; 90-41(a)(23); 90-48;
 Eff. September 3, 1976;
 Readopted Eff. September 26, 1977;
 Amended Eff. February 1, 2008; May 1, 1991.

21 NCAC 16Q .0201 GENERAL ANESTHESIA CREDENTIALS AND PERMIT

(a) No dentist shall employ or use general anesthesia on an outpatient basis for dental patients unless the dentist possesses a permit issued by the Board. A dentist holding a permit shall be subject to review and shall only employ or use general anesthesia at a facility located in the State of North Carolina in accordance with 21 NCAC 16Q .0202. Such permit must be renewed annually and shall be displayed with the current renewal at all times in a conspicuous place in the office of the permit holder.

(b) Any dentist who wishes to administer general anesthesia to patients must apply to the Board for the required permit on a prescribed application form, submit an application fee of one hundred dollars (\$100.00) and produce evidence showing that he or she:

- (1) Has completed a minimum of one year of advanced training in anesthesiology and related academic subjects (or its equivalent) beyond the undergraduate dental school level; or
- (2) Has graduated from a program certified by the American Dental Association in Oral and Maxillofacial Surgery; or
- (3) Is a Diplomate of or eligible for examination by the American Board of Oral and Maxillofacial Surgery; or
- (4) Is a Fellow of the American Dental Society of Anesthesiology; or
- (5) Is a dentist who has been administering general anesthetics in a competent manner for the five years preceding the effective date of this Rule.

(c) A dentist who is qualified to administer general anesthesia in accordance with this Section and holds a general anesthesia

permit is also authorized to administer any level of sedation without obtaining a separate sedation permit.

(d) The dentist involved with the administration of general anesthesia shall document current, successful completion of advanced cardiac life support (ACLS) training, or its age-specific equivalent or other Board-approved equivalent course and auxiliary personnel shall document annual, successful completion of basic life support (BLS) training.

History Note: Authority G.S. 90-28; 90-30.1; Eff. February 1, 1990; Amended Eff. April 1, 2001; August 1, 2000; Temporary Amendment Eff. December 11, 2002; Amended Eff. February 5, 2008.

21 NCAC 16R .0101 APPLICATIONS

A renewal application must be received in the Board's office by the close of business on January 31 of each year for renewal without a fee for late filing. All applications submitted to the Board must be completed in full.

History Note: Authority G.S. 90-31; Eff. April 1, 2003; Amended Eff. February 1, 2008.

21 NCAC 16R .0102 FEE FOR LATE FILING

If the application for a renewal certificate, accompanied by the fee required, is not received in to the Board's office by the close of business on January 31 of each year, an additional fee of fifty dollars (\$50.00) shall be charged for the renewal certificate.

History Note: Authority G.S. 90-31; 90-39; Eff. April 1, 2003; Amended Eff. February 1, 2008.

21 NCAC 16R .0107 PENALTY/NON-COMPLIANCE/CONTINUING EDUCATION

If the applicant for a renewal certificate fails to provide proof of completion of reported continuing education hours for the current year as required by Rules .0103 and .0105 of this Section, the Board may refuse to issue a renewal certificate for the year for which renewal is sought until such time as the licensee completes the required hours of education for the current year and meets all other qualifications for renewal. If the applicant applies for credit for or exemption from continuing education hours and fails to provide the required documentation upon request, the Board shall refuse to issue a certificate of renewal until such time as the applicant meets the qualifications for exemption or credit. If an applicant fails to meet the qualifications for renewal, including completing the required hours of continuing education and delivering the required documentation to the Board's office before the close of business on March 31 of each year, the license becomes void and must be reinstated.

History Note: Authority G.S. 90-31.1; Eff. May 1, 1994; Amended Eff. February 1, 2008; April 1, 2003; April 1, 2001.

21 NCAC 16Z .0101 ELIGIBILITY TO PRACTICE HYGIENE OUTSIDE DIRECT SUPERVISION

(a) To be eligible to perform the clinical hygiene procedures set out in G.S. 90-221(a) without the direct supervision of a dentist, a dental hygienist must:

- (1) maintain an active license to practice dental hygiene in this State;
- (2) have no prior disciplinary history in any State;
- (3) complete at least three years of experience in clinical dental hygiene or at least 2,000 hours of performing primarily prophylaxis or periodontal debridement under the supervision of a dentist licensed in this State within the five calendar years immediately preceding initial approval to work without direct supervision;
- (4) successfully complete annual CPR certification;
- (5) successfully complete at least six hours of Board approved continuing education in dental office medical emergencies, in addition to the requirements of G.S. 90-225.1.

(b) To retain eligibility to perform the clinical hygiene procedures set out in G.S. 90-221(a) without direct supervision of a dentist, a dental hygienist must:

- (1) successfully complete at least six hours of Board approved continuing education in dental office medical emergencies each year, in addition to the requirements of G.S. 90-225.1;
- (2) successfully complete annual CPR certification;
- (3) comply with all provisions of the N.C. Dental Practice Act and all rules of the Dental Board applicable to dental hygienists; and
- (4) cooperate fully with all lawful Board inspections of any facility at which the hygienist provides dental hygiene services without direct supervision of a dentist.

History Note: Authority G.S. 90-221; 90-233; Eff. February 1, 2008.

21 NCAC 16Z .0102 RECORD KEEPING

(a) A dentist who designates a dental hygienist employee as capable of providing clinical dental hygiene procedures without direct supervision of the dentist must keep and maintain the following records for at least ten years:

- (1) names of all hygienists who provide clinical dental hygiene procedures without direct supervision;
- (2) proof that each hygienist, at the time of initial approval, met the experience requirements set out in Rule .0101(a) of this Subchapter;
- (3) names and locations of all facilities at which each hygienist has provided clinical dental hygiene procedures without direct supervision;
- (4) work schedules reflecting all locations at which each hygienist is scheduled to provide

- (5) clinical dental hygiene procedures without direct supervision in the next 30 days; work schedules of all hygienists indirectly supervised by the dentist, with sufficient detail to demonstrate that a single dentist does not supervise more than two hygienists employed in clinical dental hygiene positions at any given time;
- (6) records reflecting the personal examination of the patient and the procedures directed by the dentist; and
- (7) proof that the dentist and hygienist complied with the requirements of G.S. 90-233(a1)(1) – (3).

(b) The dentist shall produce all records required to be kept under this Rule to the Dental Board or its employees upon request and shall provide an annual report to the Board in compliance with G.S. 90-233(a4).

History Note: Authority G.S. 90-221; 90-233; Eff. February 1, 2008.

21 NCAC 16Z .0103 INSPECTIONS

All locations at which a hygienist performs clinical dental hygiene procedures without direct supervision of a dentist shall be subject to random, unannounced inspection by the Dental Board or its agents for the purpose of determining if services are provided in compliance with the Center for Disease Control and OSHA standards for infection control and patient treatment.

History Note: Authority G.S. 90-221; 90-233; Eff. February 1, 2008.

CHAPTER 32 – MEDICAL BOARD

21 NCAC 32B .1207 TEN-YEAR QUALIFICATION

The Board may issue a license without examination to any applicant who has met one of the following qualifications within the past 10 years:

- (1) National Board of Medical Examiners certification;
- (2) National Board of Osteopathic Medical Examiners certification;
- (3) Examination for license testing general medical knowledge;
- (4) Passage of SPEX examination with a score of at least 75;
- (5) Passage of COMVEX examination with a score of at least 75;
- (6) Passage of COMLEX (Comprehensive Osteopathic Medical Licensing Examination) examination with a score of at least 75;
- (7) Certification or re-certification from a specialty board recognized by the ABMS or the AOA; or certification or re-certification with added qualifications from a specialty or

- (8) subspecialty board recognized by the ABMS or AOA;
- (8) Completion of formal postgraduate medical education as required under Rule .0313 of this Chapter;
- (9) Receipt of a current AMA Physician's Recognition Award, or an amount of AOA CME (Continuing Medical Education) hours earned equivalent to receive the AMA Physician's Recognition Award, if the Board is satisfied that the physician's knowledge of the practice of medicine is current.

History Note: Authority G.S. 90-6; 90-10; 90-14; 90-15.1; Eff. February 1, 2008.

21 NCAC 32U .0101 ADMINISTRATION OF VACCINES BY PHARMACISTS

(a) Purpose. The purpose of this Rule is to provide standards for pharmacists engaged in the administration of influenza, pneumococcal and zoster vaccines as authorized in G.S. 90-85.3(r) of the North Carolina Pharmacy Practice Act.

(b) Definitions. The following words and terms, when used in this Rule, shall have the following meanings, unless the context indicates otherwise.

- (1) "ACPE" means Accreditation Council for Pharmacy Education.
- (2) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or other means by:
 - (A) a pharmacist, an authorized agent under his/her supervision, or other person authorized by law; or
 - (B) the patient at the direction of a physician or pharmacist.
- (3) "Antibody" means a protein in the blood that is produced in response to stimulation by a specific antigen. Antibodies help destroy the antigen that produced them. Antibodies against an antigen usually equate to immunity to that antigen.
- (4) "Antigen" means a substance recognized by the body as being foreign; it results in the production of specific antibodies directed against it.
- (5) "Board" means the North Carolina Board of Pharmacy.
- (6) "Confidential record" means any health-related record that contains information that identifies an individual and that is maintained by a pharmacy or pharmacist such as a patient medication record, prescription drug order, or medication order.
- (7) "Immunization" means the act of inducing antibody formation, thus leading to immunity.
- (8) "Medical Practice Act" means G.S. 90-1, et seq.
- (9) "Physician" means a currently licensed M.D. or D.O. with the North Carolina Medical

Board who is responsible for the on-going, continuous supervision of the pharmacist pursuant to written protocols between the pharmacist and the physician.

- (10) "Vaccination" means the act of administering any antigen in order to induce immunity; is not synonymous with immunization since vaccination does not imply success.
- (11) "Vaccine" means a specially prepared antigen, which upon administration to a person may result in immunity.
- (12) Written Protocol—A physician's written order, standing medical order, or other order or protocol. A written protocol must be prepared, signed and dated by the physician and pharmacist and contain the following:
 - (A) the name of the individual physician authorized to prescribe drugs and responsible for authorizing the written protocol;
 - (B) the name of the individual pharmacist authorized to administer vaccines;
 - (C) the immunizations or vaccinations that may be administered by the pharmacist;
 - (D) procedures to follow, including any drugs required by the pharmacist for treatment of the patient, in the event of an emergency or severe adverse reaction following vaccine administration;
 - (E) the reporting requirements by the pharmacist to the physician issuing the written protocol, including content and time frame;
 - (F) locations at which the pharmacist may administer immunizations or vaccinations; and
 - (G) the requirement for annual review of the protocols by the physician and pharmacist.

(c) Policies and Procedures.

- (1) Pharmacists must follow a written protocol as specified in Subparagraph (b)(12) of this Rule for administration of influenza, pneumococcal and zoster vaccines and the treatment of severe adverse events following administration.
- (2) The pharmacist administering vaccines must maintain written policies and procedures for handling and disposal of used or contaminated equipment and supplies.
- (3) The pharmacist or pharmacist's agent must give the appropriate, most current vaccine information regarding the purpose, risks, benefits, and contraindications of the vaccine to the patient or legal representative with each dose of vaccine. The pharmacist must ensure that the patient or legal representative is available and has read, or has had read to him

or her, the information provided and has had his or her questions answered prior to administering the vaccine.

- (4) The pharmacist must report adverse events to the primary care provider as identified by the patient.
- (5) The pharmacist shall not administer vaccines to patients under 18 years of age.
- (6) The pharmacist shall not administer the pneumococcal or zoster vaccines to a patient unless the pharmacist first consults with the patient's primary care provider. The pharmacist shall document in the patient's profile the primary care provider's order to administer the pneumococcal or zoster vaccines. In the event the patient does not have a primary care provider, the pharmacist shall not administer the pneumococcal or zoster vaccines to the patient.
- (7) The pharmacist shall report all vaccines administered to the patient's primary care provider and report all vaccines administered to all entities as required by law, including any State registries which may be implemented in the future.
- (d) Pharmacist requirements. Pharmacists who enter into a written protocol with a physician to administer vaccines shall:
 - (1) hold a current provider level cardiopulmonary resuscitation (CPR) certification issued by the American Heart Association or the American Red Cross or equivalent;
 - (2) successfully complete a certificate program in the administration of vaccines accredited by the Centers for Disease Control, the ACPE or a similar health authority or professional body approved by the Board;
 - (3) maintain documentation of:
 - (A) completion of the initial course specified in Subparagraph (2) of this Paragraph;
 - (B) three hours of continuing education every two years beginning January 1, 2006, which are designed to maintain competency in the disease states, drugs, and administration of vaccines;
 - (C) current certification specified in Subparagraph (1) of this Paragraph;
 - (D) original written physician protocol;
 - (E) annual review and revision of original written protocol with physician;
 - (F) any problems or complications reported; and
 - (G) items specified in Paragraph (g) of this Rule.

(e) Supervising Physician responsibilities. Pharmacists who administer vaccines shall enter into a written protocol with a supervising physician who agrees to meet the following requirements:

- (1) be responsible for the formulation or approval and periodic review of the physician's order, standing medical order, standing delegation order, or other order or written protocol and periodically review the order or protocol and the services provided to a patient under the order or protocol;
- (2) be accessible to the pharmacist administering the vaccines or be available through direct telecommunication for consultation, assistance, direction, and provide back-up coverage;
- (3) review written protocol with pharmacist at least annually and revise if necessary; and
- (4) receive a periodic status report on the patient, including any problem or complication encountered.

(f) Drugs. The following requirements pertain to drugs administered by a pharmacist:

- (1) Drugs administered by a pharmacist under the provisions of this Rule shall be in the legal possession of:
 - (A) a pharmacy, which shall be the pharmacy responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination; or
 - (B) a physician, who shall be responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination;

- (2) Drugs shall be transported and stored at the proper temperatures indicated for each drug;
- (3) Pharmacists while engaged in the administration of vaccines under written protocol, may have in their custody and control the vaccines identified in the written protocol and any other drugs listed in the written protocol to treat adverse reactions; and
- (4) After administering vaccines at a location other than a pharmacy, the pharmacist shall return all unused prescription medications to the pharmacy or physician responsible for the drugs.

(g) Record Keeping and Reporting.

- (1) A pharmacist who administers any vaccine shall maintain the following information, readily retrievable, in the pharmacy records regarding each administration:
 - (A) The name, address, and date of birth of the patient;
 - (B) The date of the administration;
 - (C) The administration site of injection (e.g., right arm, left leg, right upper arm);
 - (D) Route of administration of the vaccine;

- (E) The name, manufacturer, lot number, and expiration date of the vaccine;
- (F) Dose administered;
- (G) The name and address of the patient's primary health care provider, as identified by the patient; and
- (H) The name or identifiable initials of the administering pharmacist.

(2) A pharmacist who administers vaccines shall document annual review with physician of written protocol in the records of the pharmacy that is in possession of the vaccines administered.

(h) Confidentiality.

- (1) The pharmacist shall comply with the privacy provisions of the federal Health Insurance Portability and Accountability Act of 1996 and any rules adopted pursuant to this act.
- (2) The pharmacist shall comply with any other confidentiality provisions of federal or state laws.

*History Note: Authority G.S. 90-85.3(r);
Emergency Adoption Eff. September 10, 2004;
Temporary Adoption Eff. December 29, 2004;
Eff. November 1, 2005;
Amended Eff. February 1, 2008.*

CHAPTER 46 – BOARD OF PHARMACY

21 NCAC 46 .2507 ADMINISTRATION OF VACCINES BY PHARMACISTS

(a) Purpose. The purpose of this Rule is to provide standards for pharmacists engaged in the administration of influenza, pneumococcal and zoster vaccines as authorized in G.S. 90-85.3(r) of the North Carolina Pharmacy Practice Act.

(b) Definitions. The following words and terms, when used in this Rule, shall have the following meanings, unless the context indicates otherwise.

- (1) "ACPE" means Accreditation Council for Pharmacy Education.
- (2) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or other means by:
 - (A) a pharmacist, an authorized agent under his/her supervision, or other person authorized by law; or
 - (B) the patient at the direction of a physician or pharmacist.
- (3) "Antibody" means a protein in the blood that is produced in response to stimulation by a specific antigen. Antibodies help destroy the antigen that produced them. Antibodies against an antigen usually equate to immunity to that antigen.
- (4) "Antigen" means a substance recognized by the body as being foreign; it results in the

- (5) production of specific antibodies directed against it.
- (5) "Board" means the North Carolina Board of Pharmacy.
- (6) "Confidential record" means any health-related record that contains information that identifies an individual and that is maintained by a pharmacy or pharmacist such as a patient medication record, prescription drug order, or medication order.
- (7) "Immunization" means the act of inducing antibody formation, thus leading to immunity.
- (8) "Medical Practice Act" means G.S. 90-1, et seq.
- (9) "Physician" means a currently licensed M.D. or D.O. with the North Carolina Medical Board who is responsible for the on-going, continuous supervision of the pharmacist pursuant to written protocols between the pharmacist and the physician.
- (10) "Vaccination" means the act of administering any antigen in order to induce immunity; is not synonymous with immunization since vaccination does not imply success.
- (11) "Vaccine" means a specially prepared antigen, which upon administration to a person may result in immunity.
- (12) Written Protocol—A physician's written order, standing medical order, or other order or protocol. A written protocol must be prepared, signed and dated by the physician and pharmacist and contain the following:
 - (A) the name of the individual physician authorized to prescribe drugs and responsible for authorizing the written protocol;
 - (B) the name of the individual pharmacist authorized to administer vaccines;
 - (C) the immunizations or vaccinations that may be administered by the pharmacist;
 - (D) procedures to follow, including any drugs required by the pharmacist for treatment of the patient, in the event of an emergency or severe adverse reaction following vaccine administration;
 - (E) the reporting requirements by the pharmacist to the physician issuing the written protocol, including content and time frame;
 - (F) locations at which the pharmacist may administer immunizations or vaccinations; and
 - (G) the requirement for annual review of the protocols by the physician and pharmacist.

(c) Policies and Procedures.

- (1) Pharmacists must follow a written protocol as specified in Subparagraph (b)(12) of this Rule for administration of influenza, pneumococcal and zoster vaccines and the treatment of severe adverse events following administration.
- (2) The pharmacist administering vaccines must maintain written policies and procedures for handling and disposal of used or contaminated equipment and supplies.
- (3) The pharmacist or pharmacist's agent must give the appropriate, most current vaccine information regarding the purpose, risks, benefits, and contraindications of the vaccine to the patient or legal representative with each dose of vaccine. The pharmacist must ensure that the patient or legal representative is available and has read, or has had read to him or her, the information provided and has had his or her questions answered prior to administering the vaccine.
- (4) The pharmacist must report adverse events to the primary care provider as identified by the patient.
- (5) The pharmacist shall not administer vaccines to patients under 18 years of age.
- (6) The pharmacist shall not administer the pneumococcal or zoster vaccines to a patient unless the pharmacist first consults with the patient's primary care provider. The pharmacist shall document in the patient's profile the primary care provider's order to administer the pneumococcal or zoster vaccines. In the event the patient does not have a primary care provider, the pharmacist shall not administer the pneumococcal or zoster vaccines to the patient.
- (7) The pharmacist shall report all vaccines administered to the patient's primary care provider and report all vaccines administered to all entities as required by law, including any State registries which may be implemented in the future.
- (d) Pharmacist requirements. Pharmacists who enter into a written protocol with a physician to administer vaccines shall:
 - (1) hold a current provider level cardiopulmonary resuscitation (CPR) certification issued by the American Heart Association or the American Red Cross or equivalent;
 - (2) successfully complete a certificate program in the administration of vaccines accredited by the Centers for Disease Control, the ACPE or a similar health authority or professional body approved by the Board;
 - (3) maintain documentation of:
 - (A) completion of the initial course specified in Subparagraph (2) of this Paragraph;
 - (B) three hours of continuing education every two years beginning January 1,

- 2006, which are designed to maintain competency in the disease states, drugs, and administration of vaccines;
- (C) current certification specified in Subparagraph (1) of this Paragraph;
- (D) original written physician protocol;
- (E) annual review and revision of original written protocol with physician;
- (F) any problems or complications reported; and
- (G) items specified in Paragraph (g) of this Rule.

(e) Supervising Physician responsibilities. Pharmacists who administer vaccines shall enter into a written protocol with a supervising physician who agrees to meet the following requirements:

- (1) be responsible for the formulation or approval and periodic review of the physician's order, standing medical order, standing delegation order, or other order or written protocol and periodically review the order or protocol and the services provided to a patient under the order or protocol;
- (2) be accessible to the pharmacist administering the vaccines or be available through direct telecommunication for consultation, assistance, direction, and provide back-up coverage;
- (3) review written protocol with pharmacist at least annually and revise if necessary; and
- (4) receive a periodic status report on the patient, including any problem or complication encountered.

(f) Drugs. The following requirements pertain to drugs administered by a pharmacist:

- (1) Drugs administered by a pharmacist under the provisions of this Rule shall be in the legal possession of:
 - (A) a pharmacy, which shall be the pharmacy responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination; or
 - (B) a physician, who shall be responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination;
- (2) Drugs shall be transported and stored at the proper temperatures indicated for each drug;
- (3) Pharmacists while engaged in the administration of vaccines under written protocol, may have in their custody and control the vaccines identified in the written protocol and any other drugs listed in the written protocol to treat adverse reactions; and
- (4) After administering vaccines at a location other than a pharmacy, the pharmacist shall

return all unused prescription medications to the pharmacy or physician responsible for the drugs.

(g) Record Keeping and Reporting.

- (1) A pharmacist who administers any vaccine shall maintain the following information, readily retrievable, in the pharmacy records regarding each administration:
 - (A) The name, address, and date of birth of the patient;
 - (B) The date of the administration;
 - (C) The administration site of injection (e.g., right arm, left leg, right upper arm);
 - (D) Route of administration of the vaccine;
 - (E) The name, manufacturer, lot number, and expiration date of the vaccine;
 - (F) Dose administered;
 - (G) The name and address of the patient's primary health care provider, as identified by the patient; and
 - (H) The name or identifiable initials of the administering pharmacist.
- (2) A pharmacist who administers vaccines shall document annual review with physician of written protocol in the records of the pharmacy that is in possession of the vaccines administered.

(h) Confidentiality.

- (1) The pharmacist shall comply with the privacy provisions of the federal Health Insurance Portability and Accountability Act of 1996 and any rules adopted pursuant to this act.
- (2) The pharmacist shall comply with any other confidentiality provisions of federal or state laws.

History Note: Authority G.S. 90-85.3; 90-85.6; Eff. April 1, 2003; Emergency Amendment Eff. May 11, 2004; Temporary Amendment approved by RRC October 21, 2004; Amended Eff. February 1, 2008; November 1, 2005; November 1, 2004.

TITLE 25 – OFFICE OF STATE PERSONNEL

25 NCAC 01B .0201 CONTENT AND PROCEDURE

- (a) Any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule of the Commission shall address a petition to:
Office of State Personnel
1331 Mail Service Center
Raleigh, North Carolina 27699-1331.
- (b) The petition shall be labeled Petition for Rulemaking and contain the following information:

- (1) either a draft of the proposed rule or a summary of its contents;
- (2) reason for proposal;
- (3) effect on existing rules or orders;
- (4) data supporting proposal;
- (5) fiscal note on the impact of the proposed rule on existing practices in the area involved, including cost factors and basis of analysis;
- (6) names of those most likely to be affected by the proposed rule with addresses if reasonably known;
- (7) name(s) and address(es) of petitioner(s).

(c) The Office of State Personnel shall examine the petition and weigh the information therein in relation to the public interest. The Office of State Personnel shall consider all the contents of the submitted petition, plus any additional information the Office of State Personnel deems relevant. The Office of State Personnel shall make a recommendation to the Commission for the denial of the petition or the institution of rule-making proceedings, as the case may be.

(d) At the next regularly scheduled Commission meeting occurring at least 60 days after the submission of the petition, the Commission shall render a final decision. If the decision is to deny the petition, the Office of State Personnel shall notify the petitioner in writing, stating the reasons therefor. If the decision is to grant the petition, the Commission, within 30 days of submission, shall initiate rule-making proceedings by issuing a notice of rulemaking proceeding, in accordance with the requirements G.S. 150B.

History Note: Authority G.S. 126-2; 126-4; 150B-20;
Eff. February 1, 1976;
Amended Eff. February 1, 2008; March 1, 1996; June 1, 1982.

25 NCAC 01B .0204 PRESENTATIONS

- (a) Any person desiring to present oral data, views, or arguments on the proposed rule shall before the public hearing, file a notice with: Office of State Personnel, 1331 Mail Service Center, Raleigh, North Carolina 27699-1331.
- (b) Any person permitted to make an oral presentation may submit a written copy of the presentation to the designated hearing officer at the public hearing.

History Note: Authority G.S. 126-4;
Eff. February 1, 1976;
Amended Eff. February 1, 2008; March 1, 1996; June 1, 1982.

25 NCAC 01B .0213 REQUESTS FOR DECLARATORY RULING

All requests for declaratory rulings shall be written and mailed to: Office of State Personnel, 1331 Mail Service Center, Raleigh, North Carolina 27699-1331.

History Note: Authority G.S. 126-2; 126-4; 150B-4;
Eff. February 1, 1976;
Amended Eff. February 1, 2008; March 1, 1996; June 1, 1982.

25 NCAC 01B .0439 CONTINUANCES

(a) The State Personnel Commission hereby delegates to the Administrator to the Commission the authority to rule upon the availability of a continuance in any case on the Commission docket which does not require an extension of jurisdiction pursuant to G.S. 150B-44. The Administrator shall grant a request for continuance where the request is made at least five days prior to the Commission meeting at which the case is docketed and where good cause exists for the continuance request. Good cause shall include a court order requiring a continuance; a documented conflict in a superior forum; death or incapacitating illness of a party, representative, or attorney of a party; lack of notice of the Commission meeting; a required substitution of an attorney of a party; mutual consent of the parties where settlement negotiations or other relevant matters necessitate a continuance. Requests for continuance shall be made in writing and directed as follows:

Administrator, State Personnel Commission
Office of State Personnel
1331 Mail Service Center
Raleigh, North Carolina 27699-1331.

(b) Continuance requests for good cause received within five days of the applicable Commission meeting or in cases where a G.S. 150B-44 jurisdictional extension is required, shall be ruled upon by the Commission. Continuance requests received after the deadline for the submission of objections, exceptions, briefs, memoranda, or other pleadings does not extend the time period for the submission of these documents.

History Note: Authority G.S. 126-4(11);
Eff. March 1, 1996;
Amended Eff. February 1, 2008.

25 NCAC 01N .0501 POLICY

In partnership with the State Health Plan and the Office of State Personnel, each agency shall create and participate in a Worksite Wellness program. The Worksite Wellness initiatives shall address the primary components of a healthy lifestyle including healthy eating, physical activity, tobacco cessation and stress management.

History Note: Authority G.S. 126-4;
Eff. February 1, 2008.

25 NCAC 01N .0502 ADMINISTRATION

The Office of State Personnel and the State Health Plan, in collaboration with the North Carolina Division of Public Health, shall guide and assist agencies in the development of a comprehensive Worksite Wellness Program for State employees.

History Note: Authority G.S. 126-4;
Eff. February 1, 2008.

25 NCAC 01N .0503 WELLNESS LEADER

- (a) Each agency head shall designate a Wellness Leader at the management level who has direct access to the agency head.
- (b) In collaboration with management and employees, the Wellness Leader shall create a Worksite Wellness infrastructure, overseeing the development and implementation of employee

wellness policies and committees, and providing ongoing assessment/monitoring of the effectiveness of Worksite Wellness Programs.

*History Note: Authority G.S. 126-4;
Eff. February 1, 2008.*

25 NCAC 01N .0504 WELLNESS COMMITTEES

(a) Each agency shall establish a wellness committee infrastructure. A wellness committee is a team of employees that meet formally and have identified aims, goals, and implementation strategies to encourage healthy behaviors at the

workplace, advocate for policy change, and create health-friendly work environments.

(b) The committee shall be comprised of employees who represent a cross section of the employee population. Multiple committees may be necessary depending on the size and number of locations of the agency.

(c) Committees shall elect a wellness chair or co-chairs to conduct meetings and lead activities.

*History Note: Authority G.S. 126-4;
Eff. February 1, 2008.*

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday February 21 & March 20, 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

March 20, 2008 April 17, 2008
May 15, 2008 June 19, 2008

**RULES REVIEW COMMISSION
February 21, 2008
MINUTES**

The Rules Review Commission met on Thursday, February 21, 2008, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Jerry Crisp, Jim Funderburk, Keith Gregory, Clarence Horton, John Lewis, Dan McLawhorn and Mary Shuping.

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:

| | |
|----------------------|--|
| Amy Pickle | Southern Environmental Law Center |
| 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 |
| Nancy Pate | Department of Environment and Natural Resources |
| Gerry Barrett | Down East Tomorrow |
| Stephen Dickson | Board of Funeral Service |
| Tyler Newman | Business Alliance for a Sound Economy |
| Floyd Boyer | Respiratory Care Board |
| Ellie Sprenkel | Department of Insurance |
| Rose Williams | Department of Insurance |
| Frank Folger | Helms Mulliss Wicker |
| Jeff Hudson | General Assembly Staff |
| Karen Cochrane Brown | General Assembly Staff |
| Will Clark | SEG |
| Joan Troy | Wildlife Resources Commission |
| Jim Hayes | DENR/Environmental Health |
| Francis Crawley | Attorney Generals office |
| Craig Bromby | Hunton & Williams Representing Business Alliance for a Sound Economy |
| Jessica Hayes | Home Builders Association |
| Alastais Macaulay | Home Builders Association |
| David McGowan | North Carolina Realtors |
| Gretchen Aycock | Department of Administration |

| | |
|------------------|-----------------------------------|
| Sondra Panico | Department of Justice |
| Tom Reeder | DENR/Division of Water Quality |
| Julian Mann | Office of Administrative Hearings |
| Felicia Williams | Office of Administrative Hearings |
| 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 10:05 a.m. with Mr. Funderburk presiding. He 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). Vice-Chairman Funderburk asked for any discussion, comments, or corrections concerning the minutes of the January 17, 2008 meeting. There were none and the minutes were approved as distributed.

FOLLOW-UP MATTERS

12 NCAC 07D .0601, .0801 – Private Protective Services Board. The Commission approved the rewritten rules submitted by the agency.

14A NCAC 12 .0102, .0402, .0406, .0605, .0801, .0804, .0805, .0806, .0811 – Alcohol Law Enforcement. The Commission approved the rewritten rules submitted by the agency.

15A NCAC 07J .0701, .0703 – Coastal Resources Commission. These rules were returned to the agency at the agency's request.

25 NCAC 01L .0102 – State Personnel Commission. No rewritten rules have been submitted and no action was taken.

LOG OF FILINGS

Vice-Chairman Funderburk presided over the review of the log of permanent rules.

Prior to the review of the rules from the Board of Funeral Service, Commissioner Shuping recused herself and did not participate in any discussion or vote concerning these rules because she is co-counsel to the Board of Funeral Service.

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.

All rules were approved unanimously with the following exceptions:

01 NCAC 44A .0301: Department of Administration – The Commission extended the period of review to give this agency an opportunity to add language about how the agency will protect confidential information.

11 NCAC 08 .1501: Department of Insurance – This rule was withdrawn by the agency.

15A NCAC 02H .1005: Environmental Management Commission - The commission objected to this rule based on failure to comply with the Administrative Procedure Act and ambiguity. The agency failed to comply with G.S. 150B-21.2(g) in that the rule appears to be substantially changed in what is now paragraph (a)(5). As originally proposed the rule affected "coastal wetlands" or alternatively "jurisdictional wetlands or isolated wetlands." The rule now affects "404 jurisdictional wetlands or non-404 jurisdictional wetlands." It is not immediately clear if the latter are the same as the former ("coastal ... jurisdictional ... isolated wetlands") or if there are new or additional wetlands included within these new terms. It is also not clear if the "404 ... wetlands" terms are defined or otherwise clearly identified to those who use the rule. Paragraph (a)(2) is not clear in how (A), (B), and (C) are to be applied. There needs to be some sort of introduction in (a)(2) as to who does what with (A) – (C) or how someone is to use (A) – (C). In addition it would probably help to clarify the rule if (a)(2)(A)(i), especially, were broken into its component parts. It appears there is more than one requirement within that sub-paragraph.

Speaking in support of the rule was Tom Reeder, Division of Water Quality. Craig Bromby from Hunton & Williams representing Business Alliance for a Sound Economy and Lisa Martin from the N. C. Home Builders Association spoke in opposition to the rule.

RULES REVIEW COMMISSION

15A NCAC 06E .0107: Soil and Water Conservation Commission - The Commission objected to this rule based on ambiguity and lack of statutory authority. In (e) lines 22 and 23 it is unclear what standards the Commission or the Division shall use for approving the installation specifications. There is no authority to set the approval standards outside rulemaking.

15A NCAC 06I .0107: Soil and Water Conservation Commission - The Commission objected to this rule based on ambiguity and lack of statutory authority. In (d) line 14 it is unclear what standards the Commission or the Division shall use for approving the installation specifications. There is no authority to set the approval standards outside rulemaking.

21 NCAC 61 .0201: Respiratory Care Board - The Commission objected to this Rule based on ambiguity. In (b)(2) it appears that there are a couple of requirements to complete for someone who has not practiced respiratory care in the last five years and an alternative to one or both of those requirements. It is not clear whether the alternative is to one or both of the other requirements. An applicant who has “not practiced respiratory care for ... five years ... must provide evidence of) sixty hours of continuing education and successful completion of the Certified Respiratory Therapist (CRT) examination. That exam must be taken within “the 90-day period before receipt of the application for licensure or ...” Following “or” is the condition “completion of a ... refresher course” It is not clear if the exam must be taken within 90 days of either the application or the refresher course or if the refresher course is an alternative to something else. If it is an alternative to something else, it is not clear what it is an alternative to – both the continuing education and the CRT examination or an alternative to just the CRT assessment examination.

COMMISSION PROCEDURES AND OTHER BUSINESS

Joe Deluca reported that the RRC rules are in the process of being finalized and may be ready for publication in the March 17 issue of the NC Register.

Commissioner McLawhorn requested that any correspondence that staff receives regarding rules for the next months meeting are forwarded to the Commissioners at the time the rules are mailed to them.

The meeting adjourned at 12:15 p.m.

The next scheduled meeting of the Commission is Thursday, March 20, 2008 10:00 a.m.

Respectfully Submitted,
Angela J. Person
Administrative Assistant

**LIST OF APPROVED PERMANENT RULES
February 21, 2008 Meeting**

ADMINISTRATION, DEPARTMENT OF

| | | | | |
|---|----|------|-----|-------|
| <u>Scope</u> | 01 | NCAC | 44A | .0101 |
| <u>Definitions</u> | 01 | NCAC | 44A | .0102 |
| <u>Application</u> | 01 | NCAC | 44A | .0201 |
| <u>Documentation</u> | 01 | NCAC | 44A | .0202 |
| <u>Approval</u> | 01 | NCAC | 44A | .0203 |
| <u>Duration</u> | 01 | NCAC | 44A | .0204 |
| <u>Changes in Ownership or Management and Control</u> | 01 | NCAC | 44A | .0205 |
| <u>Denial</u> | 01 | NCAC | 44A | .0206 |
| <u>Renewal</u> | 01 | NCAC | 44A | .0207 |
| <u>Inactivity</u> | 01 | NCAC | 44A | .0208 |
| <u>Challenge Initiation</u> | 01 | NCAC | 44A | .0401 |
| <u>HUB Office Investigation</u> | 01 | NCAC | 44A | .0402 |
| <u>Determination</u> | 01 | NCAC | 44A | .0403 |
| <u>HUB Status During Challenge</u> | 01 | NCAC | 44A | .0404 |

RULES REVIEW COMMISSION

| | | | | |
|-------------------------------|----|------|-----|-------|
| <u>Reasons for Revocation</u> | 01 | NCAC | 44A | .0501 |
| <u>Notice</u> | 01 | NCAC | 44A | .0502 |
| <u>Review</u> | 01 | NCAC | 44A | .0601 |
| <u>Contents</u> | 01 | NCAC | 44A | .0602 |
| <u>Criteria</u> | 01 | NCAC | 44A | .0603 |
| <u>Decision</u> | 01 | NCAC | 44A | .0604 |
| <u>Status Pending Review</u> | 01 | NCAC | 44A | .0605 |
| <u>Appeal</u> | 01 | NCAC | 44A | .0606 |

INSURANCE, DEPARTMENT OF

| | | | | |
|---|----|------|-----|-------|
| <u>Licensing of Business Entities</u> | 11 | NCAC | 06A | .0413 |
| <u>Time for Appeal and Documents Required</u> | 11 | NCAC | 08 | .1502 |
| <u>Service on Local Authority</u> | 11 | NCAC | 08 | .1503 |
| <u>Response by Local Authority</u> | 11 | NCAC | 08 | .1504 |
| <u>Review of Local Authority Decision</u> | 11 | NCAC | 08 | .1505 |
| <u>Administrative and Judicial Review</u> | 11 | NCAC | 08 | .1506 |

PRIVATE PROTECTIVE SERVICES BOARD

| | | | | |
|---|----|------|-----|-------|
| <u>Experience Requirements for A.P.S.E. License</u> | 12 | NCAC | 07D | .0601 |
| <u>Application/Armed Security Guard Firearm Registration Permit</u> | 12 | NCAC | 07D | .0801 |

ALCOHOL LAW ENFORCEMENT

| | | | | |
|---|-----|------|----|-------|
| <u>Definitions</u> | 14A | NCAC | 12 | .0102 |
| <u>Licensing Requirements</u> | 14A | NCAC | 12 | .0402 |
| <u>Duties of Referees</u> | 14A | NCAC | 12 | .0406 |
| <u>Amateurs-Kickboxing</u> | 14A | NCAC | 12 | .0605 |
| <u>Weigh-Ins-Mixed Martial Arts</u> | 14A | NCAC | 12 | .0801 |
| <u>Appearance-Mixed Martial Arts</u> | 14A | NCAC | 12 | .0802 |
| <u>Gloves-Mixed Martial Arts</u> | 14A | NCAC | 12 | .0804 |
| <u>Ring Requirements-Mixed Martial Arts</u> | 14A | NCAC | 12 | .0805 |
| <u>Number of Rounds-Mixed Martial Arts</u> | 14A | NCAC | 12 | .0806 |
| <u>Seconds Duties-Mixed Martial Arts</u> | 14A | NCAC | 12 | .0807 |
| <u>Amateurs-Mixed Martial Arts</u> | 14A | NCAC | 12 | .0810 |
| <u>Suspension-Mixed Martial Arts</u> | 14A | NCAC | 12 | .0811 |

ENVIRONMENTAL MANAGEMENT COMMISSION

| | | | | |
|--|-----|------|-----|-------|
| <u>Scope and Purpose</u> | 15A | NCAC | 02C | .0301 |
| <u>Definitions</u> | 15A | NCAC | 02C | .0302 |
| <u>Application for Construction Permit</u> | 15A | NCAC | 02C | .0303 |
| <u>Permitting</u> | 15A | NCAC | 02C | .0304 |
| <u>Grout Inspection: Certification</u> | 15A | NCAC | 02C | .0305 |
| <u>Well Completion and Certification</u> | 15A | NCAC | 02C | .0306 |
| <u>Well Data and Records</u> | 15A | NCAC | 02C | .0307 |
| <u>Appeal Procedure</u> | 15A | NCAC | 02C | .0308 |
| <u>Permit and Application Fees</u> | 15A | NCAC | 02Q | .0203 |

RULES REVIEW COMMISSION

| | | | | |
|---|-----|------|-----|-------|
| <u>Inflation Adjustment</u> | 15A | NCAC | 02Q | .0204 |
| SOIL AND WATER CONSERVATION COMMISSION | | | | |
| <u>Definitions for Subchapter 06E</u> | 15A | NCAC | 06E | .0102 |
| <u>Cost Share and Incentive Payments</u> | 15A | NCAC | 06E | .0105 |
| <u>District Program Operation</u> | 15A | NCAC | 06E | .0108 |
| <u>District Program Operation</u> | 15A | NCAC | 06I | .0108 |
| WILDLIFE RESOURCES COMMISSION | | | | |
| <u>Safety Equipment</u> | 15A | NCAC | 10F | .0201 |
| NC MEDICAL BOARD/PERFUSION ADVISORY COMMITTEE | | | | |
| <u>Fees</u> | 21 | NCAC | 32V | .0115 |
| FUNERAL SERVICE, BOARD OF | | | | |
| <u>Definitions</u> | 21 | NCAC | 34B | .0407 |
| <u>Course Accreditation Standards</u> | 21 | NCAC | 34B | .0409 |
| <u>General Course Approval</u> | 21 | NCAC | 34B | .0411 |
| <u>Accreditation of Prerecorded Programs and Live Programs B...</u> | 21 | NCAC | 34B | .0413 |
| <u>Accreditation of Computer-Based CE</u> | 21 | NCAC | 34B | .0414 |
| OCCUPATIONAL THERAPY, BOARD OF | | | | |
| <u>Continuing Duty to Report Certain Crimes and Civil Suits</u> | 21 | NCAC | 38 | .0305 |
| PSYCHOLOGY BOARD | | | | |
| <u>Criminal History Record Check</u> | 21 | NCAC | 54 | .1612 |
| <u>Information Required</u> | 21 | NCAC | 54 | .1701 |
| <u>Senior Psychologist</u> | 21 | NCAC | 54 | .1707 |
| <u>Reinstatement</u> | 21 | NCAC | 54 | .2103 |
| <u>HSP-PA Requirements</u> | 21 | NCAC | 54 | .2706 |
| RESPIRATORY CARE BOARD | | | | |
| <u>Fees</u> | 21 | NCAC | 61 | .0204 |
| <u>Inactive Status</u> | 21 | NCAC | 61 | .0305 |

AGENDA
RULES REVIEW COMMISSION
Thursday, March 20, 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. Department of Administration – 01 NCAC 44A .0301 (Bryan)

- B. Environmental Management Commission – 15A NCAC 02H .1005 (DeLuca)
 - C. Soil & Water Conservation Commission – 15A NCAC 06E .0107 (DeLuca)
 - D. Soil & Water Conservation Commission – 15A NCAC 06I .0107 (DeLuca)
 - E. Respiratory Care Board – 21 NCAC 61 .0201 (DeLuca)
 - F. State Personnel Commission – 25 NCAC 01L .0102 (DeLuca)
- IV. Review of Log of Permanent Rule filings for rules filed between January 23, 2008 and February 20, 2008(attached)
- V. Review of Temporary Rules
- VI. Commission Business
- Report from the Rules Committee
 - Next meeting: April 17, 2008
-

Commission Review
Log of Permanent Rule Filings
January 23, 2008 through February 20, 2008

AGRICULTURE, BOARD OF

The rules in Chapter 48 are Department of Agriculture rules governing the plant industry, including plant protection, fertilizer, seeds, liming materials and landplaster, and genetically engineered organisms. The rules in Subchapter 48A are plant protection rules directed at specific plant problems or methods of protection including the honey and bee industry (.0200); protection against the boll weevil (.0600); vegetable plant certification (.1000); tobacco plant certification (.1100); and control of noxious weeds (.1700).

Issuance of Certificates and Limited Permits 02 NCAC 48A .1706
Amend/*

The rules in Subchapter 52B cover animal diseases, treatment, and protection including quarantine (.0100), admission of livestock to North Carolina (.0200), brucellosis regulations (.0300), equine infectious anemia (.0400), poultry diseases (.0500), poultry hatcheries (.0600); and scrapie disease (.0700).

Importation Requirements: Goats 02 NCAC 52B .0208
Repeal/*

Importation Requirements: Sheep 02 NCAC 52B .0209
Amend/*

Identification Requirements 02 NCAC 52B .0701
Adopt/*

Identification Methodology 02 NCAC 52B .0702
Adopt/*

Recordkeeping 02 NCAC 52B .0703
Adopt/*

Reporting Requirement 02 NCAC 52B .0704
Adopt/*

Quarantine 02 NCAC 52B .0705
Adopt/*

Tissue Collection 02 NCAC 52B .0706
Adopt/*

Carcass Disposal 02 NCAC 52B .0707
Adopt/*

The rules in Subchapter 52J are enforced by the animal welfare section and include rules about record keeping and licensing (.0100); facilities and operating standards (.0200); transportation standards (.0300); euthanasia standards (.0400); euthanasia by injection (.0500); euthanasia by carbon monoxide (.0600); extraordinary circumstances (.0700); and policy and procedure manual (.0800).

| | | | |
|--|----|----------|-------|
| <u>Outdoor Facilities</u> | 02 | NCAC 52J | .0203 |
| Amend/* | | | |
| <u>Veterinary Care</u> | 02 | NCAC 52J | .0210 |
| Amend/* | | | |
| <u>Primary Enclosures Used in Transporting Dogs and Cats</u> | 02 | NCAC 52J | .0302 |
| Amend/* | | | |
| <u>Adoption by Reference</u> | 02 | NCAC 52J | .0401 |
| Adopt/* | | | |
| <u>Authorized Persons</u> | 02 | NCAC 52J | .0402 |
| Adopt/* | | | |
| <u>Definitions</u> | 02 | NCAC 52J | .0403 |
| Adopt/* | | | |
| <u>Certification Requirements for Euthanasia</u> | 02 | NCAC 52J | .0404 |
| Adopt/* | | | |
| <u>Certification Standards</u> | 02 | NCAC 52J | .0405 |
| Adopt/* | | | |
| <u>Application Requirements</u> | 02 | NCAC 52J | .0406 |
| Adopt/* | | | |
| <u>Training and Examinations</u> | 02 | NCAC 52J | .0407 |
| Adopt/* | | | |
| <u>Trainers</u> | 02 | NCAC 52J | .0408 |
| Adopt/* | | | |
| <u>Probationary Euthanasia Technicians</u> | 02 | NCAC 52J | .0409 |
| Adopt/* | | | |
| <u>Exam Required</u> | 02 | NCAC 52J | .0410 |
| Adopt/* | | | |
| <u>New Application</u> | 02 | NCAC 52J | .0411 |
| Adopt/* | | | |
| <u>Issuance of Certification</u> | 02 | NCAC 52J | .0412 |
| Adopt/* | | | |
| <u>Length of Certification</u> | 02 | NCAC 52J | .0413 |
| Adopt/* | | | |
| <u>Termination of Employment</u> | 02 | NCAC 52J | .0414 |
| Adopt/* | | | |
| <u>Notice of Termination</u> | 02 | NCAC 52J | .0415 |
| Adopt/* | | | |
| <u>Recertification</u> | 02 | NCAC 52J | .0416 |
| Adopt/* | | | |
| <u>Certification Renewal</u> | 02 | NCAC 52J | .0417 |
| Adopt/* | | | |
| <u>Duties</u> | 02 | NCAC 52J | .0418 |
| Adopt/* | | | |
| <u>Grounds for Discipline - Certified Euthanasia Technicians</u> | 02 | NCAC 52J | .0419 |
| Adopt/* | | | |
| <u>Criminal Convictions</u> | 02 | NCAC 52J | .0420 |
| Adopt/* | | | |

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|---|-------------------|
| <u>Authorized Persons</u> Adopt/* | 02 NCAC 52J .0501 |
| <u>Intracardiac Injection</u> Adopt/* | 02 NCAC 52J .0502 |
| <u>Carbon Monoxide Equipment</u> Adopt/* | 02 NCAC 52J .0601 |
| <u>Prohibited Uses</u> Adopt/* | 02 NCAC 52J .0602 |
| <u>Dead Animals</u> Adopt/* | 02 NCAC 52J .0603 |
| <u>Individual Separation</u> Adopt/* | 02 NCAC 52J .0604 |
| <u>Chamber Requirements</u> Adopt/* | 02 NCAC 52J .0605 |
| <u>Inspections and Records</u> Adopt/* | 02 NCAC 52J .0606 |
| <u>Cleaning Chamber</u> Adopt/* | 02 NCAC 52J .0607 |
| <u>Operational Guidelines and Instruction Manuals</u> Adopt/* | 02 NCAC 52J .0608 |
| <u>Persons Required to be Present</u> Adopt/* | 02 NCAC 52J .0609 |
| <u>Methods of Euthanasia Permitted Under Extraordinary Circum...</u> Adopt/* | 02 NCAC 52J .0701 |
| <u>Gunshot or Other Methods</u> Adopt/* | 02 NCAC 52J .0702 |
| <u>Methods and Standards</u> Adopt/* | 02 NCAC 52J .0703 |
| <u>Technician Not Required</u> Adopt/* | 02 NCAC 52J .0704 |
| <u>Reports</u> Adopt/* | 02 NCAC 52J .0705 |
| <u>Manual Required</u> Adopt/* | 02 NCAC 52J .0801 |
| <u>Contents</u> Adopt/* | 02 NCAC 52J .0802 |
| <u>Additional Contents</u> Adopt/* | 02 NCAC 52J .0803 |

BANKS, OFFICE OF THE COMMISSIONER

The rules in Chapter 3 are from the Banking Commission and the Commission of Banks.

The rules in Subchapter 3M concern mortgage lending including general mortgage lending (.0100); licensing (.0200); education and examinations (.0300); reporting and notification requirements (.0400); and record and bookkeeping requirements (.0500).

| | |
|--|-------------------|
| <u>Definitions</u> Amend/* | 04 NCAC 03M .0101 |
| <u>Experience</u> Amend/* | 04 NCAC 03M .0204 |
| <u>Financial Responsibility</u> Adopt/* | 04 NCAC 03M .0205 |
| <u>Surety Bond</u> | 04 NCAC 03M .0206 |

| | |
|--|-------------------|
| Adopt/* | |
| <u>Approval of Providers and Programs</u> | 04 NCAC 03M .0301 |
| Amend/* | |
| <u>Annual Reporting Requirements</u> | 04 NCAC 03M .0401 |
| Amend/* | |
| <u>Amendments to Information on File With the Commissioner</u> | 04 NCAC 03M .0402 |
| Amend/* | |
| <u>Termination of Operations</u> | 04 NCAC 03M .0403 |
| Amend/* | |
| <u>Records to be Maintained</u> | 04 NCAC 03M .0501 |
| Amend/* | |

MEDICAL CARE COMMISSION

The rules in Chapter 13 are from the NC Medical Care Commission.

The rules in Subchapter 13B set standards for the licensing of hospitals including supplemental rules for the licensure of skilled intermediate, adult care home beds in a hospital (.1900); specialized rehabilitative and rehabilitative services (.2000); general information (.3000); procedure (.3100); general requirements (.3200); patients' bill of rights (.3300); supplemental rules for the licensure of critical care hospitals (.3400); grievance and management (.3500); management and administration of operations (.3600); medical staff (.3700); nursing services (.3800); medical record services (.3900); outpatient services (.4000); emergency services (.4100); special care units (.4200); maternal-neonatal services (.4300); respiratory care services (.4400); pharmacy services and medication administration (.4500); surgical and anesthesia services (.4600); nutrition and dietetic services (.4700); diagnostic imaging (.4800); laboratory services and pathology (.4900); physical rehabilitation services (.5000); infection control (.5100); psychiatric services (.5200); nursing and adult care beds (.5300); comprehensive inpatient rehabilitation (.5400); supplemental rules for hospitals providing living organ donation transplant services (.5500); physical plant (.6000); general requirements (.6100); and construction requirements (.6200).

| | |
|---|--------------------|
| <u>Minimum Provisions of Patient's Bill of Rights</u> | 10A NCAC 13B .3302 |
| Amend/* | |

The rules in subchapter 13F concern licensing of homes for the aged and infirm and include definitions (.0100); licensing (.0200); physical plant (.0300); staff qualification (.0400); staff orientation training, competency and continuing education (.0500); staffing (.0600); admission and discharge (.0700); resident assessment and care plan (.0800); resident care and services (.0900); medication (.1000); Resident's funds and refunds (.1100); policies; records and reports (.1200); special care units for alzheimer and related disorders (.1300); special care units for mental health disorders (.1400); use of physical restraints and alternatives (.1500); and rated certificates (.1600).

| | |
|---|--------------------|
| <u>Scope</u> | 10A NCAC 13F .1601 |
| Adopt/* | |
| <u>Issuance of Rated Certificates</u> | 10A NCAC 13F .1602 |
| Adopt/* | |
| <u>Statutory and Rule Requirements Affecting Rated Certificates</u> | 10A NCAC 13F .1603 |
| Adopt/* | |
| <u>Rating Calculation</u> | 10A NCAC 13F .1604 |
| Adopt/* | |
| <u>Contents of Rated Certificate</u> | 10A NCAC 13F .1605 |
| Adopt/* | |

The rules in subchapter 13G concern licensing of family care homes including definitions (.0100); licensing (.0200); the building (.0300); staff qualifications (.0400); staffing orientation, training, competency and continuing education (.0500); staffing of the home (.0600); admission and discharge (.0700); resident assessment and care plan (.0800); resident care and services (.0900); medications (.1000); management and resident's funds and refunds (.1100); policies, records and reports (.1200); use of physical restraints and alternatives (.1300); and rated certificates (.1600).

| | |
|--|--------------------|
| <u>Scope</u> Adopt/* | 10A NCAC 13G .1601 |
| <u>Issuance of Rated Certificate</u> Adopt/* | 10A NCAC 13G .1602 |
| <u>Statutory and Rule Requirements Affecting Rated Certificates</u> Adopt/* | 10A NCAC 13G .1603 |
| <u>Rating Calculation</u> Adopt/* | 10A NCAC 13G .1604 |
| <u>Contents of Rated Certificate</u> Adopt/* | 10A NCAC 13G .1605 |

PUBLIC HEALTH, COMMISSION FOR

The rules in Chapter 41 concern epidemiology health.

The rules in Subchapter 41A deal with communicable disease control and include reporting of communicable diseases (.0100); control measures for communicable diseases including special control measures (.0200-.0300); immunization (.0400); purchase and distribution of vaccine (.0500); special program/project funding (.0600); licensed nursing home services (.0700); communicable disease grants and contracts (.0800); and biological agent registry (.0900).

| | |
|--|--------------------|
| <u>Reportable Diseases and Conditions</u> Amend/* | 10A NCAC 41A .0101 |
| <u>Control Measures - Sexually Transmitted Diseases</u> Amend/* | 10A NCAC 41A .0204 |

The rules in Chapter 43 concern personal health.

The rules in Subchapter 43A concern family planning including general policies (.0100); local provider funding (.0200); local provider services (.0300); quality assurance (.0400); program policies governing clinical procedures (.0500); and teen pregnancy prevention (.0800).

| | |
|--|--------------------|
| <u>Criteria for Project Selection</u> Amend/* | 10A NCAC 43A .0808 |
|--|--------------------|

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

The rules in Chapter 9 are from the Criminal Justice Education and Training Standards Commission.

This Commission has primary responsibility for setting statewide education, training, employment, and retention standards for criminal justice personnel (not including sheriffs). The rules in Subchapter 9B cover minimum standards for: employment (.0100); schools and training programs (.0200); criminal justice instructors (.0300); completion of training (.0400); school directors (.0500); and certification of post-secondary criminal justice education programs (.0600).

| | |
|--|-------------------|
| <u>Basic Training - Wildlife Enforcement Officers</u> Amend/* | 12 NCAC 09B .0228 |
|--|-------------------|

The rules in Subchapter 9C concern the administration of criminal justice education and training standards including responsibilities of the criminal justice standards division (.0100); forms (.0200); certification of criminal justice officers (.0300); accreditation of criminal justice schools and training courses (.0400); minimum standards for accreditation of associate of applied science degree programs incorporating basic law enforcement training (.0500); and equipment and procedures (.0600).

| | |
|---|-------------------|
| <u>Certification of Criminal Justice Schools</u> Amend/* | 12 NCAC 09C .0401 |
|---|-------------------|

The rules in Subchapter 9E relate to the law enforcement officers' in-service training program.

RULES REVIEW COMMISSION

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|---|-------------------|
| <u>Required Annual In-Service Training Topics</u> Amend/* | 12 NCAC 09E .0102 |
| <u>Instructors Annual In Service Training</u> Amend/* | 12 NCAC 09E .0104 |
| <u>Minimum Training Specifications: Annual In-Service Training</u> Amend/* | 12 NCAC 09E .0105 |

The rules in Subchapter 9G are the standards for correction including scope, applicability and definitions (.0100); minimum standards for certification of correctional officers, probation/parole officers, and probation/parole officers-intermediate (.0200); certification of correctional officers, probation/parole officers, probation/parole officers intermediate and instructors (.0300); minimum standards for training of correctional officers, probation/parole officers, and probation/parole officers-intermediate (.0400); enforcement of rules (.0500); professional certification program (.0600); and forms (.0700).

| | |
|--|-------------------|
| <u>Corrections Specialized Instructor Training - Firearms</u> Amend/* | 12 NCAC 09G .0415 |
|--|-------------------|

COASTAL RESOURCES COMMISSION

The rules in Chapter 7 are coastal management rules.

The rules in Subchapter 7B are land use planning guidelines including introduction (.0600); land use planning (.0700); CAMA land use plan review and CRC certification (.0800); and CAMA land use plan amendments (.0900).

| | |
|--|--------------------|
| <u>Presentation to Coastal Resources Commission for Certific...</u> Amend/* | 15A NCAC 07B .0802 |
|--|--------------------|

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

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| <u>Coastal Shorelines</u> Amend/* | 15A NCAC 07H .0209 |
| <u>General Identification and Description of Landforms</u> Amend/* | 15A NCAC 07H .0305 |
| <u>Specific Use Standards for Ocean Hazard Areas</u> Amend/* | 15A NCAC 07H .0308 |
| <u>Technical Standards for Beach Fill Projects</u> Amend/* | 15A NCAC 07H .0312 |

PUBLIC HEALTH, COMMISSION FOR

The rules in Chapter 18 cover environmental aspects of health such as sanitation (18A), mosquito control (18B), water supplies (18C), and water treatment facility operators (18D).

The rules in Subchapter 18A deal with sanitation and include handling, packing and shipping of crustacean meat (.0100) and shellfish (.0300 and .0400); operation of shellstock plants and reshippers (.0500); shucking and packing plants (.0600); depuration mechanical purification facilities (.0700); wet storage of shellstock (.0800); shellfish growing waters (.0900); summer camps (.1000); grade A milk (.1200); hospitals, nursing homes, rest homes, etc. (.1300); mass gatherings (.1400); local confinement facilities (.1500); residential care facilities (.1600); protection of water supplies (.1700); lodging places (.1800); sewage treatment and disposal systems (.1900); migrant housing (.2100); bed and breakfast homes (.2200); delegation of authority to enforce rules (.2300); public, private and religious schools (.2400); public swimming pools (.2500); restaurants, meat markets, and other food handling establishments (.2600); child day care facilities (.2800); restaurant and lodging fee collection program (.2900); bed and breakfast inns (.3000); lead poisoning prevention (.3100); tattooing (.3200); adult day service facilities (.3300); primitive camps (.3500); rules governing the sanitation of resident camps (.3600); and private drinking water well sampling (.3800).

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|--------------------------------------|--------------------|
| <u>Inspections and Reinspections</u> | 15A NCAC 18A .2604 |
| Amend/* | |
| <u>Grading</u> | 15A NCAC 18A .2606 |
| Amend/* | |
| <u>Grading</u> | 15A NCAC 18A .3606 |
| Amend/* | |
| <u>Definitions</u> | 15A NCAC 18A .3801 |
| Adopt/* | |
| <u>Sample Collection</u> | 15A NCAC 18A .3802 |
| Adopt/* | |
| <u>Sample Analysis</u> | 15A NCAC 18A .3803 |
| Adopt/* | |
| <u>Reporting</u> | 15A NCAC 18A .3804 |
| Adopt/* | |
| <u>Data Review</u> | 15A NCAC 18A .3805 |
| Adopt/* | |

WELL CONTRACTORS CERTIFICATION COMMISSION

The rules in Chapter 27 concern well contractor certification including duties and definitions (.0100); well contractor fees (.0200); certification of well contractors (.0300); certification by examination (.0400); certification without examination (.0500); certification renewal (.0600); types of certification (.0700); continuing education (.0800); and procedures for disciplinary actions (.0900).

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|--|-------------------|
| <u>Types of Certification</u> | 15A NCAC 27 .0110 |
| Amend/* | |
| <u>Schedule of Certification Fees</u> | 15A NCAC 27 .0201 |
| Amend/* | |
| <u>Application for Certification</u> | 15A NCAC 27 .0301 |
| Amend/* | |
| <u>Submittal and Processing of Applications for Examinations</u> | 15A NCAC 27 .0401 |
| Amend/* | |
| <u>Well Contractor Examinations</u> | 15A NCAC 27 .0410 |
| Amend/* | |
| <u>Certification by Legislative Exemption</u> | 15A NCAC 27 .0501 |
| Repeal/* | |
| <u>Requirements of Certification</u> | 15A NCAC 27 .0702 |
| Adopt/* | |

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|---|-------------------|
| <u>Level D Certification Without Examination</u> Adopt/* | 15A NCAC 27 .0703 |
| <u>Certification Without Examination in 2008</u> Adopt/* | 15A NCAC 27 .0704 |
| <u>Recordkeeping</u> Amend/* | 15A NCAC 27 .0830 |
| <u>Revocation, Relinquishment or Expiration of Certification</u> Amend/* | 15A NCAC 27 .0901 |

REVENUE, DEPARTMENT OF

The rules in Chapter 4 are from the license and excise tax division.

The rules in Subchapter 4C concern cigarette tax including definitions (.0100); cigarette distributors license (.0200); affixation of stamps and receipts (.0500); requirements for cigarette manufacturers (.0600); receipt of untaxed cigarettes (.0700); entities exempt from the Tobacco Products Tax Act (.0800); reports and records required of distributors (.0900); refunds of the cigarette tax (.1000); how tax applies on railroads and ocean-going vessels (.1100); rules relevant to cigarette vending machines (.1200); home requirements for other tobacco products besides cigarettes (.1300); manufacturers of other tobacco products (.1400); who is liable for the other tobacco products excise tax (.1500); how to designate sales as exempt (.1700); monthly report, invoice and record requirements (.1800); and other tobacco products vending machines (.1900).

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|--|-------------------|
| <u>Out-of-State Sales: Nonresident Registration</u> Amend/* | 17 NCAC 04C .0504 |
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The rules in Subchapter 04E concern alcoholic beverages tax including licenses (.0100); monthly reports: payment of tax (.0200); spoilage: breakage and destruction (.0300); military beer and wine (.0400); ocean-going beer and wine (.0500); bond required (.0600); and distribution of malt and wine excise tax to local governments (.0700).

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|--|-------------------|
| <u>Bond Required of Wholesaler and Importer</u> Amend/* | 17 NCAC 04E .0601 |
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The rules in Chapter 5 are from the corporate income and franchise tax division.

The rules in Subchapter 5D concern declaration of income by corporations.

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|--------------------------|-------------------|
| <u>Remedy</u> Adopt/* | 17 NCAC 05D .0114 |
|--------------------------|-------------------|

MEDICAL BOARD

The rules in Chapter 32 are from the Medical Board and include the licensing and practice standards of doctors, approval of nurse practitioners and physician assistants, regulation of professional corporations and mobile intensive care, and other aspects of medical practice and the regulatory procedures.

The rules in Subchapter 32B concern license to practice medicine including general provisions (.0100); license by written examination (.0200); license by endorsement (.0300); temporary license by endorsement of credentials (.0400); resident's training license (.0500); special limited license (.0600); certificate of registration for visiting professors (.0700); medical school facility license (.0800); special volunteer license (.0900) prescribing (.1000); reactivation of full license (.1100); and reinstatement of full license (.1200).

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|---|-------------------|
| <u>Certified Photograph and Certification of Graduation</u> Repeal/* | 21 NCAC 32B .0204 |
| <u>Application Forms</u> Repeal/* | 21 NCAC 32B .0206 |
| <u>Letters of Recommendation</u> Repeal/* | 21 NCAC 32B .0207 |
| <u>Fee</u> | 21 NCAC 32B .0209 |

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|--|-------------------|
| Repeal/* | |
| <u>Required Application Materials</u> | 21 NCAC 32B .0210 |
| Repeal/* | |
| <u>Passing Score</u> | 21 NCAC 32B .0211 |
| Repeal/* | |
| <u>Examination Times</u> | 21 NCAC 32B .0212 |
| Repeal/* | |
| <u>Graduate Medical Education and Training for Licensure</u> | 21 NCAC 32B .0213 |
| Repeal/* | |
| <u>Personal Interview</u> | 21 NCAC 32B .0214 |
| Repeal/* | |

The rules in Subchapter 32M concern approval of nurse practitioners (.0100).

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|-----------------------------|-------------------|
| <u>Continuing Education</u> | 21 NCAC 32M .0107 |
| Amend/* | |

The rules in Subchapter 32W concern the regulations of anesthesiologist assistants.

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|---|-------------------|
| <u>Definitions</u> | 21 NCAC 32W .0101 |
| Adopt/* | |
| <u>Qualifications for License</u> | 21 NCAC 32W .0102 |
| Adopt/* | |
| <u>Inactive License Status</u> | 21 NCAC 32W .0103 |
| Adopt/* | |
| <u>Annual Renewal</u> | 21 NCAC 32W .0104 |
| Adopt/* | |
| <u>Continuing Medical Education</u> | 21 NCAC 32W .0105 |
| Adopt/* | |
| <u>Student Anesthesiologist Assistants</u> | 21 NCAC 32W .0106 |
| Adopt/* | |
| <u>Exemption from License</u> | 21 NCAC 32W .0107 |
| Adopt/* | |
| <u>Scope of Practice</u> | 21 NCAC 32W .0108 |
| Adopt/* | |
| <u>Supervision of Anesthesiologist Assistants</u> | 21 NCAC 32W .0109 |
| Adopt/* | |
| <u>Limitations on Practice</u> | 21 NCAC 32W .0110 |
| Adopt/* | |
| <u>Title and Practice Protection</u> | 21 NCAC 32W .0111 |
| Adopt/* | |
| <u>Identification Requirements</u> | 21 NCAC 32W .0112 |
| Adopt/* | |
| <u>Fees</u> | 21 NCAC 32W .0113 |
| Adopt/* | |
| <u>Violations</u> | 21 NCAC 32W .0114 |
| Adopt/* | |
| <u>Practice During a Disaster</u> | 21 NCAC 32W .0115 |
| Adopt/* | |

NURSING, BOARD OF

The rules in Chapter 36 are the rules of the Board of Nursing including rules relating to general provisions (.0100); licensure (.0200); approval of nursing programs (.0300); unlicensed personnel and nurses aides (.0400); professional corporations (.0500); articles of organization (.0600); nurse licensure compact (.0700); and approval and practice parameters for nurse practitioners (.0800).

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|---|----|---------|-------|
| <u>License Required</u> Amend/* | 21 | NCAC 36 | .0221 |
| <u>Clinical Nurse Specialist Practice</u> Amend/* | 21 | NCAC 36 | .0228 |
| <u>Administration</u> Amend/* | 21 | NCAC 36 | .0317 |
| <u>Medication Aide Training Requirements</u> Amend/* | 21 | NCAC 36 | .0406 |
| <u>Continuing Education (CE)</u> Amend/* | 21 | NCAC 36 | .0807 |

CONTESTED CASE DECISIONS

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

OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge
JULIAN MANN, III*

*Senior Administrative Law Judge
FRED G. MORRISON JR.*

ADMINISTRATIVE LAW JUDGES

Beecher R. Gray
Selina Brooks
Melissa Owens Lassiter
Don Overby

Randall May
A. B. Elkins II
Joe Webster
Shannon Joseph

| <u>AGENCY</u> | <u>CASE NUMBER</u> | <u>ALJ</u> | <u>DATE OF DECISION</u> | <u>PUBLISHED DECISION REGISTER CITATION</u> |
|--|--------------------|------------|-------------------------|---|
| <u>ALCOHOL BEVERAGE CONTROL COMMISSION</u> | | | | |
| ABC Commission v. Agustin Zeferino Hernandez, T/A El Pujido | 06 ABC 2275 | Chess | 10/09/07 | |
| ABC Commission v. La Fiesta Mexicana II, Inc., T/A La Fiesta Mexicana | 07 ABC 0149 | Gray | 04/19/07 | |
| ABC Commission v. NK Group, Inc., T/A NK Food Mart, | 07 ABC 0163 | Overby | 04/18/07 | |
| ABC Commission v. 703 Jonestown, Inc., T/A Red Rooster | 07 ABC 0305 | Webster | 10/04/07 | |
| ABC Commission v. Donna Darlene Johnston, T/A Wagon Wheel | 07 ABC 0738 | Webster | 09/20/07 | |
| ABC Commission v. Jamal Kamel Hajeh, T/A Pleasant Grove Grocery | 07 ABC 0883 | Morrison | 09/11/07 | |
| 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: www.ncoah.com/decisions . | | | | |
| <u>BOARD OF NURSING</u> | | | | |
| Kenneth C. Johnson v. Board of Nursing | 07 BON 1679 | Overby | 12/13/07 | |
| <u>CRIME VICTIMS COMPENSATION</u> | | | | |
| Robert White, Jr., v. Crime Victims Compensation Commission | 07 CPS 0497 | Webster | 09/12/07 | |
| Renee L. Hunter | 07 CPS 1408 | Joseph | 10/24/07 | |
| Martha M. McMillan v. Victim and Justice Services | 07 CPS 1560 | Overby | 12/18/07 | |
| Eric Triplett v. Victim and Justice Services | 07 CPS 1561 | Lassiter | 12/14/07 | |
| Pricilla McAllister v. Crime Victims Compensation Commission | 06 CPS 1166 | Webster | 06/14/07 | |
| <u>DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES</u> | | | | |
| DAG, Food and Drug Protection Division, Pesticide Section v. Jeffrey A. Oxley | 06 DAG 0636 | Webster | 10/04/07 | |
| <u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u> | | | | |
| Hanson Hill Rest Home and Faiger Blackwell v. DHHS, DFS, Adult Care Licensure Section | 03 DHR 0945 | Overby | 04/16/07 | |
| Mary Elizabeth Matthews v. DHHS, Division of Medical Assistance | 06 DHR 0485 | Mann | 10/01/07 | |
| Kristen Valerie Kennedy v. Div. of Mental Health/Development Disabilities/ Substance Abuse Services at Dix | 06 DHR 0984 | Mann | 05/08/07 | |
| Eyvette Abbott, Robbie Wilson Community Services, Inc., v. DHHS (DMH/DD/SAS) | 06 DHR 1139 | Webster | 06/06/07 | |
| Amran Hussein, Trading as Laurinburg Food Mart v. DHHS, Div. of Public Health | 06 DHR 1569 | Webster | 04/17/07 | |
| James Hampton for South Haven Assisted Living v. DHHS, DFS, Mental Health Licensure and Certification Section | 06 DHR 1783 | Gray | 04/23/07 | |
| Burnell Yancey, Jr. v. DHHS, Div. of Medical Assistance | 06 DHR 1817 | Elkins | 05/29/07 | 22:01 NCR 82 |
| Nidal Dahir, DHHS, Division of Public Health | 06 DHR 1916 | Lassiter | 05/14/07 | |

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| Mary K. Short for Kathryn M. Short v. DHHS, Division of Mental Health, Developmental Disabilities and Substance Abuse | 06 DHR 2282 | Gray | 05/18/07 | |
| Egusta Ford v. DMA, Third Party Recovery | 06 DHR 2364 | Gray | 05/14/07 | |
| Stacey M Saylor v. Health Care Personnel Registry | 06 DHR 2413 | Gray | 09/24/07 | |
| Koala Day Care Centers, Inc. (6519), Alfred J. Bost, Sharon Purdie v. CACFP | 06 DHR 2428 | Webster | 12/17/07 | |
| | | | | |
| Annette L. Gwynn v. DHHS, Division of Medical Assistance | 07 DHR 0030 | Webster | 06/08/07 | |
| John A. Millan and Cornelia D. Millan v. DHHS | 07 DHR 0031 | Gray | 05/23/07 | |
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| Linda S. Little, Littles Day Care | 07 DHR 0266 | Overby | 05/23/07 | |
| Kareem S. Scott v. DHHS, DFS | 07 DHR 0300 | Webster | 05/11/07 | |
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| Peter Emeka Nwankwo v. DHHS | 07 DHR 0355 | Overby | 05/04/07 | |
| Geraldine Fenner v. DHHS | 07 DHR 0367 | Overby | 05/23/07 | |
| Annette L. Gwyn v. DHHS/Division of Medical Assistance | 07 DHR 0382 | Lassiter | 04/16/07 | |
| Scottie Dean Beck v. DHHS | 07 DHR 0399 | Gray | 12/04/07 | |
| Jessie Duncan v. DHHS | 07 DHR 0424 | Elkins | 06/08/07 | |
| Leonard Atkins Jr. v. Rowan County DSS (Ms. Tate) | 07 DHR 0464 | Gray | 06/07/07 | |
| Visitacion T Uy v. DHHS/Division of Medical Assistance | 07 DHR 0489 | Overby | 05/10/07 | |
| Dorothy Sue Johnson v. DHHS, DFS | 07 DHR 0502 | Webster | 06/15/07 | |
| Robin E. Peacock, Bridging to Success, Inc v. DHHS, DFS, Mental Health Licensure Section | 07 DHR 0510 | Gray | 05/30/07 | |
| Samantha A. Amerson v. DHHS | 07 DHR 0578 | Overby | 06/15/07 | |
| 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 | |
| Stacey M. Saylor v. Health Care Personnel Registry | 07 DHR 0662 | Gray | 09/24/07 | |
| Carmalitta M. Taylor v. DHHS | 07 DHR 0832 | Lassiter | 08/22/07 | |
| Carolyn Tolson v. DHHS | 07 DHR 0850 | Lassiter | 08/22/07 | |
| Dorothy Rose, Willie Rose, v. DHHS | 07 DHR 0859 | Lassiter | 10/08/07 | |
| Linda Thompson v. DHHS | 07 DHR 0862 | Lassiter | 08/29/07 | |
| Barbara F. Lewis v. Division of Child Development, DHHS | 07 DHR 0941 | Overby | 12/04/07 | |
| Abundance Safe Haven Inc., Girls I, Terron H. Simpson v. DHHS | 07 DHR 1004 | Elkins | 10/03/07 | |
| Keith Beddingfield c/o Thyllis Smith ATFTH Staff, Value Options, Inc. | 07 DHR 1059 | Overby | 10/04/07 | |
| Tonya Thompson v. DHHS | 07 DHR 1062 | Gray | 09/07/07 | |
| Triangle Alternatives Inc., Dorothy George v. OAH, DHHS Emery E Milliken General Counsel | 07 DHR 1081 | Elkins | 10/03/07 | |
| Gina Fuller v. Value Options | 07 DHR 1137 | Overby | 10/04/07 | |
| Marcia Barksdale v. OAH | 07 DHR 1138 | Elkins | 12/03/07 | |
| Cynthia Penniegraft Hodges v. DHHS, DFS | 07 DHR 1156 | Elkins | 12/17/07 | |
| Kroger Pharmacy v. DHHS | 07 DHR 1159 | Elkins | 10/25/07 | |
| Betty Bennett parent of Shantel Boyce v. Medicaid | 07 DHR 1193 | Overby | 10/03/07 | |
| Sherril L. Gabel v. Onslow County Department of Social Services | 07 DHR 1203 | Webster | 10/24/07 | |
| K&A Food Mart, Hani A. Nahhas v. DHHS, WIC Section | 07 DHR 1252 | Elkins | 12/07/07 | |
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| Kids Academy, Dawanda Bridges v. DHHS, Div. of Public Health, Child and Adult Care Food Program | 07 DHR 1342 | Gray | 10/19/07 | |
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| Michael J. Graves v. DHHS, DFS, Mental Health Licensure and Certification Section | 07 DHR 1468 | Overby | 10/10/07 | |
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| Jerry L. Martin, Arlene N. Martin v. DHHS | 07 DHR 1505 | Overby | 12/18/07 | |
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| Liliam Ibekwere for Lillian's Prince and Princess, Inc. v. OAH | 07 DHR 1590 | Joseph | 11/28/07 | |
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| | | | | |
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| Travis Dan Williams v. Criminal Justice Education and Training Standards Commission | 06 DOJ 1198 | Webster | 04/26/07 | |
| Robert Anthony Wilson v. DOJ, Company Police Program | 06 DOJ 1508 | Gray | 02/16/07 | |
| Jerry Hailey v. Insurance Underwriting Association | 06 DOJ 1528 | Gray | 10/01/07 | 22:09 NCR 883 |
| Jeremy Shayne Pearce v. DOJ, Campus Police Program | 06 DOJ 2424 | Overby | 04/16/07 | |
| | | | | |
| Andre Cornelius Patterson v. Private Protective Services Board | 07 DOJ 0003 | Gray | 05/18/07 | |
| David Keith Shelton v. Private Protective Services Board | 07 DOJ 0011 | Morrison | 03/29/07 | |
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| Kristine A. Conti v. Special Police | 07 DOJ 0090 | Gray | 12/20/07 | | |
| Antonio Jose Coles v. Sheriffs' Education and Training Standards Comm. | 07 DOJ 0142 | Overby | 04/03/07 | | |
| Joseph Lester Early II v. Sheriffs' Education and Training Standards Comm. | 07 DOJ 0143 | Lassiter | 09/28/07 | | |
| Jeffrey S. Moore v. Private Protective Services Board | 07 DOJ 0468 | Morrison | 06/08/07 | | |
| Roy Lee Burgess v. DOJ, Campus Police Program | 07 DOJ 0540 | Gray | 09/25/07 | | |
| Norman Jerome Turner v. Criminal Justice Education and Training Standards Commission | 07 DOJ 0599 | Overby | 09/19/07 | | |
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| William Brian Martin v. Alarm Systems Licensing Board | 07 DOJ 0929 | Gray | 10/16/07 | | |
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| <u>DEPARTMENT OF TRANSPORTATION</u> | | | | | |
| Citizens for the Preservation of Willis Landing, Kenneth M. Seigler v. DOT | 07 DOT 0175 | Gray | 03/27/07 | | |
| <u>DEPARTMENT OF STATE TREASURER</u> | | | | | |
| Sparkle Nicole Jones v. DST and Denise Virginia Lee and Arthur E. Seay, III | 05 DST 1612 | Gray | 05/23/07 | | |
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| Elaine Scarlett v. DST, Retirement Systems Division | 07 DST 0452 | Webster | 10/12/07 | | |
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| Lynn C. Sasser v. Board of Education | 06 EDC 0044 | Elkins | 05/04/07 | | |
| Karen Stallings v. Board of Education | 06 EDC 1725 | Elkins | 05/08/07 | 22:01 NCR | 90 |
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| April Williams Compton v. National Board Certification Committee Public Schools of NC | 06 EDC 1816 | Webster | 05/18/07 | | |
| John M. Radford, Jr., v. Dept. of Public Instruction | 06 EDC 1841 | Webster | 08/17/07 | | |
| Vonnita Hart Taylor v Department of Public Instruction | 06 EDC 2203 | Webster | 09/20/07 | | |
| Ms. Victoria L. Ruffin v. Board of Education | 06 EDC 2218 | Overby | 06/01/07 | | |
| Connie R. Austin v. Dept. of Public Instruction | 06 EDC 2270 | Elkins | 04/02/07 | | |
| Sandra B. Rayne v. State Board of Education, DPI Div. of Human Resources Management | 06 EDC 2277 | Lassiter | 10/31/07 | | |
| Jason Forrister v. Dept. of Public Instruction | 07 EDC 0054 | Gray | 06/22/07 | 22:09 NCR | 888 |
| Merredith Page v. Board of Education | 07 EDC 0056 | Webster | 04/19/07 | | |
| Jane H. Layton v. Department of Public Instruction | 07 EDC 0182 | Webster | 09/18/07 | | |
| Corporation for Effective Schooling d/b/a Kestrel Heights School v. Board of Education and DPI | 07 EDC 0319 | Elkins | 10/29/07 | 22:14 NCR | 1340 |
| Olga Patricia Cancino v. Public Schools of NC et al. | 07 EDC 0904 | Chess | 10/10/07 | | |
| Kesia Coleman v. DPI | 07 EDC 1142 | Elkins | 12/17/07 | | |
| Eric Scott Feltman by parent Edward S. Feltman v. Wilson County Board of Education | 07 EDC 1304 | Elkins | 12/04/07 | | |
| Nathaniel J. Mewborn v. Alamance Burlington Schools | 07 EDC 1413 | Joseph | 12/12/07 | | |
| <u>DEPT. OF ENVIRONMENT AND NATURAL RESOURCES</u> | | | | | |
| George A. Jenkins, Jr, d/b/a Lake Juno Park, Inc., v. Dept. of Environmental Health | 05 EHR 1161 | Lassiter | 02/16/07 | | |
| Wayne Smith, Jack in the Box, Inc. v. DENR | 05 EHR 1237 | Hunter | 10/02/07 | | |
| Robert D. Bryant v. DENR, Division of Coastal Management and Stanley L. McCauley | 05 EHR 2185 | Chess | 02/16/07 | | |
| Franklin Grading Co., Inc. v. DENR, Division of Air Quality | 06 EHR 0239 | Lassiter | 10/01/07 | | |
| Wildcat Investments LLC, James Cook v. Cherokee County Health Depart. | 06 EHR 0631 | Gray | 04/23/07 | | |
| Randy Dockery v. Cherokee County Health Department | 06 EHR 0728 | Gray | 04/23/07 | | |
| Alan Raper v. Cherokee Health Department | 06 EHR 0873 | Gray | 04/23/07 | | |
| Christopher Perry v. Caldwell County Health Department | 06 EHR 1010 | Elkins | 06/05/07 | | |
| Franklin Grading Co., Inc. v. DENR, Division Air Quality | 06 EHR 1525 | Lassiter | 10/01/07 | | |
| Robert Don Foster v. DENR, Div. of Coastal Management | 06 EHR 1833 | Morrison | 05/11/07 | 22:01 NCR | 95 |
| Andrew Price v. DENR, Div. of Coastal Management and William F. Canady | 06 EHR 1834 | Morrison | 05/11/07 | 22:01 NCR | 95 |
| Conrad McLean v. DENR/Division of Air Quality | 06 EHR 2243 | Gray | 05/03/07 | | |
| Terry Collins v. DENR, Division of Waste Management | 06 EHR 2414 | Gray | 05/01/07 | | |
| Riverwalk, LLC v. Town of Highlands | 06 EHR 2420 | Gray | 10/01/07 | | |
| H. Johnston Sifly v. DENR, Div. of Coastal Management | 07 EHR 0040 | Gray | 09/06/07 | | |
| Paul A. Stennett v. DENR, Public Water Supply Section | 07 EHR 0170 | Overby | 05/04/07 | | |

CONTESTED CASE DECISIONS

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| Daniel R. Wroblewski v. DENR and Coastal Management | 07 EHR 0217 | Overby | 05/08/07 |
| James Wallace v. DENR | 07 EHR 0600 | Elkins | 09/18/07 |
| Max Plowman v. DENR, Division of Air Quality | 07 EHR 0828 | Webster | 09/25/07 |
| Andre Family LLC v. Carteret County Health Dept | 07 EHR 1160 | Elkins | 10/25/07 |

BOARD OF EXAMINERS FOR ENGINEERS AND SURVEYORS

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| Board of Examiners for Engineers and Surveyors v. C. Phil Wagoner, PLS No. L-2416 | 07 EHR 0141 | Morrison | 08/21/07 |
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GOVERNOR'S OFFICE

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|---|-------------|----------|----------|-----------|-----|
| Jerry W. Conner (NCDOC#0085045) and James A. Campbell (NCDOC# 0063592) v. Council of State | 07 GOV 0238 | Morrison | 08/09/07 | 22:04 NCR | 280 |
| James Edwards Thomas and Marcus Robinson and Archie Lee Billings v. Council of State | 07 GOV 0264 | Morrison | 08/09/07 | 22:04 NCR | 280 |

DEPARTMENT OF INSURANCE

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| Toni W. Goodwin v. Teachers and State Employees Comprehensive Major Medical Plan | 06 INS 1016 | Overby | 05/07/07 | | |
| Larry Miller v. Teachers' and State Employees' Comprehensive Major Medical Plan | 06 INS 1236 | Overby | 04/11/07 | | |
| Randall A. Meder v. Teachers' and State Employees' Comprehensive Major Medical Plan | 06 INS 1413 | Overby | 07/16/07 | 22:04 NCR | 264 |
| Barbara Smith Pearce v. State Health Plan | 07 INS 0008 | Overby | 07/12/07 | 22:04 NCR | 273 |
| Phillip J. Adler and Benjamin F. Adler v. Teachers' and State Employees' Comprehensive Major Medical Plan | 07 INS 0037 | Overby | 10/19/07 | 22:11 NCR | 1158 |
| Robert Francis Payne v. Teachers' and State Employees' Comprehensive Major Medical Plan | 07 INS 1365 | Elkins | 12/11/07 | | |

MISCELLANEOUS

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|---|-------------|----------|----------|
| Sylvia Oliver v. Superior Court Judges, Clerk of Court Judges | 07 MIS 1603 | Lassiter | 10/18/07 |
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OFFICE OF ADMINISTRATIVE HEARINGS

| | | | |
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| Senora Kemp v. OAH | 07 OAH 0776 | Lassiter | 09/06/07 |
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OFFICE OF STATE PERSONNEL

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|---|-------------|----------|----------|
| Monty Steven Poarch v. Crime Control and Public Safety, State Highway Patrol | 03 OSP 2004 | Lassiter | 09/17/07 |
| Willie G. Shaw v. Division of Forest Resources | 05 OSP 0414 | Overby | 04/13/07 |
| Deona R. Hooper v. NCCU | 06 OSP 1071 | Lassiter | 04/25/07 |
| Franklin Leaven v. DHHS, DDH | 06 OSP 1132 | Lassiter | 10/17/07 |
| Patrice Bernard v. NC A&T State University | 06 OSP 1550 | Elkins | 06/05/07 |
| Angelia Davis v. UNC-Charlotte | 06 OSP 1908 | Gray | 03/08/07 |
| Toni Edwards v. UNC Greensboro Police Department | 06 OSP 2219 | Gray | 10/04/07 |
| Keith Dial v. Dept. of Juvenile Justice and Delinquency Prevention | 06 OSP 2346 | Gray | 04/20/07 |
| Larry L. Deyton v. Mitchell County Commission Board | 06 OSP 2415 | Gray | 04/19/07 |
| Rose M. Baltezure v. City of Brevard | 07 OSP 0009 | Gray | 04/03/07 |
| Dorothy H. Williams v. John Umstead Hospital | 07 OSP 0265 | Lassiter | 04/24/07 |
| Pei Wang v. UNC-Chapel Hill | 07 OSP 0273 | Lassiter | 04/19/07 |
| Candace R. Berguson v. Caswell County DSS and Mr. Jeff Earp, County Manager | 07 OSP 0294 | Lassiter | 04/20/07 |
| Shannon Harris Tadlock v. Wilson County, Department of Public Health | 07 OSP 0491 | Lassiter | 05/07/07 |
| Patricia G. Flanigan v. Fayetteville State University | 07 OSP 0503 | Overby | 05/10/07 |
| Tobias M. Guillaume v. FSU Police & Public Safety | 07 OSP 0565 | Overby | 05/10/07 |
| Archie Andrew Copeland v. Dept. of Juvenile Justice & Delinquency Prevention | 07 OSP 0976 | Lassiter | 08/29/07 |
| Patricia Bethea Williams v. NC A&T State University | 07 OSP 1053 | Overby | 08/28/07 |
| Amy M. Peck v. NC A&T State University Police Department | 07 OSP 1346 | Lassiter | 11/29/07 |
| Kathleen E. Kicinski v. NC A&T State University | 07 OSP 1347 | Lassiter | 11/29/07 |
| Kevin Edral Douglas v. NCSU | 07 OSP 1465 | Joseph | 12/03/07 |
| Terence G. Westry v. NC A&T State University | 07 OSP 1497 | Webster | 12/17/07 |
| Angela N. Mewborn v. Office of State Auditor | 07 OSP 1668 | Lassiter | 12/07/07 |
| Darrin Ball v. Wildlife Resources Commission | 07 OSP 1678 | Elkins | 12/11/07 |
| Mahatam S. Jailall v. DPI | 07 OSP 1978 | Overby | 12/21/07 |

SECRETARY OF STATE

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| Mary C. Brandon v. Department of the Secretary of State | 06 SOS 1839 | Elkins | 04/02/07 |
| Samuel Abraham , pro-se v. SOS, General Counsel Ann Wall | 07 SOS 0224 | Overby | 04/27/07 |
| Mr. Tim Rhodes, President, Event Marketing Services, Inc. v. SOS | 07 SOS 0374 | Overby | 06/14/07 |
| Angela Dozier v. SOS | 07 SOS 0912 | Gray | 08/30/07 |
| Timeka Rene' Jones v. SOS | 07 SOS 1309 | Lassiter | 12/12/07 |

UNC HOSPITALS

CONTESTED CASE DECISIONS

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|-----------------------------------|-------------|----------|----------|
| Layton Leach v. UNC Hospital | 05 UNC 0449 | Bryan | 09/07/07 |
| Mary Lawson v. UNC Hospital | 05 UNC 0467 | Bryan | 09/28/07 |
| Kenneth Trivette v. UNC Hospitals | 06 UNC 2014 | Elkins | 04/02/07 |
| Mark A. Parrish v. UNC Hospitals | 06 UNC 2406 | Elkins | 06/15/07 |
| Carolyn Parker v. UNC Hospitals | 07 UNC 0924 | Lassiter | 09/06/07 |
| Debra B. Davis v. UNC Hospitals | 07 UNC 1169 | Brooks | 10/01/07 |