

NORTH CAROLINA REGISTER

VOLUME 22 • ISSUE 18 • Pages 1584 - 1633

March 17, 2008

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

contact: Karen Cochrane-Brown, Staff Attorney karenc@ncleg.net
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NC Association of County Commissioners
215 North Dawson Street
Raleigh, North Carolina 27603
(919) 715-2893

contact: Jim Blackburn jim.blackburn@ncacc.org
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NORTH CAROLINA REGISTER
Publication Schedule for January 2008 – December 2008

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 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
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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
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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. 136
REESTABLISHING THE NORTH CAROLINA COMMISSION ON VOLUNTEERISM
AND COMMUNITY SERVICE

WHEREAS, the increasing realization of the importance of volunteerism and civic participation, the growing recognition of community service as a means of community and state problem-solving, and the revival of national services as an avenue for addressing many of the country's unmet social, environmental, educational, and public safety needs have revealed new options for enhancing the quality of life for North Carolinians; and,

WHEREAS, promoting the capability of North Carolina's people, communities, and enterprises to work collaboratively is vital to the long-term prosperity of this state; and

WHEREAS, building and encouraging community services as an integral part of the formula to our growth as a state and as a nation requires cooperative efforts by the public sector, the private sector, the nonprofit sector, and partnerships among these sections; and

WHEREAS, a State Commission is necessary to advise and assist in the development of a comprehensive, statewide service plan for promoting volunteer involvement and citizen participation in North Carolina;

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Establishment

The North Carolina Commission on Volunteerism and Community Service ("Commission") is hereby established to encourage community service and volunteer participation as a means of community and state problem-solving; to promote and support voluntary citizen involvement in government and private programs throughout the state; to develop a long-term, comprehensive vision and plan of action for community service initiatives

in North Carolina; and to serve as the state's liaison to national and state organizations which support its mission.

Section 2. Membership Composition

- a. All members of the Commission shall be appointed by the Governor. It shall consist of no fewer than 15 and no more than 25 members. Not more than 50 percent of the Commission plus one member may be from the same political party. To the extent possible, it shall be diverse in race, ethnicity, age, disability, and gender. Terms shall be for three years and shall be staggered.

- b. The Commission shall include:
 - 1. An individual with expertise in the educational, training, and developmental needs of youth, particularly disadvantaged youth.
 - 2. An individual with experience in promoting the involvement of older adults in service and volunteerism.
 - 3. A representative of community-based agencies or community-based organizations within the State.
 - 4. The Superintendent of the Department of Public Instruction, or his designee.
 - 5. A representative of local governments in the State.
 - 6. A representative of local labor organizations in the State.
 - 7. A representative of business.
 - 8. At least two Commission members shall be individuals between the ages of 16 and 25 who are service providers or recipients in a volunteer or service program.
 - 9. A representative of the Corporation for National and Community Service described in Section 122(a) of the United States Public Law 103-82 ("P.L."), as a non-voting, ex officio member.
 - 10. A designee from the Governor's Office and the Director of the Department of Public Instruction's Learn and Serve School-Based Program shall serve as non-voting ex-officio members.

- c. The Commission may include:
 - 1. Members selected from among local educators.
 - 2. Members selected from among experts in the delivery of human, educational, environmental, or public safety services to communities and persons.
 - 3. Representatives of Native American tribes.
 - 4. Members selected from among out-of-school youth or other "at-risk" youth.
 - 5. Representatives of entities that receive assistance under the domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.).

- d. Not more than 25 percent of the Commission members may be employees of state government, though additional state agency representatives may sit on the Commission as non-voting, ex officio members.

- e. Vacancies among the members shall be filled by the Governor to serve for the remainder of the unexpired term.

Section 3. Officers

The Officers of the Commission shall be Chair and Vice-Chair. All officers shall be elected by the voting Commission members from among their ranks and officers shall serve for a term of one year. Vacancies in any offices shall be filled with an election by the Commission for the remainder of the unexpired term.

- a. Chair: It shall be the responsibility of the Chair to preside at all meetings of the Commission; to appoint all committee chairs; to assist all committee chairs in the planning of committee activities; to supervise all chairs as to the management of committee plans; to authorize and execute the wishes of the board; and to be an ex officio member of all committees.
- b. Vice-Chair: The Vice-Chair shall assist the Chair, and, in the absence of the Chair, perform those duties. The Vice-Chair shall accept special assignments from the Chair and perform other duties as delegated by the Commission.

Section 4. Standing Committees

The Standing Committees shall advise and assist the Commission in carrying out its duties and responsibilities. Committee chairs shall be appointed by the Commission Chair from among Commission members, but the committees' members need not be limited to commission members. The Commission Chair, in consultation with the Committee Chairs, shall name the committees' members. Standing Committees of the Commission may include:

- a. Volunteer Recognition: The Standing Committee on Volunteer Recognition shall assist with the implementation of Governor's awards relating to exemplary volunteer service in the State; work with individual communities to develop local recognition programs; and explore additional opportunities to recognize individuals and organizations addressing community needs through volunteer service.
- b. Evaluation: The Standing Committee on Evaluation shall evaluate each program funded by the Corporation for National and Community Service (described in the P.L. 103-82) and state organizations which support the purpose of the Commission to assure their on-going quality.
- c. Community Collaboration: The Standing Committee on Community Collaboration shall promote communication and information sharing between state and local private and public initiatives to meet community needs.

- d. Resource Development: The Standing Committee on Resource Development shall develop and implement strategies to secure local, state, and federal resources to reinforce, expand, and initiate quality community programs across the state.
- e. Training: The Standing committee on Training will develop and implement strategies for training and technical assistance to community service programs, potential grant applicants and State commission-funded programs, as well as work towards building service program partnerships statewide.
- f. Service Learning: The Standing Committee on Service Learning will act as a liaison between the State commission, private and public institutions of higher education and the Department of Public Instruction to shape the service learning state plan and promote service learning in community-based and school-based programs and partnerships across the state.

Section 5. Meetings

The Commission shall meet at least quarterly. Failure to attend at least 75 percent of called meetings in any calendar year shall result in removal from the Commission. A quorum shall consist of a simple majority of voting members.

Section 6. Duties

The Commission shall, in the performance of its tasks and functions:

- a. Ensure that its funding decisions meet all federal and state statutory requirements.
- b. Recommend innovative, creative, statewide service programs to increase volunteer participation in all age groups and community-based problem-solving among diverse participants.
- c. Develop and implement a centralized, organized system of obtaining information and technical support concerning volunteerism and community service recruitment, projects, training methods, materials, and activities throughout North Carolina. Share such information and support upon request.
- d. Promote strong interagency collaboration as an avenue for maximizing resources and provide that model on the State level.
- e. Provide public recognition and support of individual volunteer efforts and successful or promising private sector initiatives and public/private partnerships which address community needs.
- f. Stimulate increased community awareness of the impact of volunteer services in North Carolina.

- g. Utilize local, state, and federal resources to reinforce, expand, and initiate quality service programs.
- h. Serve as the state's liaison and voice to appropriate national and state organizations which support its mission.
- i. Prepare a national three-year service plan for the State which follows state and federal guidelines.
- j. Prepare the financial assistance applications of the State under Sections 117B and 1301 of the P.L. 103-82.
- k. Assist in the preparation of the application of the North Carolina Department of Public Instruction for assistance under Section 113 of the P.L. 103-82.
- l. Prepare the State's application under Section 130 for the approval of service positions such as the national service educational award described in Subtitle D of the P.L. 103-82.
- m. Make technical assistance available to enable applicants for assistance under Section 121 to plan and implement service programs; and to apply for assistance under the federal service laws such as the P.L. 103-82.
- n. Assist in the provision of health care and child care benefits under Section 140 to participants in national service programs that receive assistance under Section 121 of the P.L. 103-82.
- o. Develop a state system for the recruitment and placement of participants in programs that receive assistance under the national service laws and disseminate information concerning national service programs that receive such assistance or approved national service positions.
- p. Administer the State's grant program in support of national service programs (using assistance provided to the State under Section 121 of the P.L. 103-82) including selection, oversight, and evaluation of grant recipients.
- q. Coordinate its functions (including recruitment, public awareness, and training activities) with any division of the federal ACTION program or the Corporation for National and Community Services outlined in the P.L. 103-82.

Section 7. Administration and Expenses

The Governor's Office shall provide necessary administrative and staff support services to the Commission. The Commission is authorized to accept funds and in-kind services from other state and federal entities, as authorized by the North Carolina Executive Budget Act. No

per diem allowance shall be paid to members of the Commission. Members of the Commission and staff may receive necessary travel and subsistence expenses in accordance with state law. These expenses shall be paid from federal funds where possible. If federal funds are not available, these expenses may be paid only if the Governor's Office has sufficient funds.

This executive order shall be effective immediately and shall remain in effect until rescinded.

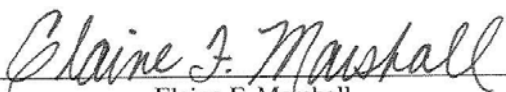
IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this seventh day of February in the year of our Lord two thousand and eight, and of the Independence of the United States of America the two hundred and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

**SUMMARY OF NOTICE OF
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY
G3 Enterprises, Inc.**

Pursuant to N.C.G.S. § 130A-310.34, G3 Enterprises, Inc. 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, also known as the former MidCal Aluminum, Inc. site, consists of approximately 5.12 acres and is located at 4933 Brookshire Boulevard. Environmental contamination exists on the Property in groundwater. G3 Enterprises, Inc. has committed itself to make no use of the Property other than as a recycling or other industrial facility, or for other commercial purposes if DENR issues prior written approval. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and G3 Enterprises, Inc., 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 brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 21 days after the period for written public comments begins. Thus, if G3 Enterprises, Inc., as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the brownfields property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods for submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on March 18, 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

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

Pursuant to N.C.G.S. 130A-310.34, Southend Realty Partners, LLC has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Charlotte, Mecklenburg County, North Carolina. The Property is the former site of operations conducted by, among others, Carolina Metal Products, LLC and Lida Manufacturing Company. It consists of approximately 4.2 acres and is located at 2208-2222 South Boulevard. Environmental contamination exists on the Property in groundwater and soil. Southend Realty Partners, LLC has committed itself to redevelopment of the Property for residential (including hotel) purposes, and/or for office, merchandise sales space/showroom, food and beverage facility, health/personal care provider and, with prior written DENR approval, other commercial use. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Southend Realty Partners, LLC, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35.

The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Public Library of Charlotte & Mecklenburg County, 310 N. Tryon St., Charlotte, NC 28202 by contacting Allison Aiken at that address or at (704) 336-2725; or at the offices of the N.C. Brownfields Program, 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 (where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents) by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 508-8411.

Written public comments may be submitted to DENR within 30 days after the date this Notice is published in a newspaper of general circulation serving the area in which the 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 Southend Realty Partners, LLC, as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the 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 18, 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

**STATE OF NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION
1617 MAIL SERVICE CENTER
RALEIGH, NORTH CAROLINA 27699-1617**

PUBLIC NOTICE OF INTENT TO ISSUE STATE GENERAL NPDES PERMITS

Public notice of intent to reissue expiring State National Pollutant Discharge Elimination System (NPDES) General Permits for Point Source Discharges of Stormwater for the following types of discharges:

NPDES General Permit No. NCG050000 for stormwater point source discharges associated with activities classified as establishments primarily engaged in Apparel and Other Finished Products Made from Fabrics and Similar Materials [standard industrial classification (SIC) 23], Printing Publishing and Allied Industries [SIC 27], Converted Paper and Paperboard Products [SIC 267], Paperboard Containers and Boxes [SIC 265], Miscellaneous Manufacturing Industries [SIC 39], Leather and Leather Products [SIC 31], and Rubber and Miscellaneous Products [SIC 30]. The following activities are specifically excluded from coverage under this General Permit: Leather Tanning and Finishing [SIC 311] and Tires and Inner Tubes [SIC 301].

NPDES General Permit No. NCG070000 for stormwater point source discharges associated with activities classified as establishments primarily engaged in Stone, Clay, Glass, and Concrete Products [standard industrial classification (SIC) 32]. The following activities are specifically excluded from coverage under this General Permit: Ready-mixed concrete [SIC 3273].

NPDES General Permit No. NCG110000 for stormwater point source discharges associated with activities classified as Treatment Works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, with a design low of 1.0 million gallons per day or more, or facilities which are required to have an approved pretreatment program under Title 40 CFR Part 403, including lands dedicated to the disposal of sewage sludge that is located within the confines of the facility.

NPDES General Permit No. NCG130000 for stormwater point source discharges associated with activities classified as establishments primarily engaged in the wholesale trade of non-metal waste and scrap [a portion of standard industrial classification (SIC) 5093]. The following activities are specifically excluded from coverage under this General Permit: the wholesale trade of metal waste and scrap, iron and steel scrap, and nonferrous metal scrap; waste oil recycling; and automobile wrecking for scrap.

NPDES General Permit No. NCG210000 for stormwater point source discharges associated with activities classified as establishments primarily engaged in Timber Products [standard industrial classification (SIC) 24]. The following activities are specifically excluded from coverage under this General Permit: Wood Kitchen Cabinets [SIC 2434], Wood Preserving [SIC 2491], and Wood Chip Mills.

On the basis of preliminary staff review and application of Article 21 of Chapter 143 of the General Statutes of North Carolina, Public Law 92-500 and other lawful standards and regulations, the North Carolina Environmental Management Commission proposes to reissue State NPDES General Permits for the discharges as described above.

INFORMATION: The text of the draft NPDES General Permits and associated Fact Sheets are available at the Stormwater Permitting Unit website at <http://h2o.enr.state.nc.us/su/index.htm>

Persons wishing to comment upon or object to the proposed determinations are invited to submit their comments in writing to the address below no later than April 16, 2008. All comments received prior to that date will be considered in the final determination regarding permit issuance and revisions to the draft permits. A public meeting may be held where the Director of the Division of Water Quality finds a significant degree of public interest in any proposed permit issuance. The draft Permits, Fact Sheets and other information are available at the Division of Water Quality, 512 N. Salisbury Street, Room 942T, Archdale Building, Raleigh, North Carolina. They may be inspected during normal office hours. Copies of the information on file are available upon request and payment of the costs of reproduction. All such comments and requests regarding these matters should make reference to the draft Permit Numbers, NCG050000, NCG070000, NCG110000, NCG130000 or NCG210000.

CONTACT:

Ken Pickle
Wetlands and Stormwater Branch
N.C. Division of Water Quality
1617 Mail Service Center

Raleigh, North Carolina 27699-1617
Telephone (919) 733-5083 ext. 584

Date: February 28, 2008

for (signed) Ken Pickle
Coleen H. Sullins, Director
N.C. Division of Water Quality

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

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

TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Agriculture intends to amend the rules cited as 02 NCAC 52K .0406, .0501, .0601.

Proposed Effective Date: July 1, 2008

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 April 1, 2008, to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Reason for Proposed Action:

02 NCAC 52K .0406 – Equine species are lower risk for *E. coli* infections than ruminant species. Pony rides operate such that the ponies are confined to a circular path and fecal material is cleaned up quickly. Requiring ponies to walk on concrete for extended periods could lead to medical problems including lameness.

02 NCAC 52K .0501 – Suitable hand-washing stations often exist near animal exhibits but not within 10 feet of the exit. Our goal with this change is simply to provide some flexibility on the distance but still maintain the appropriate flow of exhibit exit to hand-washing station to food vendors as is otherwise outlined in these Rules.

02 NCAC 52K .0601 – By making this change, we allow for young animals to be on exhibit that would otherwise be excluded. These animals (at least two weeks of age but less than three months) have some protection through maternal antibody but are too young to be vaccinated. The proposed clarifications also more accurately reflect current rabies vaccination protocols than the current wording of the rule.

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

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

Comment period ends: May 16, 2008

Procedure for Subjecting a Proposed Rule to Legislative

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

Fiscal Impact:

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

CHAPTER 52 - VETERINARY DIVISION

SUBCHAPTER 52K – ANIMAL EXHIBITIONS

SECTION .0400 – OPERATIONS AND STAFFING

02 NCAC 52K .0406 SURFACES; EXHIBIT AREAS

(a) Surfaces in the animal contact exhibit that can be touched by both fair patrons and animals shall be made of impervious material, and shall be cleaned and disinfected daily and at any time visible contamination is present.

(b) All animal fencing, feed troughs, and open watering systems shall be disinfected prior to and at the end of each fair.

(c) Contact animal exhibits shall be held on impervious surfaces whenever feasible.

(d) Impervious exhibit areas shall be cleaned and disinfected at the end of the fair.

(e) Exhibit areas that are not impervious shall be cleaned of all manure at the end of the fair and shall not be used for human activities for at least six months after cleaning.

(f) Paragraphs (c) and (e) of this Rule shall not apply to pony rides.

Authority G.S. 106-520.3A.

SECTION .0500 – FOOD, DRINK AND HAND-WASHING

02 NCAC 52K .0501 HAND-WASHING STATIONS

- (a) Hand-washing stations with soap, running water, paper towels and disposal containers shall be located within ~~ten-10~~ feet of the exit of an animal contact ~~exhibit—exhibit, wherever feasible.~~
- (b) Hand-washing stations suitable for small children shall be available in the same area.
- (c) Signage shall be provided to direct patrons to hand-washing stations.
- (d) In order to promote hand-washing with soap and water, dispensers for waterless hand sanitizing lotions, gels or hand wipes shall not be provided in the transition or exhibit area.

Authority G.S. 106-520.3A.

SECTION .0600 - ANIMAL KEEPING, CERTIFICATIONS AND EXHIBITION

02 NCAC 52K .0601 HEALTH CERTIFICATE; VACCINATIONS

- (a) An official certificate of veterinary inspection, as defined in 02 NCAC 52B .0202, a rabies vaccination certificate (when applicable), and any other documentation required by the State Veterinarian for species or state of origin, shall accompany all animals contained in a public contact setting.
- (b) ~~Animals—An animal~~ for which there is an approved rabies vaccine, but which ~~are—is~~ too young to receive rabies vaccination, ~~are—is~~ prohibited from animal contact ~~exhibits.~~ exhibits unless proof of rabies vaccination, within the preceding 12 months, of the mother is provided.
- (c) ~~Rabies—Initial rabies~~ vaccination shall be administered at least ~~three months prior to and no more than one year~~ 30 days prior to the event. Subsequent vaccinations for livestock shall be no more than one year prior to the event and can be within 30 days of the event if proof of previous vaccination is provided. Dogs and cats shall be in compliance with the North Carolina rabies law, G.S. 130A, Article 6, Part 6.
- (d) If no licensed rabies vaccine exists for a particular species (such as rabbits, goats, llamas, and camels), no vaccination is required.

Authority G.S. 106-520.3A.

Location: Room 113 Council Building, NC Division of Health Service Regulation, Dorothea Dix Campus, 701 Barbour Drive, Raleigh, NC 27603

Reason for Proposed Action: Temporary rule amendment effective January 1, 2008, now proposing for permanent rule amendment. House Bill 1473 removed the Agency's authority for establishing fees for Certificate of Need submission applications. The General Statutes 131E-177(9) and 131E-182(c) were amended to establish the fee structure for CON applications. The Agency will no longer be making rules to establish fees. The Agency is amending the rule to repeal the application fees rule language to allow for rule consistency with the amended General Statutes.

Procedure by which a person can object to the agency on a proposed rule: An individual may object to the agency on the proposed rule by submitting written comments on the proposed rule. They may also object by attending the public hearing and personally voice their objections during that time.

Comments may be submitted to: Nadine Pfeiffer, 2701 Mail Service Center, Raleigh, NC 27699-2701, fax (919) 733-2757, email DHSR.RulesCoordinator@ncmail.net

Comment period ends: May 16, 2008

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

Fiscal Impact:

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

CHAPTER 14 – DIRECTOR, DIVISION OF HEALTH SERVICE REGULATION

SUBCHAPTER 14C – CERTIFICATE OF NEED REGULATIONS

SECTION .0200 – APPLICATION AND REVIEW PROCESS

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Health Service Regulation/ NC Department of Health and Human Services intends to amend the rule cited as 10A NCAC 14C .0203.

Proposed Effective Date: July 1, 2008

Public Hearing:
Date: April 30, 2008
Time: 10:00 a.m.

10A NCAC 14C .0203 FILING APPLICATIONS

(a) An application shall not be reviewed by the agency until it is filed in accordance with this Rule.

(b) An original and a copy of the application shall be file-stamped as received by the agency no later than 5:30 p.m. on the 15th day of the month preceding the scheduled review period. In instances when the 15th of the month falls on a weekend or holiday, the filing deadline is 5:30 p.m. on the next business day. An application shall not be included in a scheduled review if it is not received by the agency by this deadline. Each applicant shall transmit, with the application, a fee to be determined according to the ~~following formula: formula as stated in G.S. 131E-182(c).~~

- ~~(1) With each application proposing the addition of a sixth bed to an existing or approved five bed intermediate care facility for the mentally retarded, the proponent shall transmit a fee in the amount of two thousand dollars (\$2,000).~~
- ~~(2) With each application, other than those referenced in Subparagraph (b)(1) of this Rule, proposing no capital expenditure or a capital expenditure of up to, but not including, one million dollars (\$1,000,000), the proponent shall transmit a fee in the amount of three thousand five hundred dollars (\$3,500).~~
- ~~(3) With each application, other than those referenced in Subparagraph (b)(1) of this Rule, proposing a capital expenditure greater than of one million dollars (\$1,000,000) or greater, the proponent shall transmit a fee in the amount of three thousand five hundred dollars (\$3,500), plus an additional fee equal to .003 of the amount of the proposed capital expenditure in excess of one million dollars (\$1,000,000). The additional fee shall be rounded to the nearest whole dollar. In no case shall the total fee exceed seventeen thousand five hundred dollars (\$17,500).~~

(c) After an application is filed, the agency shall determine whether it is complete for review. An application shall not be considered complete if:

- (1) the requisite fee has not been received by the agency; or
- (2) a signed original and copy of the application have not been submitted to the agency on the appropriate application form.

(d) If the agency determines the application is not complete for review, it shall mail notice of such determination to the applicant within five business days after the application is filed and shall specify what is necessary to complete the application. If the agency determines the application is complete, it shall mail notice of such determination to the applicant prior to the beginning of the applicable review period.

(e) Information requested by the agency to complete the application must be received by the agency no later than 5:30 p.m. on the last working day before the first day of the scheduled review period. The review of an application shall commence in the next applicable review period that commences after the application has been determined to be complete.

Authority G.S. 131E-177; 131E-182.

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Insurance intends to adopt the rule cited as 11 NCAC 12 .0563.

Proposed Effective Date: July 1, 2008

Public Hearing:

Date: April 4, 2008

Time: 10:00 a.m.

Location: 3rd Floor Hearing Room, Dobbs Building, 430 N. Salisbury Street, Raleigh, NC

Reason for Proposed Action: Establishes guidelines prescribed in S.L. 2007-268.

Procedure by which a person can object to the agency on a proposed rule: The Department of Insurance will accept written objections to this rule until the expiration of the comment period on May 16, 2008.

Comments may be submitted to: Ellen K. Sprenkel, 1201 Mail Service Center, Raleigh, NC 27699-1201, phone (919)733-4529, fax (919)733-6495, email esprenkel@ncdoi.net.

Comment period ends: May 16, 2008

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

Fiscal Impact:

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

CHAPTER 12 - LIFE AND HEALTH DIVISION

SECTION .0500 - ACCIDENT AND HEALTH: GENERAL NATURE

**11 NCAC 12 .0563 WEIGHTED AVERAGE:
MENTAL ILLNESS BENEFITS COVERAGE**

(a) The definitions contained in G.S. 58-3-220(h) are incorporated into this Rule by reference.

(b) To exercise the option under G.S. 58-3-220(f), at the time of submission for approval of a group health benefit plan policy form, certificate, or rider containing mental illness benefits, the insurer shall include in the submission a certification of compliance with this Rule signed by a qualified actuary, as defined in 11 NCAC 16 .0401(17). The certification of compliance shall include a statement that:

(1) No more than five percent of the entire plan's actuarial value is contained in the selected physical illness and injury benefits that are subject to any limit.

(2) The weighted average calculation was performed and calculated as prescribed in Paragraph (c) of this Rule.

(c) The weighted average calculation shall be performed on a benefit-by-benefit basis. The weighted average for a limit shall be calculated by summing the product of the expected value of each physical illness and injury benefit and its applicable limit, and then dividing that summation by the sum of the expected values of each physical illness and injury benefit.

(d) An insurer shall make the information, documentation, and actuarial calculations described in this rule available to the Commissioner upon request.

G.S. 58-2-40; 58-3-220;

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to amend the rule cited as 15A NCAC 13A .0113.

Proposed Effective Date: August 1, 2008

Public Hearing:

Date: April 2, 2008

Time: 2:00 p.m.

Location: 401 Oberlin Road, Conference Room 3, Raleigh, NC

Reason for Proposed Action: *The Hazardous Waste Section has decided not to adopt the new Federal Standardized Permit Rule because the Rule is not as stringent as the current North Carolina permit requirements. 40 CFR 270.67, "RCRA Standardized permits for storage and treatment", references the new permit rule and therefore the Hazardous Waste Section recommends it be unadopted.*

Procedure by which a person can object to the agency on a proposed rule: *Objections may be filed in writing by contacting: Elizabeth W. Cannon, Chief, Hazardous Waste Section, 1646 Mail Service Center, Raleigh, NC 27699-1646. Written objections to the proposed text of the Rule published in*

the North Carolina Register shall be specific. All comments and written exceptions for or against the proposed text of the Rule will be considered.

Comments may be submitted to: *Elizabeth W. Cannon, Chief, Hazardous Waste Section, 1646 Mail Service Center, Raleigh, NC 27699-1646, phone (919) 508-8534, fax (919) 715-3605, email Elizabeth.Cannon@ncmail.net*

Comment period ends: May 16, 2008

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

Fiscal Impact:

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

CHAPTER 13 – SOLID WASTE MANAGEMENT

**SUBCHAPTER 13A - HAZARDOUS WASTE
MANAGEMENT**

SECTION .0100 - HAZARDOUS WASTE

**15A NCAC 13A .0113 THE HAZARDOUS WASTE
PERMIT PROGRAM - PART 270**

(a) 40 CFR 270.1 through 270.6 (Subpart A), "General Information", are incorporated by reference including subsequent amendments and editions. For the purpose of this incorporation by reference, "January 26, 1983" shall be substituted for "July 26, 1982" contained in 40 CFR 270.1(c).

(b) 40 CFR 270.10 through 270.29 (Subpart B), "Permit Application", are incorporated by reference including subsequent amendments and editions.

(c) The following are additional Part B information requirements for all hazardous waste facilities:

- (1) Description and documentation of the public meetings as required in 15A NCAC 13A .0109(r)(7);
- (2) A description of the hydrological and geological properties of the site including flood plains, depth to water table, ground water travel time, seasonal and long-term

groundwater level fluctuations, proximity to public water supply watersheds, consolidated rock, soil pH, soil cation exchange capacity, soil characteristics and composition and permeability, existence of cavernous bedrock and seismic activity, slope, mines, climate, location and withdrawal rates of surface water users within the immediate drainage basin and well water users within a one mile radius of the facility; water quality information of both surface and groundwater within 1000 feet of the facility, and a description of the local air quality;

- (3) A description of the facility's proximity to and potential impact on wetlands, endangered species habitats, parks, forests, wilderness areas, historical sites, mines, and air quality;
- (4) A description of local land use including residential, industrial, commercial, recreational, agricultural and the proximity to schools and airports;
- (5) A description of the proximity of the facility to waste generators and population centers; a description of the method of waste transportation; the comments of the local community and state transportation authority on the proposed route, and route safety. Comments shall include proposed alternative routes and restrictions necessary to protect the public health;
- (6) A description of facility aesthetic factors including visibility, appearance, and noise level; and
- (7) A description of any other objective factors that the Department determines are reasonably related and relevant to the proper siting and operation of the facility.

(d) In addition to the specific Part B information requirements for hazardous waste disposal facilities, owners and operators of hazardous waste landfills or longterm storage facilities shall provide the following information:

- (1) Design drawings and specifications of the leachate collection and removal system;
- (2) Design drawings and specifications of the artificial impervious liner;
- (3) Design drawings and specifications of the clay or clay-like liner below the artificial liner, and a description of the permeability of the clay or clay-like liner; and
- (4) A description of how hazardous wastes will be treated prior to placement in the facility.

(e) In addition to the specific Part B information requirements for surface impoundments, owners and operators of surface impoundments shall provide the following information:

- (1) Design drawings and specifications of the leachate collection and removal system;
- (2) Design drawings and specifications of all artificial impervious liners;

- (3) Design drawings and specifications of all clay or clay-like liners and a description of the clay or clay-like liner; and
- (4) Design drawings and specifications that show that the facility has been constructed in a manner that will prevent landsliding, slippage, or slumping.

(f) 40 CFR 270.30 through 270.33 (Subpart C), "Permit Conditions", are incorporated by reference including subsequent amendments and editions.

(g) 40 CFR 270.40 through 270.43 (Subpart D), "Changes to Permit", are incorporated by reference including subsequent amendments and editions.

(h) 40 CFR 270.50 through 270.51 (Subpart E), "Expiration and Continuation of Permits", are incorporated by reference including subsequent amendments and editions.

(i) 40 CFR 270.60 through 270.68 (Subpart F), "Special Forms of Permits", are incorporated by reference including subsequent amendments and editions, except that 40 CFR 270.67 and 270.68 ~~is~~ are not incorporated by reference.

(j) 40 CFR 270.70 through 270.73 (Subpart G), "Interim Status", are incorporated by reference including subsequent amendments and editions. For the purpose of this incorporation by reference, "January 1, 1986" shall be substituted for "November 8, 1985" contained in 40 CFR 270.73(c).

(k) 40 CFR 270.235, (Subpart I), "Integration with Maximum Achievable Control Technology (MACT) Standards", is incorporated by reference including subsequent amendments and editions.

(l) The following are additional permitting requirements for hazardous waste facilities.

- (1) An applicant applying for a permit for a hazardous waste facility shall submit a disclosure statement to the Department as a part of the application for a permit or any time thereafter specified by the Department. The disclosure statement shall be supported by an affidavit attesting to the truth and completeness of the facts asserted in the statement and shall include:
 - (A) A brief description of the form of the business (e.g. partnership, sole proprietorship, corporation, association, or other);
 - (B) The name and address of any hazardous waste facility constructed or operated after October 21, 1976 by the applicant or any parent or subsidiary corporation if the applicant is a corporation; and
 - (C) A list identifying any legal action taken against any facility identified in Part (l)(1)(B) of this Rule involving:
 - (i) any administrative ruling or order issued by any state, federal or local authority relating to revocation of any environmental or waste management permit or

- license, or to a violation of any state or federal statute or local ordinance relating to waste management or environmental protection;
- (ii) any judicial determination of liability or conviction under any state or federal law or local ordinance relating to waste management or environmental protection; and
- (iii) any pending administrative or judicial proceeding of the type described in this Part.
- (D) The identification of each action described in Part (l)(1)(C) of this Rule shall include the name and location of the facility that the action concerns, the agency or court that heard or is hearing the matter, the title, docket or case number, and the status of the proceeding.
- (2) In addition to the information set forth in Subparagraph (l)(1) of this Rule, the Department shall require from any applicant such additional information as it deems necessary to satisfy the requirements of G.S. 130A-295. Such information may include:
 - (A) The names, addresses, and titles of all officers, directors, or partners of the applicant and of any parent or subsidiary corporation if the applicant is a corporation;
 - (B) The name and address of any company in the field of hazardous waste management in which the applicant business or any of its officers, directors, or partners, hold an equity interest and the name of the officer, director, or partner holding such interest; and
 - (C) A copy of any administrative ruling or order and of any judicial determination of liability or conviction described in Part (l)(1)(C) of this Rule, and a description of any pending administrative or judicial proceeding in that item.
- (3) If the Department finds that any part or parts of the disclosure statement is not necessary to satisfy the requirements of G.S. 130A-295, such information shall not be required.
- (m) An applicant for a new, or modification to an existing, commercial facility permit, shall provide a description and justification of the need for the facility.
- (n) Requirements for Off-site Recycling Facilities.
 - (1) The permit requirements of 15A NCAC 13A .0109 apply to owners and operators of off-site recycling facilities unless excluded in Subparagraph (2) of Paragraph (n).
 - (2) Requirements of 15A NCAC 13A .0113(n)(4), (5), (6), (7) and (8) do not apply to owners and operators of off-site recycling facilities that recycle only precious metals as described in 40 CFR 266.70(a), as incorporated by reference in 15A NCAC 13A .0111(b).
 - (3) Off-site facilities that recycle precious metals shall follow the regulations as described in 15A NCAC 13A .0111(b).
 - (4) Notwithstanding any other statement of applicability, the following provisions of 40 CFR Part 264, as incorporated by reference, shall apply to owners and operators of off-site recycling facilities except those excluded in 15A NCAC 13A .0113(n)(2):
 - (A) Subpart B - General Facility Standards;
 - (B) Subpart C - Preparedness and Prevention;
 - (C) Subpart D - Contingency Plan and Emergency Procedures;
 - (D) Subpart E - Manifest System, Recordkeeping and Reporting;
 - (E) Subpart G - Closure and Post-closure;
 - (F) Subpart H - Financial Requirements;
 - (G) Subpart I - Use and Management of Containers;
 - (H) Subpart J - Tank Systems;
 - (I) 264.101 - Corrective Action for Solid Waste Management Units;
 - (J) Subpart X - Miscellaneous Units; and
 - (K) Subpart DD - Containment Buildings.
 - (5) The requirements listed in Subparagraph (n)(4) of this Rule apply to the entire off-site recycling facility, including all recycling units, staging and process areas, and permanent and temporary storage areas for wastes.
 - (6) The following provisions of 15A NCAC 13A .0109 shall apply to owners and operators of off-site recycling facilities:
 - (A) The substitute financial requirements of Rule .0109(i)(1), (2) and (4); and
 - (B) The additional standards of Rule .0109(r)(1), (2), (3), (6) and (7).
 - (7) The owner or operator of an off-site recycling facility shall keep a written operating record at his facility.
 - (8) The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility:
 - (A) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or recycling at the facility;
 - (B) The location of all hazardous waste within the facility and the quantity at each location. This information must

include cross-references to specific manifest document numbers if the waste was accompanied by a manifest; and

- (C) Documentation of the fate of all hazardous wastes received from off-site or generated on-site. This shall include records of the sale, reuse, off-site transfer, or disposal of all waste materials.

(o) Permit Fees for Commercial Hazardous Waste Facilities.

- (1) An applicant for a permit modification for a commercial hazardous waste facility shall pay an application fee as follows:
 - (A) Class 1 permit modification \$100;
 - (B) Class 2 permit modification \$1,000; or
 - (C) Class 3 permit modification \$5,000.

Note: Class 1 permit modifications which do not require prior approval of the Division Director are excluded from the fee requirement.

- (2) The application fee for a new permit, permit renewal, or permit modification must accompany the application, and is non-refundable. The application shall be considered incomplete until the fee is paid. Checks shall be made payable to: Division of Waste Management.

Authority G.S. 130A-294(c); 130A-294.1; 130A-295(a)(1),(2), (c); 150B-21.6.

other areas, clarification is needed regarding the type and extent of supervision for trainees, both for residents and non-residents. Clarification is also needed for schools regarding changing instructors after course approval, the minimum number of class room hours for appraisal elective courses, the requirements to be a school director, and the requirements to teach a USPAP course.

Procedure by which a person can object to the agency on a proposed rule: Send written comments to Roberta Ouellette, 5830 Six Forks Road, Raleigh, NC 27609. Send an email to Roberta Ouellette at Roberta@ncab.org. Appear at the public hearing on May 13, 2008.

Comments may be submitted to: Roberta Ouellette, North Carolina Appraisal Board, 5830 Six Forks Road, Raleigh, NC 27609, phone (919) 870-4854, fax (919) 870-4849, email Roberta@ncab.org

Comment period ends: May 16, 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.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 57 – REAL ESTATE APPRAISAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Appraisal Board intends to adopt the rule cited as 21 NCAC 57B .0613 and amend the rules cited as 21 NCAC 57A .0101 - .0102, .0201 - .0202, .0206, .0210 - .0211, .0301 - .0303, .0405, .0407; 57B .0101 - .0103, .0201 - .0203, .0207 - .0209, .0301 - .0303, .0306 - .0307, .0401, .0604.

Proposed Effective Date: September 1, 2008

Public Hearing:

Date: May 13, 2008

Time: 9:00 a.m.

Location: 5830 Six Forks Road, Raleigh, NC 27609

Reason for Proposed Action: SL 2007-506 removed the category of licensed residential appraiser, required trainees to have a high school diploma or GED, required applicants to obtain a criminal records check, and required schools and course sponsors to pay a fee to the Board for students. Most of these rule changes are necessary to implement SL 2007-506. In

Fiscal Impact:

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

SUBCHAPTER 57A - REGISTRATION LICENSING, CERTIFICATION AND PRACTICE

SECTION .0100 - APPLICATION FOR REAL ESTATE APPRAISER LICENSE OR CERTIFICATE

21 NCAC 57A .0101 FORM

A person who wishes to file an application for a real estate trainee ~~registration, registration or an appraiser license or certificate~~ may obtain the required form upon request to the Board. In general, the form calls for information such as the applicant's name and address, the applicant's social security number, a recent passport size photograph of the applicant, places of residence and employment, education, and such other information as may be necessary to identify the applicant and

determine his qualifications and fitness for ~~registration, licensure~~ registration or certification.

Authority G.S. 93E-1-6(a); 93E-1-10.

21 NCAC 57A .0102 FILING AND FEES

(a) Each application for ~~registration, licensure~~ registration or certification ~~must~~ shall be filed in the proper form and ~~must~~ shall be accompanied by the required application fee. An additional fee may be charged to defray the cost of any competency examination administered by a private testing service. This additional fee shall be no more than the fee set by the private testing agency. The Board may reject and return to the applicant any application which is incomplete, not in proper form, or not accompanied by the required fee or fees. Application fees accompanying complete applications submitted in proper form are not refundable.

(b) The application fee shall be that prescribed in G.S. 93E-1-6(b).

(c) Payment of application fees shall be made by certified check, bank check or money order payable to the North Carolina Appraisal Board.

Authority G.S. 93E-1-6; 93E-1-10.

SECTION .0200 – TRAINEE REGISTRATION, APPRAISER LICENSING AND CERTIFICATION

21 NCAC 57A .0201 QUALIFICATIONS FOR TRAINEE REGISTRATION AND APPRAISER CERTIFICATION

(a) Applicants for trainee ~~registration, licensure as a licensed residential real estate appraiser and registration and~~ for certification as a certified real estate appraiser must satisfy the qualification requirements stated in G.S. 93E-1-6 as further set forth in this Section, provided however that registration as a trainee or licensure as a licensed residential real estate appraiser is not prerequisite for certification as a certified residential or general real estate appraiser. All ~~prelicensing or~~ prelicensing or precertification education must have been obtained in a classroom setting. No credit will be given for courses taken by any other method, such as correspondence school courses or computer based courses.

(b) Applicants for trainee registration shall have completed, within the five-year period immediately preceding the date application is made, 90 hours of education as set forth in 21 NCAC 57B .0101 or education found by the Board to be equivalent to such courses. Applicants for trainee registration must possess a high school diploma or a GED.

(c) Applicants for certification as a certified residential real estate appraiser shall have completed, within the five-year period immediately preceding the date application is made, 200 hours of education as set forth in 21 NCAC 57B .0102 or education found by the Board to be equivalent to such courses. In addition, applicants for certification as a certified residential real estate appraiser must hold an Associate's degree, or higher, from an accredited college, junior college, community college, or university. In lieu of the Associate's degree requirements, applicants shall have successfully completed 21 semester credit hours in the following collegiate subject matter courses from an

accredited college or university: English composition, principles of economics (macro or micro), finance, algebra, geometry or higher mathematics, statistics, introduction of computers, including word processing and spreadsheets, and business or real estate law. Applicants shall have obtained at least 2,500 hours of appraisal experience acquired within the five-year period immediately preceding the date application is made and over a minimum period of two calendar years. Applicants must have been actively engaged in real estate appraising for at least two calendar years prior to the date application is made. At least 50 percent of this appraisal experience must have been of one to four family residential properties in which the sales comparison approach was utilized in the appraisal process.

(d) Applicants for certification as a certified general real estate appraiser shall have completed 300 hours of education as set forth in 21 NCAC 57B .0103 or education found by the Board to be equivalent to such courses. In addition, applicants for certification as a certified general real estate appraiser must hold a Bachelor's, or higher, from an accredited college or university. In lieu of the Bachelor's degree requirements, applicants shall have successfully completed 30 semester credit hours in the following collegiate subject matter courses from an accredited college university: English composition, micro economics, macro economics, finance, algebra, geometry or higher mathematics, statistics, introduction of computers, including word processing and spreadsheets, business or real estate law, and two elective courses in accounting, geography, business management or real estate. Applicants shall have obtained at least 3,000 hours of appraisal experience acquired within the five-year period immediately preceding the date application is made and over a minimum period of two and a half calendar years of which at least 50 percent must have been in appraising non-residential real estate. Applicants must have been actively engaged in real estate appraising for at least two and one-half calendar years prior to the date application is made. At least 50 percent of the non-residential appraisal experience must have been of complex properties or of improved properties in which the income approach was utilized in the appraisal process.

(e) Applicants for ~~licensure or~~ licensure or certification who are currently registered trainees must submit a complete copy of their complete appraisal log. Applicants for certification who are currently licensed or certified appraisers must submit an appraisal log showing that they possess the requisite amount and length of experience as set forth in Paragraphs (c) and (d) of this Rule. All applicants shall be required to provide to the Board copies of appraisal reports in support of experience credit. In order for an appraisal to be given experience credit, it must comply with the Uniform Standards of Professional Appraisal Practice (USPAP) and with any applicable state statutes or rules.

(f) When a trainee or a licensed real estate appraiser becomes a ~~licensed or certified real estate appraiser or when a licensed real estate appraiser becomes a certified real estate appraiser~~, his previous registration or licensure shall be immediately canceled by the Board. When a certified residential real estate appraiser becomes certified as a general real estate appraiser, his previous certification shall be immediately canceled by the Board.

(g) In the event that the Board asks an applicant to submit updated information or provide further information necessary to complete the application and the applicant fails to submit such

information within 90 days following the Board's request, the Board shall cancel the applicant's application and the application fee will be retained by the Board. An applicant whose application has been cancelled and who wishes to obtain a ~~registration, license~~ registration or certificate must start the licensing process over by filing a complete application with the Board and paying all required fees.

(h) An applicant may request that his or her application be withdrawn at any time before final action is taken by the Appraisal Board on the application.

(i) If an application is withdrawn, cancelled or denied, the applicant must wait six months from the date the application is withdrawn, cancelled or denied to file a new application.

(j) If an applicant has a current open complaint before the North Carolina Appraisal Board or an appraiser licensing board from any other state, or if the applicant has pending criminal charges in this or any state, the application will be accepted but no further action will be taken on the application until the complaint or criminal charges are resolved. For the purposes of this Section, criminal charges do not include speeding tickets or traffic infractions.

Authority G.S. 93E-1-6(a); 93E-1-10.

21 NCAC 57A .0202 FITNESS FOR REGISTRATION OR CERTIFICATION

(a) The Appraisal Board shall consider the fitness for ~~registration, licensure~~ registration or certification of each applicant who has passed the appropriate examination. When the fitness of an applicant is in question, action by the Board shall be deferred until the applicant has affirmatively demonstrated that the applicant possesses the requisite competency, truthfulness, honesty and integrity.

(b) When the application is deferred, the Board shall notify the applicant and the applicant shall be entitled to demonstrate his or her competency or fitness for ~~registration, licensure or registration~~ or certification at a hearing before the Board.

(c) The inquiry into fitness for ~~registration, licensure registration~~ or certification may ~~include~~ include, but is not limited to, consideration of whether the applicant has had any disciplinary action taken against any professional license in North Carolina or any other state, or whether the applicant has committed or done any act which, if committed or done by any real estate trainee or appraiser, would be grounds under the provisions hereinafter set forth for disciplinary action including the suspension or revocation of registration, licensure, or certification, whether the applicant has been convicted of or pleaded guilty to any criminal act, or whether any such actions or charges are pending.

(d) All applicants for registration or certification shall obtain a criminal records check from an agency designated by the Appraisal Board to provide criminal record reports. This records check must have been performed within 60 days of the date the completed application for registration or certification is received by the Board. Applicants shall pay the designated reporting service for the cost of these reports.

~~(d)(e)~~ Notice to the applicant that his or her competency or fitness for ~~registration, licensure registration~~ or certification is in question shall be in writing, sent by certified mail, return receipt

requested, to the address shown upon the application. The applicant shall have 60 days from the date of receipt of this notice to request a hearing before the Board. Failure to request a hearing within this time shall constitute a waiver of the applicant's right to a hearing on his or her application for ~~trainee registration, licensing registration~~ or certification, and the application shall be deemed denied. Nothing in this Rule shall be interpreted to prevent an applicant from reapplying for ~~registration, licensure registration~~ or certification.

Authority G.S. 93E-1-6(c); 93E-1-10.

21 NCAC 57A .0206 EXPIRED REGISTRATION, LICENSE OR CERTIFICATE

(a) Expired registrations, licenses and certificates may be reinstated within 12 months after expiration upon proper application, payment to the Board of the renewal and late filing fees as set out in G.S. 93E-1-7 and provision of proof of having obtained the continuing education that would have been required had the registration, license or certificate been continuously renewed.

(b) If ~~the registration, license~~ a registration or certificate has been expired for more than 12 months, but less than 24 months, an applicant may apply for reinstatement. In order to be considered for reinstatement, the applicant must pay the filing fee as set out in G.S. 93E-1-7 and include in the application proof that the applicant has obtained the continuing education that would have been required had the ~~registration, license registration~~ or certificate been continuously renewed. In addition, the Board may consider whether the applicant for reinstatement has any prior or current disciplinary actions, and may examine the applicant's fitness for ~~registration, licensure registration~~ or certification before granting the request for reinstatement.

(c) An application for reinstatement shall not be granted if the ~~registration, license registration~~ or certificate has been expired for more than 24 months.

(d) Reinstatement is effective the date it is issued by the Board. It is not retroactive.

(e) A trainee or appraiser whose ~~registration, license registration~~ or certification has expired and who is returning from active military duty will be allowed to renew his or her ~~registration, license registration~~ or certificate when the trainee or appraiser returns from active duty without payment of a late filing fee as long as the ~~trainee, licensee trainee~~ or certificate holder renews the ~~registration, license registration~~ or certificate within 180 days of when the ~~trainee, licensee trainee~~ or certificate holder returns from active duty.

(f) A license holder whose license has been expired for more than 12 months may not apply for reinstatement.

Authority G.S. 93E-1-6(b); 93E-1-7; 93E-1-10.

21 NCAC 57A .0210 TEMPORARY PRACTICE

(a) A real estate appraiser who does not reside in North Carolina and who is licensed or certified by the appraiser licensing or certifying agency in another state may apply to receive temporary appraiser licensing or certification privileges in this State by filing a notarized application with the Board.

(b) Upon filing a completed application accompanied by the fee prescribed in G.S. 93E-1-9(c) and otherwise satisfying the Appraisal Board as to his or her qualifications and eligibility for temporary licensing or certification privileges, an applicant shall be granted a temporary practice permit by the Board authorizing the applicant to perform in this State the appraisal assignment described in such application, provided that the length of time projected by the applicant for completion of the assignment is reasonable given the scope and complexity of the assignment. The fee must be paid by money order, certified check or cashier's check. The Board may consider whether an applicant's trainee registration or appraiser license or certification is or has been subject to discipline in their resident state or any other state, and may consider all other information outlined in Rule .0202 of this Section.

(c) Privileges granted under the provisions of this Rule shall expire upon the expiration date set forth in the temporary practice permit. However, upon a showing by the permittee satisfactory to the Appraisal Board that, notwithstanding the permittee's attention to the appraisal assignment, additional time is needed to complete the assignment, the Board shall extend the temporary practice privileges granted under the permittee's temporary practice permit to afford him additional time to complete the appraisal assignment. Such request for extension must be received before the original temporary practice permit expires or it shall not be granted.

(d) Persons granted temporary practice privileges under this Rule shall not advertise or otherwise hold themselves out as being a North Carolina trainee or licensed or certified appraiser.

(e) A trainee may apply for a temporary practice permit and the provisions of Sections (a), (b), (c) and (d) above shall apply. The supervising appraiser for the trainee must be a North Carolina licensed or certified appraiser. If not, the supervising appraiser must be licensed or certified as a real estate appraiser in another state and must also receive a temporary practice permit for the same assignment as the trainee. The term "trainee" shall include apprentices and others who are licensed and regulated by a state agency to perform real estate appraisals under the supervision of a licensed or certified appraiser. The supervisor is not required to comply with the provisions of 21 NCAC 57A .0407 in order to supervise a trainee who is appraising in this state pursuant to the temporary practice permit. The supervisor is required to actively and personally supervise the trainee on the assignment, and must accompany the trainee on all inspections of property located in this state for the assignment.

(f) An applicant for a temporary practice permit shall not begin performing any appraisal work in this State until the temporary practice permit has been issued by the Board. If an applicant does begin work before the permit is issued, the temporary practice permit shall be denied.

Authority G.S. 93E-1-9(c) and (d); 93E-1-10; Title XI, Section 1122(a); 12 U.S.C. 3351(a).

21 NCAC 57A .0211 APPLICANTS CERTIFIED IN ANOTHER STATE

(a) Applicants who are certified in another state and who are applying in North Carolina for the same level of certification as they hold in their state of certification shall not have to complete

an experience log, take further education or take an examination provided the applicant's certification is current and is in good standing. The applicant shall Applicants for registration, licensure or certification who are not residents of North Carolina must file an application as stated in Rule .0101 of this Subchapter. In addition, nonresident applicants must also consent to service of process in this state and file an affidavit of residency with the application. If the applicant is licensed by the appraiser licensing board of the applicant's resident state, the applicant must also file with the application a letter of good standing from the appraiser licensing board of the resident that other state, which was issued under seal by that licensing board no later than 30 days prior to within 30 days of the date application is made in this state.

(b) Applicants who are ~~licensed~~ certified in another state and who are not residents of the State of North Carolina must consent to service of process in this state and file an affidavit of residency with the application. ~~applying for the same level of licensure as they hold in their state of licensure shall not have to complete an experience log, take further education or take an examination provided the applicant is in good standing in the other state as evidenced by the letter of good standing from the appraiser licensing board of the other state.~~

(c) Applicants for registration or certification shall obtain a criminal records check from an agency designated by the Appraisal Board to provide criminal record reports. This records check must have been performed within 60 days of the date the completed application for registration or certification is received by the Board. Applicants shall pay the designated reporting service for the cost of these reports.

(d) An appraiser whose certification is suspended in North Carolina may not apply for certification in this state under this Section while the certification is suspended. An appraiser whose certification was revoked in North Carolina may not apply for certification in this state under this Section for five years after the date of revocation.

Authority G.S. 93E-1-9(a) and (b); 93E-1-10; Title XI, Section 1122(a); 12 U.S.C. 3351(a).

SECTION .0300 - APPRAISER EXAMINATIONS

21 NCAC 57A .0301 TIME AND PLACE

(a) Applicants who have completed the education and experience requirements as set forth in 21 NCAC 57A.0201 shall be issued an examination approval form. The examination approval form is valid for three attempts at the examination or for one year from date of issuance, whichever comes first.

(b) Examinations for real estate trainee ~~registrations, appraiser licenses and registrations and appraiser~~ certificates shall be scheduled at such times and places as determined by the Executive Director and the Board-approved private testing service. Applicants for the examination shall be scheduled for examination based on their successful completion of appraiser educational qualification requirements stated in G.S. 93E-1-6 and filing an application with the Board. Violation of examination procedures and instructions shall be grounds for denial, suspension or revocation of a ~~license-registration~~ or certificate.

(c) Examination results are valid for 24 months from the date the examination is successfully completed.

~~(d) Examinations successfully completed before January 1, 2008 will remain valid for 24 months from the date passed even if the application for upgrade is received after January 1, 2008.~~

Authority G.S. 93E-1-6(c); 93E-1-10.

21 NCAC 57A .0302 SUBJECT MATTER AND PASSING SCORES

(a) The examination for trainee ~~registration, licensure as a licensed real estate appraiser~~ registration and for certification as a certified residential real estate appraiser shall test applicants on the following subject areas:

- (1) Influences on Real Estate Value;
- (2) Legal Considerations in Appraisal;
- (3) Types of Value;
- (4) Economic Principles;
- (5) Real Estate Markets and Analysis;
- (6) Valuation Process;
- (7) Property Description;
- (8) Highest and Best Use Analysis;
- (9) Appraisal Statistical Concepts;
- (10) Sales Comparison approach;
- (11) Site Value;
- (12) Cost Approach;
- (13) Income Approach (Gross Rent Multipliers, Estimation of Income and Expenses, Operating Expense ratios);
- (14) Valuation of Partial Interests; and
- (15) Appraisal Standards and Ethics.

(b) In addition to the subject areas listed in Paragraph (a) of this Rule, the examination for certification as a certified general real estate appraiser shall test applicants on the following subject areas:

- (1) Direct Capitalization;
- (2) Cash Flow Estimates;
- (3) Measures of Cash Flow; and
- (4) Discounted Cash Flow Analysis.

(c) Prior to taking the examination, applicants will be informed of the score required to pass. Applicants who pass the examination will be notified only that they have passed. Applicants who have failed will be informed of their actual score.

Authority G.S. 93E-1-6(c); 93E-1-10.

21 NCAC 57A .0303 RE-EXAMINATION

(a) Applicants for a trainee ~~registration, or appraiser license or registration or an appraiser~~ certificate who fail to pass or appear for any examination for which the applicant has been scheduled by the Board-approved private testing service, may schedule a subsequent examination and shall pay the prescribed examination testing fees to the Board-approved private testing service.

(b) Applicants may take the examination no more than three times per application. If an applicant fails the examination, the applicant must wait a minimum of 30 days before retaking the examination. If the applicant does not pass the examination by

the third attempt at the examination or within one year of the date of issuance of the examination approval form, the application is cancelled. If the application is cancelled, the applicant must wait six months before filing a new application for ~~registration, licensure~~ registration or certification and must meet all the qualification requirements for original approval.

Authority G.S. 93E-1-6; 93E-1-10.

SECTION .0400 – GENERAL APPRAISAL PRACTICE

21 NCAC 57A .0405 APPRAISAL REPORTS

(a) Each written appraisal report prepared by or under the supervision of a licensed or certified real estate appraiser shall bear the signature of the licensed or certified appraiser, the license or certificate number of the licensee or certificate holder in whose name the appraisal report is issued, and the designation "licensed residential real estate appraiser," "certified residential real estate appraiser," or "certified general real estate appraiser," as applicable. Each such appraisal report shall also indicate whether or not the licensed or certified appraiser has personally inspected the property, and shall identify any other person who assists in the appraisal process other than by providing clerical assistance. Appraisers shall personally affix their signature to their appraisal reports and shall not allow any other person or entity to affix their signature. Trainees are not required to affix their signatures to appraisal reports, but if they do so, they must personally affix their signature and shall not allow any other person or entity to affix their signature. Trainees and appraisers shall sign their reports with the same name and in the same manner as it printed on their pocket cards.

(b) Every licensed and certified real estate appraiser shall affix or stamp to all appraisal reports a seal which shall set forth the name and license or certificate number of the appraiser in whose name the appraisal report is issued and shall identify the appraiser as a "licensed residential real estate appraiser", a "certified residential real estate appraiser", or as a "certified general real estate appraiser", as applicable. The seal must be legible, must conform to the seal authorized by the Board at time of initial licensure or certification, and must be a minimum of 1 inch in diameter. Appraisers shall personally affix their seal to their appraisal reports and shall not allow any other person or entity to affix their seal. Registered trainees are prohibited from using a seal on appraisal reports.

(c) A licensed or certified real estate appraiser who signs an appraisal report prepared by another person, in any capacity, shall be responsible for the content and conclusions of the report.

(d) A written appraisal report shall be issued on all real estate appraisals performed in connection with federally related transactions.

(e) Appraisers shall keep a log of all appraisals performed. The log shall contain, at a minimum, the appraiser's license or certificate number, the street address of the subject property, the date the report was signed, the name of anyone assisting in the preparation of the report and the name of the client. These logs shall be updated at least every 30 days.

Authority G.S. 93E-1-10.

21 NCAC 57A .0407 SUPERVISION OF TRAINEES

(a) A licensed or certified real estate appraiser may engage a registered trainee to assist in the performance of real estate appraisals, provided that the licensed or certified real estate appraiser:

- (1) has been licensed or certified for at least two years;
- (2) has no more than one trainee working under his or her supervision at any one time, if the supervisor is a licensed real estate appraiser, ~~or two trainees if the supervisor is a certified real estate appraiser.~~ A certified residential appraiser may have two trainees working under his or her supervision at any one time. Once at least one of those trainees has completed 50% of the required appraisal experience to upgrade, a certified residential appraiser may add another trainee. At no time may a certified residential appraiser have more than three trainees working under his or her supervision. A certified general may have three trainees working under his or her supervision. Prior to the date any trainee begins performing appraisals under his or her supervision, the supervisor must inform the Board of the name of the trainee. The supervisor must also inform the Board when a trainee is no longer working under his or her supervision;
- (3) actively and personally supervises the ~~trainee.~~ trainee on all appraisal reports and appraisal related activities until the trainee is no longer under his or her supervision; The supervisor must accompany the trainee on the inspections of the subject property on the first 50 appraisal assignments for which the trainee will perform more than 75% of the work. After that point, the trainee may perform the inspections without the presence of the supervisor provided that the trainee is competent to perform those inspections, and provided that the subject property is less than 50 miles from the supervisor's primary business location. The supervisor must accompany the trainee on all inspections of subject properties that are located more than 50 miles from the supervisor's primary business location;
- (4) reviews all appraisal reports and supporting data used in connection with appraisals in which the services of a trainee is ~~utilized;~~ utilized, and assures that research of general and specific data has been adequately conducted and properly reported, application of appraisal principles and methodologies has been properly applied, that the analysis is sound and adequately reported, and that any analysis, opinions, or conclusions are adequately developed and reported so that the appraisal report is not misleading;

- (5) complies with all provisions of Rule .0405 of this Section regarding appraisal reports;
- (6) prepares and furnishes to each trainee, whose services were utilized in connection with the appraisal, a report describing the nature and extent of assistance rendered by the trainee in connection with the appraisal, and places a copy of such report in the supporting file for the appraisal within 30 days of the date the appraisal report was signed. In addition, the supervisor must make available to the trainee a copy of every appraisal report where the trainee performs more than 75% of the work on the appraisal; and
- (7) has not received any disciplinary action regarding his or her appraisal license or certificate from the State of North Carolina or any other state within the previous two years. For the purposes of this Section, disciplinary action means an active suspension or a revocation.

(b) Active and personal supervision includes direction, guidance, and support from the supervisor. At a minimum, the supervising appraiser shall have input into and full knowledge of the appraisal report prior to its completion, and shall make any necessary and appropriate changes to the report before it is transmitted to the client. In addition, the supervisor must accompany the trainee on the inspections of the subject property on the first 50 appraisal assignments for which the trainee will perform more than 75% of the work. After that point, the trainee may perform the inspections without the presence of the supervisor provided that the trainee is competent to perform those inspections, and provided that the subject property is less than 50 miles from the supervisor's primary business location. The supervisor must accompany the trainee on all inspections of subject properties that are located more than 50 miles from the supervisor's primary business location;

~~(b)(c)~~ The trainee must maintain a log on a form prescribed by the Board that includes, but is not limited to, each appraisal performed by the trainee, the type of property appraised, type of appraisal performed, complete street address of the subject property, the date the report was signed, the points claimed, the name of the supervisor for that appraisal, the supervisor's license or certificate number, and whether the supervisor accompanied the trainee on the inspection of the subject. The log must show all appraisals performed by the trainee and must be updated at least every 30 days.

~~(c)(d)~~ An appraiser who wishes to supervise a trainee must attend an education program offered by the Appraisal Board regarding the role of a supervisor either before such supervision begins, or within 90 days after such supervision begins. If the supervisor does not take the class within 90 days after the supervision begins, the trainee may no longer work under the supervision of that supervisor until the class is taken, and the supervisor must take the course before he can begin supervising a trainee.

~~(d)(e)~~ Trainees must assure that the supervisor has properly completed and sent the Supervisor Declaration Form to the Appraisal Board on or before the day the trainee begins assisting

the supervising appraiser. Trainees shall not receive appraisal experience credit for appraisals performed in violation of this Section.

~~(e)(f)~~ Supervising appraisers shall not be employed by a trainee or by a company, firm or partnership in which the trainee has a controlling interest.

Authority G.S. 93E-1-3(b); 93E-1-10.

SUBCHAPTER 57B – REAL ESTATE APPRAISAL EDUCATION

SECTION .0100 – COURSES REQUIRED FOR REGISTRATION, LICENSURE AND CERTIFICATION

21 NCAC 57B .0101 REGISTERED TRAINEE COURSE REQUIREMENTS

(a) Each applicant for registration as a trainee shall complete a minimum of 90 hours of ~~prelicensing~~ precertification education, consisting of the following:

- (1) A minimum of 30 hours in Basic Appraisal Principles;
- (2) A minimum of 30 hours in Basic Appraisal Procedures;
- (3) A minimum of 15 hours in Residential Market Analysis and Highest and Best Use; and
- (4) A minimum of 15 hours in The Uniform Standards of Professional Appraisal Practice (USPAP).

~~(b) Each applicant for licensure as a licensed residential real estate appraiser shall complete a minimum of 150 hours of prelicensing education, consisting of the following;~~

- ~~(1) A minimum of 30 hours in Basic Appraisal Principles;~~
- ~~(2) A minimum of 30 hours in Basic Appraisal Procedures;~~
- ~~(3) A minimum of 15 hours in Residential Market Analysis and Highest and Best Use;~~
- ~~(4) A minimum of 15 hours in Residential Appraiser Site Valuation and Cost Approach;~~
- ~~(5) A minimum of 30 Hours in Residential Sales Comparison and Income Approaches;~~
- ~~(6) A minimum of 15 hours in Residential Report Writing and Case Studies; and~~
- ~~(7) A minimum of 15 hours in The Uniform Standards of Professional Appraisal Practice (USPAP);~~

~~(b)(e)~~ Credit for these courses must be earned from a Board-approved course sponsor or school and all course content shall be approved by the Appraisal Board in accordance with these rules. These courses must be completed within the five-year period immediately preceding the date when application for ~~registration, licensure or certification~~ registration is made to the Board.

~~(c)(d)~~ Basic Appraisal Principles shall be a prerequisite to taking Basic Appraisal Procedures, and Basic Appraisal Procedures shall be a prerequisite to taking Residential Market Analysis and Highest and Best Use. The 15 hour USPAP course

may be taken any time after the successful completion of Basic Appraisal Procedures.

~~(e) An applicant who is not currently registered by the Board as a trainee must have completed all required courses within the five year period immediately preceding the date application is made to the Board.~~

~~(f) An applicant who is currently registered by the Board as a trainee must have completed all courses required beyond those required for his registration within the five year period immediately preceding the date application is made to the Board.~~

Authority G.S. 93E-1-6(a); 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0102 CERTIFIED RESIDENTIAL REAL ESTATE APPRAISER COURSE REQUIREMENTS

(a) Each applicant for certification as a certified residential real estate appraiser shall complete a minimum of 200 hours of ~~prelicensing~~ precertification education, consisting of the following:

- (1) A minimum of 30 hours in Basic Appraisal Principles;
- (2) A minimum of 30 hours in Basic Appraisal Procedures;
- (3) A minimum of 15 hours in Residential Market Analysis and Highest and Best Use;
- (4) A minimum of 15 hours in Residential Appraiser Site Valuation and Cost Approach;
- (5) A minimum of 30 Hours in Residential Sales Comparison and Income Approaches;
- (6) A minimum of 15 hours in Residential Report Writing and Case Studies; and
- (7) A minimum of 15 hours in The Uniform Standards of Professional Appraisal Practice (USPAP).
- (8) A minimum of 15 hours in Statistics, Modeling and Finance;
- (9) A minimum of 15 hours in Advanced Residential Applications and Case Studies; and
- (10) A minimum of 20 hours of appraisal subject matter electives.

Credit for these courses must be earned from a Board-approved course sponsor or school.

(b) An applicant who is not currently registered by the Board as a trainee or who is not currently licensed by the Board as a licensed residential real estate appraiser must have completed all required courses within the five-year period immediately preceding the date application is made to the Board.

(c) An applicant who is currently registered by the Board as a trainee or who is currently licensed by the Board as a licensed residential real estate appraiser must have completed all courses required beyond those required for his current registration, licensure or certification within the five-year period immediately preceding the date application is made to the Board.

Authority G.S. 93E-1-6(b); 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0103 CERTIFIED GENERAL REAL ESTATE APPRAISER COURSE REQUIREMENTS

(a) An applicant for certification as a certified general real estate appraiser is required to complete the following precertification courses;

- (1) A minimum of 30 hours in Basic Appraisal Principles;
- (2) A minimum of 30 hours in Basic Appraisal Procedures;
- (3) A minimum of 30 hours in General Appraiser Market Analysis and Highest and Best Use;
- (4) A minimum of 15 hours in Statistics, Modeling and Finance;
- (5) A minimum of 30 hours in General Appraiser Sales Comparison Approach;
- (6) A minimum of 30 hours in General Appraiser Site Valuation and Cost Approach;
- (7) A minimum of 60 hours in General Appraiser Income Approach;
- (8) A minimum of 30 hours in General Appraiser Report Writing and Case Studies;
- (9) A minimum of 30 hours of appraisal subject matter electives; and
- (10) A minimum of 15 hours in The Uniform Standards of Professional Appraisal Practice (USPAP).

~~These courses must be commenced and completed after the applicant's successful completion of the courses specified in Rules .0101 and .0102 of this Section. Income Property Appraisal (G-1) shall be a prerequisite for Advanced Income Capitalization (G-2), and Advanced Income Capitalization (G-2), shall be a prerequisite to Applied Income Property Valuation (G-3). Basic Appraisal Principles shall be a prerequisite to taking Basic Appraisal Procedures, and Basic Appraisal Procedures shall be a prerequisite to taking any of the other courses.~~ Credit for all courses must be earned from a Board-approved course sponsor or school, and all courses shall comply with the course content standards prescribed in Rule .0302 of this Subchapter.

(b) An applicant who is currently registered with the Board as a trainee may satisfy the educational requirements to become a general real estate appraiser by completing the following education:

- (1) A minimum of 30 hours in General Appraiser Market Analysis and Highest and Best Use;
- (2) A minimum of 15 hours in Statistics, Modeling and Finance;
- (3) A minimum of 30 hours in General Appraiser Sales Comparison Approach;
- (4) A minimum of 30 hours in General Appraiser Site Valuation and Cost Approach;
- (5) A minimum of 60 hours in General Appraiser Income Approach; and
- (6) A minimum of 30 hours in General Appraiser Report Writing and Case Studies; and
- (7) A minimum of 30 hours of appraisal subject matter electives.

(c) An applicant who is currently licensed with the Board as a licensed residential real estate appraiser may satisfy the

educational requirements to become a general real estate appraiser by completing the following education:

- (1) A minimum of 15 hours in General Appraiser Market Analysis and Highest and Best Use;
- (2) A minimum of 15 hours in Statistics, Modeling and Finance;
- (3) A minimum of 15 hours in General Appraiser Sales Comparison Approach;
- (4) A minimum of 15 hours in General Appraiser Site Valuation and Cost Approach;
- (5) A minimum of 45 hours in General Appraiser Income Approach;
- (6) A minimum of 15 hours in General Appraiser Report Writing and Case Studies; and
- (7) A minimum of 30 hours of appraisal subject matter electives.

(d) An applicant who is currently certified with the Board as a certified residential real estate appraiser may satisfy the educational requirements to become a general real estate appraiser by completing the following education:

- (1) A minimum of 15 hours in General Appraiser Market Analysis and Highest and Best Use;
- (2) A minimum of 15 hours in General Appraiser Sales Comparison Approach;
- (3) A minimum of 15 hours in General Appraiser Site Valuation and Cost Approach;
- (4) A minimum of 45 hours in General Appraiser Income Approach; and
- (5) A minimum of 10 hours in General Appraiser Report Writing and Case Studies.

(e) An applicant who is not currently registered by the Board as a trainee or who is not currently licensed or certified by the Board as a licensed residential or certified residential real estate appraiser must have completed all the required courses within the five-year period immediately preceding the date application is made to the Board.

(f) An applicant who is currently registered by the Board as a trainee or who is not currently licensed or certified by the Board as a licensed residential or certified residential real estate appraiser must have completed all courses required beyond those required for his current registration, licensure or certification within the five-year period immediately preceding the date application is made to the Board.

Authority G.S. 93E-1-6(c); 93E-1-8(a); 93E-1-10.

SECTION .0200 - COURSE SPONSOR STANDARDS FOR PRELICENSING AND PRECERTIFICATION EDUCATION

21 NCAC 57B .0201 PURPOSE AND APPLICABILITY

This Section establishes criteria for approval and operational requirements for all real estate appraisal ~~prelicensing and~~ precertification course sponsors and schools. These standards ~~must~~ shall be satisfied in order for course sponsors and schools to obtain and maintain approval of their courses for appraiser ~~prelicensing and~~ precertification education credit. Schools and course sponsors ~~must~~ shall obtain course approval from the Board prior to conducting ~~prelicensing and~~ precertification

courses and prior to advertising or otherwise representing that a course is or may be approved for credit in North Carolina.

Authority G.S. 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0202 APPLICATION FOR APPROVAL
Schools and other course sponsors seeking approval to conduct real estate appraisal ~~prelicensing and~~ precertification courses ~~must~~ shall make written application to the Board ~~upon a form prescribed by the Board.~~

Authority G.S. 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0203 CRITERIA FOR APPROVAL
Approval to conduct real estate appraisal ~~prelicensing and~~ precertification courses ~~or both~~ shall be granted to a school or course sponsor when it is shown to the satisfaction of the Board that:

- (1) the school or course sponsor has submitted all information required by the Board.
- (2) the school or course sponsor complies with the standards described in this Section; and
- (3) the courses to be conducted comply with the standards described in Section .0300 of this Subchapter.

Authority G.S. 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0207 ADMINISTRATION
One person ~~must~~ shall be designated as the Director for each approved school or course sponsor and shall be responsible for administrative matters such as program development, scheduling of classes, advertising, maintenance of facilities and equipment, record keeping and general supervision of the instruction program. The director shall ensure that the policies and general operations of the school or course sponsor comply with the provisions of Sections .0200 and .0300 of this Subchapter. The Director ~~must~~ shall possess a good character and reputation and must also meet the fitness standards for applicants for trainee ~~registration, licensure registration or appraiser certification.~~

The Director shall:

- (1) have a baccalaureate or higher degree in the field of education; or
- (2) have at least two years full time experience within the past 10 years as an instructor or school administrator; or
- (3) meet the minimum appraisal education and experience qualifications listed in 21 NCAC 57B .0306 to teach either the residential or general appraisal precertification courses; or
- ~~(3)~~ (4) possess qualifications which are found by the Board to be substantially equivalent to Item ~~(1) or (2)~~ (1), (2), or (3) of this Rule.

Authority G.S. 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0208 ACCOMMODATIONS FOR PERSONS WITH DISABILITIES

The Board may suspend, revoke or deny renewal of approval of a real estate school or course sponsor to conduct appraiser ~~prelicensing and~~ precertification courses upon finding that any court of competent jurisdiction has found the school or course sponsor official or instructor in the employ of the school or course sponsor to be in violation of any applicable federal or state law or regulation prohibiting discrimination on the basis of disability, requiring that courses related to ~~licensing or~~ certification for professional or trade purposes be offered in a place and manner accessible to persons with disabilities.

Authority G.S. 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0209 CERTIFICATE OF COURSE COMPLETION

Approved schools or course sponsors must provide each passing student with a course completion certificate. Certificates of course completion ~~must~~ shall be on a document bearing the letterhead or insignia of the school or course sponsor and ~~must~~ shall have the signature or signature stamp of the school or course sponsor director. A student who has taken a ~~prelicensing and~~ precertification course, other than the 15 hour National USPAP course, for continuing education credit and who does not pass the examination shall not be given a course completion certificate, but shall be given a certificate of attendance for the course, provided that the student complies with the provisions of 21 NCAC 57B .0303. Either certificate shall be valid to obtain continuing education credit, in accordance with 21 NCAC 57B .0604.

Authority G.S. 93E-1-8(a); 93E-1-10.

SECTION .0300 - COURSE STANDARDS FOR PRELICENSING AND PRECERTIFICATION EDUCATION

21 NCAC 57B .0301 PURPOSE

This Section establishes minimum standards for real estate appraisal ~~prelicensing and~~ precertification courses prescribed by G.S 93E-1-6(a).

Authority G.S. 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0302 COURSE CONTENT

(a) All courses shall consist of instruction in the subject areas outlined in the Appraiser Qualification Board's Guide Note 1.

(b) Courses may also include coverage of additional related subject areas; however, any such course must provide additional class time above the minimum required classroom hours specified in 57B .0101, .0102, and .0103 and the minimum requirement of 15 hours for USPAP for the coverage of such additional subject areas.

(c) On or before the first class meeting day of the Basic Appraisal Principles course, the instructor shall give to each student material prepared by the Board regarding the trainee registration process and the process to upgrade to a certified appraiser.

Authority G.S. 93E-1-6; 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0303 COURSE COMPLETION STANDARDS

(a) Academic standards for course completion ~~must~~ shall reasonably assure that students receiving a passing grade possess adequate knowledge and understanding of the subject areas prescribed for the course. A student's grade ~~must~~ shall be based solely on his or her performance on examinations and on graded homework and class work assignments.

(b) Course completion requirements ~~must~~ shall include a comprehensive final course examination which covers all prescribed subject areas and which accounts for at least 50 percent of a student's grade for the course. Take-home or open-book final course examinations are prohibited. Schools and course sponsors may, within 90 days of the course ending date, allow a student one opportunity to make up any missed course examination or to retake any failed course examination without repeating the course, however any make up examination ~~must~~ shall be comparable to the initial examination with regard to the number of questions and overall difficulty, and at least 75 percent of the questions in the make up examination ~~must~~ shall be different from those used in the initial examination.

(c) The minimum attendance required for satisfactory course completion is 90 percent of all scheduled classroom hours for the course.

(d) The instructor may offer additional hours of instruction so that students can make up lost hours of instruction.

(e) Students who are taking a ~~prelicensing and~~ precertification course, other than the 15 hour National USPAP course, for continuing education credit are required to sit for the final course examination, but they are not required to pass the examination in order to receive continuing education credit. Students who pass the examination and who comply with the provisions of this Rule shall be given a course completion certificate. Students who do not pass the examination but who otherwise comply with the provisions of this Rule shall be given a certificate of attendance. Students who are taking the course as a result of a conditional dismissal, consent order or order of the Board after a hearing must take and pass the examination.

Authority G.S. 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0306 INSTRUCTOR REQUIREMENTS

(a) Except as indicated in Paragraph (b) of this Rule, all ~~prelicensing and~~ precertification courses or courses deemed equivalent by the Board shall be taught by instructors who possess the fitness for licensure required of applicants for trainee registration or real estate appraiser ~~licensure or~~ certification and either the minimum appraisal education and experience qualifications listed in this Rule or other qualifications that are found by the Board to be equivalent to those listed. These qualification requirements shall be met on a continuing basis. The minimum qualifications are as follows:

- (1) Residential appraiser courses: 200 classroom hours of real estate appraisal education equivalent to the residential appraiser education courses prescribed in Rules .0101 and .0102 of this Subchapter and two years'

full-time experience as a certified residential or general real estate appraiser within the previous five years. At least one-half of such experience must be in residential property appraising.

- (2) General appraiser courses: 300 classroom hours of real estate appraisal education equivalent to the general appraiser education courses prescribed in Rules .0101, .0102 and .0103 of this Subchapter and three years' full-time experience as a general real estate appraiser within the previous five years. At least one-half of such experience must be in income property appraising. Instructors must also be a certified general real estate appraiser and have been so certified for at least five years.

- (3) USPAP: certification by the Appraiser Qualifications Board of the Appraisal Foundation as an instructor for the National USPAP Course. The instructor must be a certified residential or a certified general appraiser.

- (4) Statistics, modeling and finance: must have previously completed this class, or must have completed 3 semester hours of statistics in an accredited college or university.

(b) Guest lecturers who do not possess the qualifications stated in Paragraph (a) of this Rule may be utilized to teach collectively up to one-fourth of any course, provided that each guest lecturer possesses education and experience directly related to the particular subject area the lecturer is teaching.

(c) Instructors shall conduct themselves in a professional manner when performing their instructional duties and shall conduct their classes in a manner that demonstrates knowledge of the subject matter being taught and mastery of the following basic teaching skills:

- (1) The ability to communicate effectively through speech, including the ability to speak clearly at an appropriate rate of speed and with appropriate grammar and vocabulary;
- (2) The ability to present instruction in a thorough, accurate, logical, orderly, and understandable manner, to utilize illustrative examples as appropriate, and to respond appropriately to questions from students;
- (3) The ability to effectively utilize varied instructive techniques other than straight lecture, such as class discussion or other techniques;
- (4) The ability to effectively utilize instructional aids to enhance learning;
- (5) The ability to maintain an effective learning environment and control of a class; and
- (6) The ability to interact with adult students in a manner that encourages students to learn, that demonstrates an understanding of students' backgrounds, that avoids offending the sensibilities of students, and that avoids

personal criticism of any other person, agency or organization.

(d) Upon request of the Board, an instructor or proposed instructor must submit to the Board a videotape or DVD in a manner and format which depicts the instructor teaching portions of a precertification course specified by the Board and which demonstrates that the instructor possesses the basic teaching skills described in Paragraph (c) of this Rule.

(e) The inquiry into fitness shall include consideration of whether the instructor has ever had any disciplinary action taken on his or her appraisal license or certificate or any other professional license or certificate in North Carolina or any other state, or whether the instructor has ever been convicted of or pleaded guilty to any criminal act. This inquiry may include consideration of whether disciplinary action or criminal charges are pending.

(f) Instructors shall not have received any disciplinary action regarding his or her appraisal license or certificate from the State of North Carolina or any other state within the previous two years. For the purposes of this Section, disciplinary action means a reprimand, suspension (whether active or inactive) or a revocation.

(g) Proposed ~~precertification and~~ precertification instructors who do not meet the minimum appraisal education and experience qualifications listed in Paragraph (a) of this Rule, and who seek to have their qualifications determined by the Board to be equivalent to the qualifications listed in Paragraph (a) of this Rule, must supply the Board with copies of sample appraisal reports or other evidence of experience.

(h) Persons desiring to become instructors for ~~precertification and~~ precertification courses must file an application for approval with the Board. There is no fee for application for instructor approval. Once an instructor has been approved to teach a specific ~~precertification and~~ precertification course, that person may teach the course at any school or for any course sponsor approved by the Appraisal Board to offer ~~precertification and~~ precertification courses.

Authority G.S. 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0307 CRITERIA FOR COURSE RECOGNITION

(a) Schools and course sponsors seeking to offer appraiser ~~precertification and~~ precertification courses ~~must shall~~ make written application to the Board and pay applicable fees as required by G.S. 93E-1-8(b).

(b) Appraisal subject matter electives offered for ~~precertification and~~ precertification credit ~~must shall~~ meet all other requirements of this Chapter. The content of these electives ~~must shall~~ be directly related to the appraisal of real property to be approved for ~~precertification and~~ precertification credit. Appraisal subject matter elective courses shall contain a minimum of 15 hours.

(c) Various combinations of courses may be recognized as equivalent to the appraiser ~~precertification and~~ precertification courses specified in 57B .0101, .0102 and .0103.

(d) The 15 hour USPAP course ~~must shall~~ be the 15-hour National USPAP Course approved by the Appraiser Qualifications Board of the Appraisal Foundation, or its equivalent.

(e) The application ~~must shall~~ state the name of the instructor for the course. All instructors ~~must shall~~ be approved by the Board pursuant to 57B .0306(h). After the course is approved, if a school or course sponsor wishes to change instructors, the school shall notify the Board of the name of the new instructor at least seven calendar days before the proposed change would take effect. If the proposed instructor is not currently approved in accordance with 57B .0306(h), the instructor shall be approved by the Board before the school or course sponsor may change instructors.

Authority G.S. 93E-1-8(a); 93E-1-10.

SECTION .0400 - COURSE SPONSOR FEES FOR PRELICENSING AND PRECERTIFICATION EDUCATION

21 NCAC 57B .0401 APPLICABILITY

This Section applies to private real estate appraisal schools offering ~~precertification and~~ precertification courses, appraisal trade organizations and to all other course sponsors other than North Carolina colleges, universities, junior colleges, community or technical colleges accredited by the Southern Association of Colleges and Schools, and agencies of the federal, State or local government.

Authority G.S. 93E-1-8(a), (b); 93E-1-10.

SECTION .0600 - CONTINUING EDUCATION COURSES

21 NCAC 57B .0604 PRECERTIFICATION COURSES

(a) Appraisal ~~precertification and~~ precertification courses conducted by North Carolina approved schools or by appraisal trade organizations which are approved as equivalent to the North Carolina ~~precertification and~~ precertification courses may be separately approved as appraisal continuing education courses. Trainees, licensed and certified appraisers may obtain continuing education credit for these courses only to the extent permitted by Rule .0204 of Subchapter 57A. Appraisal trade organizations must at all times assure compliance with Rules .0606, .0607, and .0608 of this Section in order to retain such approval for these courses.

(b) It is presumed that any person taking any of the ~~precertification and~~ precertification courses is doing so for ~~registration, licensure~~ registration or certification purposes. If the person wishes to obtain continuing education credit for the course, he or she ~~must shall~~ request such credit in writing and ~~must shall~~ send the original course completion certificate or course attendance certificate with the request.

Authority G.S. 93E-1-8(c); 93E-1-10.

21 NCAC 57B .0613 PAYMENT OF FEE REQUIRED BY G.S. 93E-1-7(C)

Schools and course sponsors who are required by G.S. 93E-1-7 to pay a fee to the Board for each licensee completing an approved continuing education course conducted by the school or course sponsor shall remit the fee to the Board along with the

roster and evaluations required by Rules .0606(10) and .0608 of this Subchapter.

Authority G.S. 93E-1-8(c),(d); 93E-1-10.

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

CHAPTER 01 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 01H - RECRUITMENT AND SELECTION

SECTION .0600 - GENERAL PROVISIONS

25 NCAC 01H .0629 APPOINTMENT TO A POSITION

An appointment may be made only if a classified and budgeted vacancy exists in the position complement authorized for the agency.

Authority G.S. 126-4.

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

Notice is hereby given that the Rules Review Commission intends to adopt rules cited as 26 NCAC 05 .0101-.0112.

Proposed Effective Date: July 1, 2008

Public Hearing:

Date: April 17, 2008

Time: 10:00am

Location: Assembly Room, 1307 Glenwood Ave, Raleigh, NC

Reason for Proposed Action: To establish procedures for the Rules Review Commission.

Comments may be submitted to: Joe DeLuca, Commission Counsel, Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

Comment period ends: May 16, 2008

CHAPTER 05 – RULES REVIEW COMMISSION

26 NCAC 05 .0101 DEFINITIONS

As used in this Chapter the following terms have the following meanings unless the context indicates otherwise:

- (1) "Commission" or "RRC" means the Rules Review Commission as established in G.S. 143B-30.1.
- (2) "Objection letter" means any letter or other written correspondence objecting to a rule and requesting review of the rule by the General Assembly filed with the Rules Review Commission while the rule is under review by the Rules Review Commission."
- (3) "Rewritten rules" mean rules that have been revised in an attempt to satisfy an objection by the Commission.

TITLE 25 – DEPARTMENT OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to adopt the rule cited as 25 NCAC 01H .0629.

Proposed Effective Date: August 1, 2008

Public Hearing:

Date: April 23, 2008

Time: 10:00 a.m.

Location: Office of State Personnel Conference Room, Administration Building, 116 West Jones Street, 3rd floor, Raleigh, NC

Reason for Proposed Action: 25 NCAC 01H .0609, Final Commitments, was repealed in February, 2007. We are requesting that a portion of the rule be reinstated as a new adoption.

Procedure by which a person can object to the agency on a proposed rule: A person may object to these proposed rules by one of the following methods: A written letter to Peggy Oliver, HR Policy Administrator, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331; An email to peggy.oliver@ncmail.net; A telephone call to Peggy Oliver at (919) 807-4832.

Comments may be submitted to: Peggy Oliver, 1331 Mail Service Center, Raleigh, NC 27699-1331, phone (919) 807-4832, email peggy.oliver@ncmail.net

Comment period ends: May 16, 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

- (4) "Technical Changes" mean the changes made by an agency to reply to a request from the Commission or its staff as set out in G.S. 150B-21.10.

Authority G.S. 143-30.1.

26 NCAC 05 .0102 COMMUNICATIONS WITH COMMISSIONERS

- (a) Any person who wishes to address the Commission or individual commissioners shall comply with Rules .0103, .0104, and .0105 of this Chapter.
- (b) The Rules Review Commission does not encourage oral communications with individual commissioners. However, to the extent that any individual commissioner allows oral communications, then such communication is permitted.

Authority G.S. 143-30.1.

26 NCAC 05 .0103 SUBMISSION OF WRITTEN COMMENTS CONCERNING PERMANENT RULES TO THE RRC

- (a) Any person desiring to submit written comments concerning a permanent rule shall submit the comments to the individual commissioners and a copy to the RRC staff by 5:00 p.m. of the Tuesday of the week prior to the next RRC meeting. Written comments may be submitted electronically to the individual commissioners who accept delivery in an electronic format.
- (b) Written submissions shall specify how a rule either complies with or fails to comply with the statutory grounds for the RRC's review set out in G.S. 150B-21.9.
- (c) Persons submitting comments shall also submit a copy of the comments at the same time and in the same manner to the agency rulemaking coordinator.
- (d) A person or agency may submit rebuttal comments to comments concerning permanent rules in the same manner as set out in Paragraph (a) up to 5:00 p.m. of the business day before the RRC meeting at which the rule is to be reviewed. The person or agency shall provide 13 copies at the meeting.
- (e) The Chair may waive the requirements of this Rule based on the factors in Rule .0112 of this Chapter.
- (f) Written comments not submitted in accordance with this Rule are subject to being excluded from the record by the Commission.
- (g) The RRC staff shall maintain a list of commissioners and rulemaking coordinators with their contact information.

Authority G.S. 143-30.1.

26 NCAC 05 .0104 SUBMISSION OF WRITTEN COMMENTS CONCERNING TEMPORARY RULES TO THE RRC

- (a) Any person desiring to submit written comments concerning a temporary rule shall submit the comments to the individual commissioners and a copy to the RRC staff prior to the RRC meeting or RRC designee meeting at which the temporary rule shall be reviewed.

- (b) Written submissions shall specify how a rule either complies with or fails to comply with the statutory grounds for the RRC's review set out in G.S. 150B-21.1 and G.S. 150B-21.9.

(c) Persons submitting comments shall also submit a copy of the comments at the same time and in the same manner to the agency rulemaking coordinator.

(d) A person or agency may submit rebuttal comments to comments concerning temporary rules in the same manner as set out in Paragraph (a). The person or agency shall provide 13 copies at the meeting.

(e) The Chair may waive the requirements of this Rule based on the factors in Rule .0112 of this Chapter.

(f) Written comments not submitted in accordance with this Rule are subject to being excluded from the record by the Commission.

Authority G.S. 143-30.1.

26 NCAC 05 .0105 REQUIRED NOTICE PRIOR TO ORAL RRC PRESENTATION

- (a) The Chair may allow an agency or any person to make oral statements in support of or in opposition to a rule.
- (b) Any person or agency desiring to make an oral statement concerning a permanent rule shall notify the RRC staff in writing by 5:00 p.m. of the second business day before the RRC meeting. The notice shall identify the rule upon which the oral statement will be made and shall also include the name, address, telephone number, fax number and email address of the individual who will be making the oral statement. If the person did not submit a written comment, the person shall state whether the oral statement will support or oppose the rule.
- (c) Any person or agency desiring to make an oral statement concerning a temporary rule shall notify the RRC staff prior to the start of the RRC meeting or RRC designee meeting at which a temporary rule will be reviewed. The notice shall identify the rule upon which the oral statement will be made and shall also include the name, address, telephone number, fax number and email address of the individual who will be making the oral statement. If the person did not submit a written comment, the person shall state whether the oral statement will support or oppose the rule.
- (d) At the same time the person notifies the RRC staff, the person shall also notify the rule making coordinator for the agency proposing the rule if the person wishes to speak in opposition to the rule. If a person fails to notify the agency in accordance with this rule, the Chair may deny a request to make an oral statement to the RRC.

Authority G.S. 143-30.1.

26 NCAC 05 .0106 LIMITATIONS ON ORAL PRESENTATIONS

- (a) The RRC Chair in open session may set time limits on oral presentations before the Commission.
- (b) Unless the Chair sets other time limits for oral presentations, the time allowed for presentations shall not exceed ten minutes for each requesting person or agency. The Chair may require that oral presentations be limited to representative spokespersons for those advocating or those opposing rule approval by the RRC.

(c) Factors that the Chair may use in determining time limits include the length of the agenda and time remaining in the meeting; the number of contested rules; the complexity of the issues; the public interest in a particular rule; the number of people desiring to address the RRC concerning the rule, the variations in their arguments (i.e., are they adding additional information to the debate or merely being repetitive of earlier speakers?), and the level of agreement within their positions or relationships; the nature of the comments in relation to the RRC scope of review; and the amount of notice given to the agency.

(d) The agency adopting the rule shall be allowed an opportunity to address the Commission when a person addresses the Commission in opposition to a rule, unless the agency fails to appear after notice of written comments opposing approval of the rule. When a comment in opposition to a rule first occurs by an oral comment at the Commission meeting, the agency shall be allowed an opportunity to address the Commission at the next meeting of the Commission or Commission's designee where the rule is under review.

Authority G.S. 143-30.1.

26 NCAC 05 .0107 WITHDRAWAL OF RULES AFTER FILING WITH RRC

An agency may withdraw a rule after filing with the RRC when:

- (1) the rule is an adoption;
- (2) the staff recommendation to disapprove the rule applies to the amendment to the rule and not to the existing language;
- (3) there is no staff recommendation to object to the rule; or
- (4) the rule was not adopted in accordance with the Administrative Procedure Act.

Authority G.S. 143-30.1.

26 NCAC 05 .0108 SUBMISSION OF REWRITTEN RULES OR RULES WITH TECHNICAL CHANGES

(a) The RRC shall not review rewritten rules until the next regular meeting following the meeting at which a rule was originally reviewed by the RRC.

(b) Agencies may submit technical changes prior to the meeting at which a rule is initially reviewed for consideration and approval by the Commission at that meeting.

(c) All rules containing technical changes shall be submitted to the RRC staff by 5:00 p.m. of the second business day before the RRC meeting.

(d) All rewritten rules shall be submitted to the RRC staff by 5:00 p.m. of the Friday before the RRC meeting. If that Friday is a holiday, then the rewritten rules shall be submitted on the last business day before the holiday.

(e) This deadline may be waived by RRC staff when an agency which is a board or commission does not meet until the day of this deadline or later or when the original submission is deficient and requires further changes.

Authority G.S. 143-30.1.

26 NCAC 05 .0109 COMMUNICATIONS WITH RRC STAFF

Any person desiring to confer with RRC staff may do so at any time that staff is available. However, this shall not be a confidential communication and staff may inform an agency or any other person of such communication and may invite rebuttal response.

Authority G.S. 143-30.1.

26 NCAC 05 .0110 FILING OBJECTION LETTERS

The RRC shall not consider any objection letter which is received prior to the time the agency adopts the rule.

Authority G.S. 143-30.1.

26 NCAC 05 .0111 RESPONSE TO OBJECTION LETTERS

(a) The RRC staff shall respond to any objection letter for which it has a return address and that is not timely written.

(b) The RRC staff's response shall inform the letter writer that the objection letter is not eligible for consideration as it was untimely and inform the letter writer how to file a timely objection letter.

(c) The RRC staff may respond to letters that were filed by a single individual on behalf of multiple individuals to the individual filing the letters.

Authority G.S. 143-30.1.

26 NCAC 05 .0112 WAIVER

(a) The Commission in open session may waive any rule for which no specific waiver provision is set out.

(b) Any person or agency requesting a waiver shall do so in writing and shall set out the specific rule for which a waiver is requested and the reasons justifying such a waiver.

(c) Any person desiring a waiver of the Commission's rules shall submit a copy of the request to the rulemaking coordinator for the agency proposing a rule at the same time and in the same manner as the submission to the RRC.

(d) The factors to be used in deciding whether to waive a rule are:

- (1) the necessity for a waiver;
- (2) the amount of notice given to the Commission, the agency proposing the rule, and interested parties;
- (3) the applicant's responsibility for the conditions creating the need for a waiver;
- (4) the applicant's previous requests for a waiver;
- (5) the applicant's knowledge of or experience with the rulemaking process;
- (6) the precedential value of such a waiver;
- (7) the harm to the applicant if a waiver is not granted;
- (8) the harm to the agency if a waiver is granted when the agency is not the applicant.

Authority G.S. 143-30.1.

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>.

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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
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<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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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	
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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. Jayshreeben Jagishchand Shah, T/A Jay's Grocery #3	07 ABC 1180	Overby	01/11/08	
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.

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OFFICE OF STATE PERSONNEL

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	
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Rose M. Baltezore 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	
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Patricia G. Flanigan v. Fayetteville State University	07 OSP 0503	Overby	05/10/07	
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Kathleen E. Kicinski v. NC A&T State University	07 OSP 1347	Lassiter	11/29/07	
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Angela N. Mewborn v. Office of State Auditor	07 OSP 1668	Lassiter	12/07/07	
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Mr. Tim Rhodes, President, Event Marketing Services, Inc. v. SOS	07 SOS 0374	Overby	06/14/07
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STATE OF NORTH CAROLINA
COUNTY OF VANCE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
06 OSP 0230

SHIRLEY BARNES,
Petitioner,

vs.

MURDOCH CENTER,
Respondent.

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DECISION

THIS CAUSE came on for hearing before the undersigned Administrative Law Judge, Augustus B. Elkins II, on September 6 and 12, 2007 in Raleigh, North Carolina. The record was left open for submission of materials by the parties after receipt of a copy of the transcript of the proceeding. After filing by Respondent and Petitioner, the record was closed on November 19, 2007.

APPEARANCES

For Petitioner: D. Bernard Alston
Alston Green & Durrante
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Henderson, NC 27536

For Respondent: Kathryn J. Thomas
Assistant Attorney General
Department of Justice
9001 Mail Service Center
114 West Edenton Street
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ISSUE

Whether Respondent had just cause to terminate Petitioner from her employment at Murdoch Center on September 13, 2005.

WITNESSES

For Petitioner: Shirley Barnes
Annie Hargrove
Nancy Lacewell

For Respondent: Lauren Bryan
Joy Gruber
Mary Winstead

EXHIBITS

For Petitioner: Exhibit 1 was admitted into evidence.

For Respondent: Exhibits 1 through 42 were admitted into evidence.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents, and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following Findings of Fact by a preponderance of the evidence. In making these Findings of Fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to the demeanor of the witnesses, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. Petitioner, Shirley Barnes is a citizen and resident of Vance County, North Carolina. She was employed at Murdoch Center as a Health Care Technician II (Tech II or HCT II) on September 13, 2005 when she was dismissed from her employment for unacceptable personal conduct. Petitioner had been employed with the State of North Carolina for approximately ten years and was a career State employee.
2. The Respondent, Murdoch Center is a residential facility established for the treatment of persons with developmental disabilities under the auspices of the North Carolina Department of Health and Human Services.
3. Lauren Bryan is a Unit Manager at Murdoch Center where she has been employed for thirteen years including the last six and a half years as a Unit Manager. Her job responsibilities include overseeing a unit of developmentally or mentally disabled people who live at Murdoch Center. Bryan is responsible for supervising staff to make sure that the residents' individual comprehensive plans (PCPs) are implemented and that their everyday needs are met. Bryan regularly reviews the residents' goals, guidelines and health considerations with staff. Any time an individual's plan changed or a special issue was raised, Bryan reviewed those changes and issues with staff either at monthly staff meetings or directly with staff. Bryan typed up her review of the information covered at staff meetings and had all staff, including those who were

not present at the staff meeting, review the minutes of the meeting. As Unit Manager, Bryan is the chairperson for the interdisciplinary team.

4. An interdisciplinary team, including but not limited to the unit manager, doctors, nurses, teachers, and pharmacists develop a comprehensive plan each year for each individual who lives at Murdoch Center. The plan is referred to as a "person centered plan" or PCP. The plan focuses on all areas of the individual's care, including education, medical needs, and daily living skills. Some individuals have individual behavior plans which are primarily put in place to prevent self-injury. Behavior plans require extensive documentation which is reviewed by the unit manager daily. Individuals have dietary plans based on their calorie or other dietary needs. Some dining guidelines are put in place for safety to keep the individuals from eating or drinking too fast.

5. Joy Gruber has worked at Murdoch Center since 1996. Her current position is Psychologist II. Since coming to Murdoch Center her jobs have included serving as unit manager, staff psychologist, program coordinator and division director. For most of 2004 she was acting Division Director at Pineview Cottage. In October 2004 Gruber became the permanent Division Director at Pineview where she served through 2005. Her job duties as a division director included having administrative responsibility for the care of 47 individuals with profound mental retardation who live in three units in Pineview Cottage. Gruber was responsible for supervising approximately 80 staff. She was responsible for making sure that staff at Pineview Cottage received necessary training and that staff received feedback and discipline to ensure the safety and well being of the individuals who lived at Pineview.

6. The residents of Pineview Cottage have profound mental retardation. These individuals require a lot of hands on care to make sure that they are groomed, bathed, fed and changed as needed. The individuals need assistance to get from place to place, and staff is responsible for ensuring their safety. None of the individuals at Pineview Cottage can verbally express themselves. The residents at Pineview Cottage are among the lowest functioning at Murdoch Center. The mean age of the residents is around 47, but the mean adaptive age is a year and a half.

7. Each resident has a unit notebook which contains their daily schedule, guidelines, and program plans including behavior and dietary plans. When there are changes to guidelines or procedures, the unit manager reviews the changes with the staff. In addition to the guidelines in the unit notebook, dietary guidelines are also available in the dining room, and are kept on the table during meals while an individual eats. If behavior plans include restraints, health care technicians are required to check the restraint every 30 minutes and the restraint must be removed for 10 minutes every two hours. Each action must be documented on data sheets which are then reviewed daily by the unit manager.

8. In addition to a unit manager, staff for the Pineview Cottage unit includes health care technicians (HCT or Health Care Tech or Tech) on each of the shifts.

9. Each HCT receives a three week long training course including training on policies and procedures as well as training on North Carolina Interventions (NCI) which includes specific

ways staff are to intervene with aggressive behaviors to prevent individuals from hurting themselves or others. Staff members also receive orientation to the unit to learn the individuals' programs.

10. A Health Care Tech II is responsible for giving staff daily assignments and making sure those assignments are carried out according to each individual's plan. Tech IIs are also responsible for hands on care of individuals and for directly overseeing all activities during a shift. Tech IIs directly supervise Tech Is. HCT IIs are directly responsible for ensuring that an individual's guidelines are followed on the unit, and for determining that the HCT Is are following the guidelines. When staff are not following guidelines, the HCT II is responsible for reporting problems to the Unit Manager. When a HCT I is promoted to a HCT II, the new HCT II receives supervisor training. Petitioner, Shirley Barnes became a Tech II on Unit 3 at Pineview Cottage at Murdoch Center in February of 2004.

11. Following the Petitioner's promotion to the Tech II position she received performance evaluations. In the June 30, 2005 annual evaluation, known as the "overall Performance Review," the Petitioner received an overall summary of "Good".

12. On September 13, 2005, Petitioner was dismissed from her employment with Murdoch Center for unacceptable personal conduct, specifically for the willful violation of known work rules and policies and for neglect of a resident under her care on September 6, 2005. (R Ex 4) At that time, Lauren Bryan and Ron Howard, Assistant Director of Programming for Residential Services, met with Petitioner and gave her a letter detailing the reasons for the termination. Bryan noted in the letter that Petitioner had received two prior written warnings as well as several documented counselings in the past year. (R Ex 4).

13. At the time of this hearing, Mary Winstead was a Youth Program Assistant I at Murdoch Center. She has worked at Murdoch Center since 2004 in Pineview Cottage where, prior to her recent promotion, she was a Health Care Tech I. At Pineview Cottage, she was supervised by Lauren Bryan and Petitioner, Shirley Barnes. Winstead received her daily assignments from Petitioner.

14. Every individual residing at Murdoch Center must have a community outing once a month. Planning is necessary in preparation for the trip including review by management, recreation and nurses to make sure where they are going is okay, and whether they need to get medications beforehand. The person in charge of the trip is responsible for making sure that the individuals are ready, that their nurses are notified when they leave, that they have their dining guidelines with them, that they have a picture of the individual in case someone gets lost and that they have a cell phone with them.

15. There are 47 individuals residing at Pineview Cottage, and two vans. In order to make sure that every individual has a community outing, a request for a van must be made in advance of the trip. A request for the van is placed no later than the 10th of the month in the month prior to the trip and the request lists the individuals and the staff involved. The person designated as the driver on the trip request form is not necessarily the designated driver listed on the van check out form.

16. When a van is checked out at Pineview Cottage, the designated driver goes to the main secretary for Pineview Cottage. The secretary checks the person's driver's license to determine whether it is valid. A form is filled out to show the name of the driver and the expiration date of the driver's license. (R Ex 9) The policy provides that "[s]taff who will operate the vehicle must have a valid driver's license," and "[t]he [administrator on call] must ensure the building charge checks the driver's license to ensure it is valid." (R Ex 8)

17. Murdoch Center received a report that one of its vans was seen in a place where it was not supposed to be on August 31, 2005. Bryan and Gruber investigated the report and spoke to Winstead and Petitioner about their August 31 trip. Though Petitioner's trip was not the one on which a complaint had been received, it came to Bryan's and Gruber's attention that Winstead had driven the van instead of Petitioner. Winstead and Petitioner provided statements to Gruber and Bryan, and Petitioner admitted that she did not drive the van even though she had signed it out. (R Ex 6-7) Winstead received a documented counseling.

18. On August 31, 2005, Petitioner checked out the Pineview Cottage van and then gave the keys to another staff member, Mary Winstead, HCT I, to drive the van without checking to see if Winstead had a valid drivers' license. After Petitioner checked out the van, she said "Mary, you drive the van today." Winstead told Petitioner that she was not supposed to drive if she did not check out the van. Winstead stated that Petitioner told her that she could drive and that she had fixed it so both of them drive the van. In her written statement which she gave to Gruber and Bryan, Petitioner wrote, "On 8/31/05 I signed the van out for a trip, but didn't drive." Petitioner also stated that "the other staff, Mary Winstead, was listed on the trip request as the driver," but "when we got back, I noticed on the trip request that Mary was supposed to be the driver." (R Ex 7)

19. Petitioner testified that as the HCT II, she was responsible for preparing the paperwork for all of the trips, but allowing Winstead to drive was just an oversight. Petitioner testified that she put Winstead in charge of the trip. Petitioner acknowledged that she did not know if Winstead had a valid license on that day, but that it was ultimately her responsibility to make sure policies were being followed. Annie Hargrove testified that she saw Winstead pick up the van book on the way out the door.

20. Petitioner's September 13 dismissal letter also cited failure to follow an individual's dining guidelines, which placed M.C. (a resident of Pineview Cottage) at risk for serious harm to her health, as an additional reason for dismissal.

21. M.C. is at serious risk of aspiration when eating. M.C. has had aspiration pneumonia previously. (R Ex 10-18, 42) M.C. has very detailed staff guidelines and health considerations. M.C.'s diet order indicated no fruit for lunch and supper. (R Ex 42) M.C.'s dining guidelines specifically provide that M.C. "should have close supervision at meals to ensure that she takes small bits, eats at a slow rate, and does not grab food. [M.C.] should swallow at least twice between bites." (R Ex 16) M.C. must be monitored one on one by staff so that staff can intervene as necessary. (R Ex 16) In addition to M.C.'s dietary guidelines, M.C. also has a copy of her "dining guidelines" placed on the table when she eats. (R Ex 11) The dining

guidelines state that M.C. is to be monitored one-on-one during meals and snacks. In addition, M.C.'s dining guidelines provide that "[S]he has a tendency to eat too quickly and take large bites. In addition, she will grab food. These behaviors increase her risk of aspiration. Interrupt as necessary to slow down her pace of eating and encourage her to swallow at least twice between bites." (R Ex 11)

22. Bryan reviewed M.C.'s dining guidelines, emphasizing the seriousness of complying with them, during staff meetings at Pineview Cottage on February 22, 2005 and May 18, 2005, the latter date during which Bryan stated "This is no joke." (R Ex 18) Petitioner also reviewed M.C.'s guidelines on June 1, 2005. (R Ex 16) Bryan was very concerned about M.C.'s dining guidelines because M.S. had a tendency to cough during meals, and sometimes she had food coming out of her nose. Bryan explained that M.C. eats first, before anyone else, by herself, with a staff member seated beside her for the whole meal.

23. On September 6, 2005, Bryan was walking past the dining room, and, looking through the door, saw M.C. seated by herself at a table. The door was closed, but she could see through a window in the door. Bryan stepped back to look in again to see if staff was with her or if she was eating and saw M.C. "shoveling" food in her mouth. Bryan saw that M.C. had a full plate of food in front of her, and as she testified was "shoveling spoon after spoon, heaping spoonfuls". Bryan could see Tech I Winstead seated with other individuals at another table. She saw that Petitioner was at the counter but was turning away from the counter. Bryan walked into the dining room and asked who was with M.C. Bryan then saw Petitioner walking toward M.C.'s table with some fruit. Petitioner put the fruit on M.C.'s plate and said to Bryan that she was with M.C. Then Petitioner walked toward the dining cart which was in Bryan's direction, and put the fruit dish on the cart. Petitioner then went to sit with M.C. Petitioner had her back to M.C. as she walked to the dining cart to place the dish on it. After making sure that Petitioner was sitting next to M.C. in conformance with M.C.'s dining guidelines, Bryan immediately reported the incident to Gruber.

24. The incident was also reported to a Murdoch Center patient advocate. Bryan, Gruber and Tara Gaucher, the patient advocate, asked Petitioner and Winstead for written statements. Bryan wrote a statement, Petitioner wrote a statement and Winstead wrote a statement. (R Ex 12-15)

25. Winstead was seated at a separate table attending to two individuals. She was seated at one end of the table with one individual on her left and the other individual on her right. Winstead was facing M.C.'s table and could see M.C. who was seated sideways to Winstead. Winstead did not see Petitioner sit down, but saw her standing at M.C.'s table at one point. Winstead then saw Petitioner walking toward where the dishes were stacked, and then toward the counter to get desert. Winstead's written statement submitted the same day as the incident stated "[t]here was no staff at [M.C.'s] table when she started eating." She also noted that "[Petitioner] sat [M.C.] at the table but did not monitor her after she was strapped in," and "[M.C.] began to feed herself with spoonful[s] of her meal before [Petitioner] began to monitor her. (R Ex 14)

26. Petitioner testified that she knew that M.C. was not supposed to be sitting alone when she was eating. Petitioner also testified that M.C. had eaten her food and was almost finished when she went to the counter to get her fruit, and she was on her way back to the table when Bryan

came in stating that M.C.'s was not to be sitting alone. Petitioner testified that she told Bryan that she had to get her fruit, and she proceeded to put M.C.'s fruit on her plate. Petitioner testified that she put the bowl back on the dining cart and then sat down with M.C. Petitioner testified that she had taken M.C.'s spoon with her so that M.C. was not eating.

27. Nancy Lacewell testified that she was the floater that day and was responsible for escorting individuals to the dining room. She brought M.C. to the dining room and sat her in a chair against the wall until she was ready to eat. Lacewell did not see M.C. again until she came back to drop off another individual about 10 or 15 minutes later. M.C. was not finished, so Lacewell came back about five minutes later and took M.C. back, and then brought another individual in. She saw Petitioner sitting with M.C.

28. Petitioner's testimony at the hearing conflicts with the statement she gave to Bryan and a Murdoch Center advocate the same day. In that statement she said:

[M.C.] was already eating her food when I went to get her fruit, I prompted her to stop eating, but by this time I got back to the table, she had started back to eat. I poured her food on her plate, & put the dish on the cart. I understand that you are suppose[d] to sit with Melanie thru out her entire meal, and keep close contact w/her & eyes on her at all times when eating. (R Ex 13)

Petitioner does not state that she took M.C.'s spoon from her.

29. Petitioner testified that Gruber told her to write down that M.C. was still eating. Petitioner testified that it was appropriate for M.C. to have fruit on August 31, 2005. However, the documentary evidence shows that M.C. was not supposed to have fruit. (R Ex 15 and 42)

30. Murdoch Center's Administrative Policy Manual defines neglect as "any situation in which staff do not carry out their duties or responsibilities deemed necessary to maintain the physical health, safety and well being of a person who lives at Murdoch Center." The policy lists as an example: "Failure to implement programs as designated by the interdisciplinary treatment team." (R Ex 10)

31. As cited in her dismissal letter, Petitioner had received two prior written warnings for personal conduct issues, three documented counselings and a verbal counseling in the prior year. Bryan and Gruber reviewed Petitioner's past actions, and they considered that it was significant enough that they needed to have a pre disciplinary conference to find out if Petitioner would provide them with more information. After the van and M.C. incidents, Bryan and Gruber considered giving Petitioner another written warning, or demotion or dismissal. The decision to dismiss Petitioner was based on a pattern of not following rules, policies, and procedures. Further, because the M.C. conduct was considered to be so unacceptable, they decided that termination was the most appropriate.

32. On October 24, 2004, Petitioner received a documented counseling for leaving the unit below minimum coverage which included leaving 1 of 3 staff not being fully trained, and leaving an untrained staff person alone in charge of monitoring the dayrooms. (R Ex 4, 19) Petitioner

testified that Bryan told her it was okay for her to leave three staff on the unit. Petitioner was of the opinion that all of the three staff persons left on the unit were very experienced. Petitioner left the unit with the knowledge of her supervisor and under the belief that backup provisions were available to provide services to the residents. Counseling was issued because management believed Petitioner should have stayed on the unit herself as one of the three remaining staff members rather than going on an outing and leaving an untrained staff person to oversee the dayroom.

33. On November 30, 2004, Petitioner received a documented counseling for failure to adhere to established guidelines, by allowing individuals to wear protective briefs when they were not supposed to wear them and not notifying management. (R Ex 4, 20, 21, 41) The individuals' person centered plans contain the information for each resident as to whether or not they wear protective briefs. Bryan noticed that one individual who was not supposed to wear protective briefs was wearing them, so she checked others and found four who were wearing protective briefs who were not supposed to. All of the individuals are supposed to be checked at every shift change to make sure their guidelines are being followed. Shift change occurs at 2:30 to 3:00, and Bryan discovered the individuals wearing briefs at around 5:30. If an individual who is not supposed to wear protective briefs is found to be wearing protective briefs at the shift change, then there is a note in the day book of the reason for needing to wear them. Noticing whether individuals were wearing protective briefs when they were not supposed to be Petitioner's responsibility, and it was also her responsibility to make sure that the HCT Is also were diligent in noting and reporting deviations from the individual's PCPs.

34. Petitioner testified that she was out on break when Bryan discovered that the individuals were wearing protective briefs and she was getting Bryan something to eat. Petitioner asserted that protective briefs are worn under clothing in a manner which cannot be detected without physically going under the outer layers of clothing. She testified that she was only responsible for checking one of the individuals, not all of them. The shift started at 2:30, and Petitioner left the building after the dinner time was over which was about 5:30. Petitioner testified that she told Bryan that she did not know anything about the clients that were wearing protective briefs because she did not put the briefs on them. Counseling was issued because management believed it was Petitioner's responsibility to know this, which Bryan was able to determine by observation initially, and then checking all of the individuals when she noted that one was wearing protective briefs when she should not have been.

35. On December 22, 2004, Petitioner received a first written warning for unacceptable personal conduct for failure to comply with known work rules by eating a candy bar in front of individuals while she was responsible for monitoring and assisting them during dinner in direct violation of Pineview Cottage policy "CPM #1.6.1, Staff Breaks". (R Ex 4, 22-29) Gruber determined that a written warning was appropriate in this instance because she previously had two documented counseling for not following policies and procedures. Petitioner agreed that she had been eating a candy bar in front of an individual, but, when a supervisor told her to put the candy bar away, she responded that she could eat while the residents are eating. (R Ex 26) Petitioner stated that the clients did not see her eating and that after being told to put the candy away, she finished what was in her mouth and put the rest in her pocket.

36. On March 4, 2005, Petitioner was verbally counseled by Bryan regarding her failure to complete monthly bathing observations as per cottage protocol. The HCT II on second shift does monthly observations of staff bathing each individual. Petitioner was out on medical leave from January 26 through February 2005, and failed to bring to Bryan's attention that the observations had not been recorded for the month of January prior to her medical leave. (R Ex 4, 30) Per Respondent's policy, the purpose of a verbal counseling was to offer direction about how things are to be done in the future, and it is not and was not disciplinary. As such, it should not have been cited as an example of a disciplinary measure for unacceptable personal conduct.

37. On May 12, 2005 Petitioner received a documented counseling for failing to ensure that an individual's behavior program was appropriately documented, and for failing to bring the problem to the attention of the Unit Manager. J.L. was put into a helmet due to self-injurious behavior. Bryan assisted the earlier staff person in placing the helmet on J.L. because the staff person was struggling, but the staff person was supposed to document the placement. Bryan did not document it because she reviews the documentation later to authorize it. When the second shift came in, it was noticed that there was no documentation showing when J.L. was put into the helmet. Annie Hargrove testified that when she came in to work at 2:30, J.L. was sitting in the chair with a helmet on. Nancy Lacewell told her that J.L. was not signed in, but Hargrove left the room after that. Though the documentation should have been done by another, as shift supervisor, Petitioner was counseled as management asserted she should have corrected the problem at shift change, and should have brought it to Bryan's attention. (R Ex 4, 31)

38. Petitioner asserted that she could not find Bryan to report that there was no documentation putting the individual into the helmet. Bryan testified that she did not leave the building but was in the front office in a public place. Every time an individual is placed in a protective device, the time must be noted, and the records of time in a protective device are reviewed by the treatment review committee.

39. Petitioner was provided with a work plan which identifies the HCT IIs responsibilities. In addition to Petitioner's responsibilities for supervising HCT Is, Petitioner was responsible for ensuring proper care and treatment of individuals, for providing feedback and instructions to staff, as well as demonstrating appropriate work performance and behaviors to the staff she supervised.

40. Health care technicians receive information about their job performance through their Performance Management Work Plans (PMWP) which are reviewed on a six-month basis and which contain their key responsibilities. Bryan supervised Petitioner from February 2004 through September 2005 at Pineview Cottage. (R Ex 39) Bryan reviewed Petitioner's performance management work plan with her beginning in June or July 2004, and Petitioner was then given interim reviews and overall reviews. (R Exs 39-40)

41. In the June 30, 2005 annual evaluation, known as the "overall Performance Review," the Petitioner received an overall summary of "Good". The non written warning disciplinary actions taken by Respondent on October 25, 2004, November 30, 2004, and May 12, 2005 as well as the verbal counseling on March 4, 2005, all preceded the Petitioner's annual evaluation dated June 30, 2005.

42. On August 15, 2005, Petitioner received a second written warning for unacceptable person conduct for falsifying documentation on an individual's special protective device (SPD) record. In this case the individual was wearing a leotard. The individual was supposed to be checked every 30 minutes while wearing the protective device, and then the protective device was supposed to be removed every two hours for 10 minutes. Each check and removal are to be recorded on the individual's SPD sheet. Bryan reviews the data for the behavior plans, and she noted that on July 30, 2005, an individual had been placed into the SPD at 6:15 by Nancy Lacewell, HCT I, and that checks were made at 6:45, 7:15 and 7:45 by Annie Hargrove, HCT I. The next entry on that line should have been at 8:15 when the protective device was removed, but the notation of the removal was left blank. On the next line, Petitioner had written that she placed the individual in the protective device at 6:20, and checked the device at 6:50, 7:20 and 7:50 before she removed the protective device at 8:15. Bryan determined that Petitioner had made all of her entries after Annie Hargrove made her last entry. The data on the records is supposed to reflect work actually done. Petitioner was responsible for ensuring that the data recorded is accurate as she supervises the HCT Is. Petitioner did not check herself, and in fact, management found that Petitioner falsified data. Bryan had recently reminded the staff during a staff meeting on July 20, 2005 that every time they are to check off on an action, the tech should actually be performing the action. (R Ex 4, 32-38) Petitioner was given a written warning in this instance because she had previously been counseled regarding keeping accurate documentation. Petitioner testified that Bryan had told her that if the documentation was not all caught up or accurate to just write it in. Petitioner asserted that the purpose of the entry was not to deceive, but to make sure that the documentation was done. Nancy Lacewell testified that Bryan had instructed them to document their own actions, and not to make the entry into the record for other people. She also testified that Bryan never told the staff to falsify documentation in order to catch it up.

43. On September 9, 2005, Lauren Bryan and Ron Howard, Assistant Director of Programming for Residential Services, met with Petitioner for a pre-disciplinary conference to review management's tentative decision to terminate Petitioner for personal conduct, during which they considered any information Petitioner had to offer to "ensure that such a significant personnel action is not based on erroneous or mistaken information or conclusions." The purpose of the pre-disciplinary meeting was to review the specific reasons for taking a proposed disciplinary action and to consider information from the employee to determine why the action should or should not be taken. (R Ex 3)

44. On September 13, 2005, Petitioner was dismissed from her employment with Murdoch Center for unacceptable personal conduct, specifically for the willful violation of known work rules and policies and for neglect of a resident. The dismissal letter noted that since a second written warning on August 15, 2005, Petitioner had engaged in two additional unacceptable personal conduct issues for which she was being dismissed.

45. The letter also noted that Petitioner had received two prior written warnings and documented counselings. The dismissal letter states that consideration was given to demotion rather than termination but that management found Petitioner's conduct and the consequences of that conduct could not be "tolerated for either a Health Care Tech I or II."

BASED UPON the foregoing Findings of Fact, and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case pursuant to Chapter 126 and Chapter 150B of the North Carolina General Statutes. The parties received proper notice of the hearing in the matter. To the extent that the findings of fact contain conclusions of law, or that the conclusions of law are findings of fact, they should be so considered without regard to the given labels.
2. The Petitioner was a career state employee, as defined in N.C. Gen. Stat. §126-1, *et seq.*, and is subject to the State Personnel Act. N.C.G.S. §126-35 provides that no career State employee subject to the State Personnel Act shall be discharged, suspended or demoted for disciplinary reasons, except for just cause.
3. N.C.G.S. §126 states that in contested cases pursuant to Chapter 150B of the General Statutes, the burden of showing that a career State employee subject to the State Personnel Act was discharged, suspended, or demoted for just cause rests with the department or agency employer.
4. The responsible party for the burden of proof must carry that burden by a greater weight or preponderance of the evidence. Black's Law Dictionary cites that "preponderance means something more than weight; it denotes a superiority of weight, or outweighing." The finder of fact cannot properly act upon the weight of evidence, in favor of the one having the *onus*, unless it overbear, in some degree, the weight upon the other side.
5. A career state employee may be discharged for just cause. *Gainey v. N.C. Dept. of Justice*, 121 N.C. App. 253, 465 S.E.2d 36 (1996) "Just cause may result either from unacceptable job performance or unacceptable personal conduct." *Souther v. New River Area Mental Health Development Disabilities and Substance Abuse*, 142 N.C. App. 1, 541 S.E.2d 750, (2001).
6. There are two bases for the discipline or dismissal of employees under the statutory standard for "just cause" as set out in G.S. 126-35. These two bases are: (1) Discipline or dismissal imposed on the basis of unsatisfactory job performance, including grossly inefficient job performance. (2) Discipline or dismissal imposed on the basis of unacceptable personal conduct. 25 N.C.A.C. 1J. 0604
7. Either unsatisfactory or grossly inefficient job performance or unacceptable personal conduct as defined in 25 N.C.A.C. 1J. 0614 constitute just cause for discipline or dismissal. The categories are not mutually exclusive, as certain actions by employees may fall into both categories, depending upon the facts of each case. No disciplinary action shall be invalid solely because the disciplinary action is labeled incorrectly. 25 N.C.A.C. 1J. 0604

8. The North Carolina Administrative Code provides that an employee may be dismissed for a current incident of unacceptable personal conduct. Further, under the progressive schedule of discipline set out in the State Personnel Manual, two active written warnings and an unresolved incident of unacceptable personal conduct or unsatisfactory job performance if found occurring, may also give rise to discharge for unsatisfactory job performance

9. Unsatisfactory Job Performance is defined as work-related performance that fails to satisfactorily meet job requirements as specified in the relevant job description, work plan, or as directed by the management of the work unit or agency. 25 N.C.A.C. 1J. 0614.

10. In order to be dismissed for a current incident of unsatisfactory job performance an employee must first receive . . . one or more written warnings followed by a warning or other disciplinary action which notifies the employee that failure to make the required performance improvements may result in dismissal. 25 N.C.A.C. 1J. 0605.

11. Grossly Inefficient Job Performance is defined as a type of unsatisfactory job performance that occurs in instances in which the employee fails to satisfactorily perform job requirements as specified in the job description, work plan, or as directed by the management of the work unit or agency; and, that failure results in the creation of the potential for death or serious bodily injury to an employee(s) or to members of the public or to a person(s) over whom the employee has responsibility. 25 N.C.A.C. 01J .0614

12. Unacceptable Personal Conduct is conduct for which no reasonable person should expect to receive prior warning or the willful violation of known or written work rules. 25 N.C.A.C. 1J .0614 Employees may be dismissed for a current incident of unacceptable personal conduct, without any prior disciplinary action. 25 N.C.A.C. 1J. 0608.

13. In *North Carolina Department of Environment and Natural Resources, Division of Parks and Recreation v. Carroll*, 358 N.C. 649, 599 S.E.2d 888 (2004) the North Carolina Supreme Court stated: [D]etermining whether a public employer had just cause to discipline its employee requires two separate inquiries: first, whether the employee engaged in the conduct the employer alleges, and second, whether that conduct constitutes just cause for [the disciplinary action taken]. citing *Sanders v. Parker Drilling Co.*, 911 F.2d 191 (9th Cir. 1990), *cert. denied*, 500 U.S. 917, 114 L. Ed. 2d 101 (1991)

14. Though Petitioner's actions with regard to signing out the van deviated from the Vehicle Checkout policies, such action should not constitute an offense from which disciplinary action should be taken. The van is an agency assigned vehicle and as such the agency should have on file those individuals and their licenses who are authorized to drive the agency assigned van. As a safeguard when an individual checks out a van, if another is to drive the vehicle (such as the individual known to be in charge of the trip), the clerk assigning out the keys may ask for a copy of the driver's license of that individual. If they do not ask, one is reasonable in presuming the clerk has the license on file.

15. In accordance with N.C. Gen. Stat. §150B-33(b) an administrative law judge may, "Determine that a rule as applied in a particular case is void because (1) it is not within the statutory authority of the agency, (2) is not clear and unambiguous to persons it is intended to direct, guide, or assist, or (3) is not reasonably necessary to enable the agency to fulfill a duty delegated to it by the General Assembly." As such, the Undersigned has determined that the actions regarding the signing out of the van should not and are not properly considered in the Petitioner's termination action.

16. Petitioner's dismissal letter does further cite that Petitioner had received two prior written warnings and was cited for another incident involving neglect of a resident as just cause for termination.

17. Patient M.C. was at risk for aspiration and had specific guidelines in place which required close supervision during meals to ensure that she took small bites, ate at a slow pace, and did not grab food intended for someone else's consumption. As such, the staff was required to prompt M.C. after each bite to swallow two times. Petitioner did not remain at M.C.'s table during the meal, and Bryan observed M.C. "shoveling" food into her mouth while Petitioner stepped away from the table. In addition, Petitioner gave M.C. fruit when it was not on her dining card. Petitioner's actions violated M.C.'s dining guidelines. These guidelines had been reviewed with the staff caring for M.C. several times, and were routinely placed on the table during M.C.'s meals.

18. Petitioner's Performance Management Work Plan required Petitioner to adhere to programs and policies to ensure appropriate treatment of the residents, and to demonstrate appropriate work performance and behaviors. By failing to adhere to M.C.'s dining guidelines, Petitioner failed to carry out her job duties and responsibilities which were necessary to maintain M.C.'s physical health, safety and well-being as required by her PMWP and Murdoch Center policy.

19. Petitioner's conduct constituted a third incident of unsatisfactory job performance having received two prior written warnings within the year of the third incident, both prior warnings advising her that her failure to implement individual programs or to follow policies and procedures could result in further disciplinary action up to and including termination.

20. Petitioner's actions were not only in disregard of M.C.'s dining guidelines and in violation of known work rules, but were also, and in the alternative, constituted grossly inefficient job performance by putting M.C. at risk for serious bodily injury.

21. State Personnel Commission rules provide that dismissal on the basis of grossly inefficient job performance is administered in the same manner as for unacceptable personal conduct. Employees may be dismissed on the basis of a current incident of grossly inefficient job performance without any prior disciplinary action. Therefore, disregarding the van incident as cited in Petitioner's termination letter, Petitioner's dismissal for the personal conduct incident involving M.C., was proper on two grounds, unsatisfactory job performance, and/or, grossly inefficient job performance, either of which or together provide cause for Respondent's action.

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the Undersigned makes the following:

DECISION

The Undersigned finds and holds that Petitioner was discharged from her employment with Respondent for unsatisfactory job performance which is just cause for termination. The Respondent has carried its burden of proof by a greater weight of the evidence that the dismissal of Petitioner was lawful and in accordance with the applicable State standards. Respondent did not act erroneously, arbitrarily, capriciously or otherwise prejudice Petitioner's rights

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this decision, and to present written arguments to those in the agency who will make the final decision. N. C. Gen. Stat. § 150B-36(a).

In accordance with N.C. Gen. Stat. § 150B-36 the agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence. For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the agency in not adopting the finding of fact. For each new finding of fact made by the agency that is not contained in the Administrative Law Judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency in making the finding of fact.

The agency that will make the final decision in this case is the North Carolina State Personnel Commission. State Personnel Commission procedures and time frames regarding appeal to the Commission are in accordance with Appeal to Commission, Section 0.0400 *et seq.* of Title 25, Chapter 1, SubChapter B of the North Carolina Administrative Code (25 NCAC 01B .0400 *et seq.*).

IT IS SO ORDERED.

This the 11th day of January, 2008.

Augustus B. Elkins II
Administrative Law Judge