

NORTH CAROLINA REGISTER

VOLUME 23 • ISSUE 20 • Pages 2016 - 2044

April 15, 2009

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PUBLISHED BY

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Contact List for Rulemaking Questions or Concerns

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

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

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Eddie Speas eddie.speas@nc.gov
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116 West Jones Street
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Legislative Process Concerning Rule-making

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

contact: Karen Cochrane-Brown, Staff Attorney karen@ncleg.net
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County and Municipality Government Questions or Notification

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

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

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

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NORTH CAROLINA REGISTER
 Publication Schedule for January 2009 – December 2009

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
23:13	01/02/09	12/08/08	01/17/09	03/03/09	03/20/09	05/01/09	05/2010	09/29/09
23:14	01/15/09	12/19/08	01/30/09	03/16/09	03/20/09	05/01/09	05/2010	10/12/09
23:15	02/02/09	01/09/09	02/17/09	04/03/09	04/20/09	06/01/09	05/2010	10/30/09
23:16	02/16/09	01/26/09	03/03/09	04/17/09	04/20/09	06/01/09	05/2010	11/13/09
23:17	03/02/09	02/09/09	03/17/09	05/01/09	05/20/09	07/01/09	05/2010	11/27/09
23:18	03/16/09	02/23/09	03/31/09	05/15/09	05/20/09	07/01/09	05/2010	12/11/09
23:19	04/01/09	03/11/09	04/16/09	06/01/09	06/22/09	08/01/09	05/2010	12/27/09
23:20	04/15/09	03/24/09	04/30/09	06/15/09	06/22/09	08/01/09	05/2010	01/10/10
23:21	05/01/09	04/09/09	05/16/09	06/30/09	07/20/09	09/01/09	05/2010	01/26/10
23:22	05/15/09	04/24/09	05/30/09	07/14/09	07/20/09	09/01/09	05/2010	02/09/10
23:23	06/01/09	05/08/09	06/16/09	07/31/09	08/20/09	10/01/09	05/2010	02/26/10
23:24	06/15/09	05/22/09	06/30/09	08/14/09	08/20/09	10/01/09	05/2010	03/12/10
24:01	07/01/09	06/10/09	07/16/09	08/31/09	09/21/09	11/01/09	05/2010	03/28/10
24:02	07/15/09	06/23/09	07/30/09	09/14/09	09/21/09	11/01/09	05/2010	04/11/10
24:03	08/03/09	07/13/09	08/18/09	10/02/09	10/20/09	12/01/09	05/2010	04/30/10
24:04	08/17/09	07/27/09	09/01/09	10/16/09	10/20/09	12/01/09	05/2010	05/14/10
24:05	09/01/09	08/11/09	09/16/09	11/02/09	11/20/09	01/01/10	05/2010	05/29/10
24:06	09/15/09	08/24/09	09/30/09	11/16/09	11/20/09	01/01/10	05/2010	06/12/10
24:07	10/01/09	09/10/09	10/16/09	11/30/09	12/21/09	02/01/10	05/2010	06/28/10
24:08	10/15/09	09/24/09	10/30/09	12/14/09	12/21/09	02/01/10	05/2010	07/12/10
24:09	11/02/09	10/12/09	11/17/09	01/02/10	01/20/10	03/01/10	05/2010	07/30/10
24:10	11/16/09	10/23/09	12/01/09	01/15/10	01/20/10	03/01/10	05/2010	08/13/10
24:11	12/01/09	11/05/09	12/16/09	02/01/10	02/22/10	04/01/10	05/2010	08/28/10
24:12	12/15/09	11/20/09	12/30/09	02/15/10	02/22/10	04/01/10	05/2010	09/11/10

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.



U.S. Department of Justice
Civil Rights Division

CC:MSR:RT:par
DJ 166-012-3
2009-0117

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

March 11, 2009

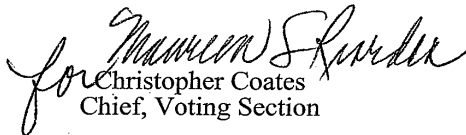
David A. Holec, Esq.
City Attorney
P.O. Box 7207
Greenville, North Carolina 27835-7207

Dear Mr. Holec:

This refers to two annexations (Ordinance Nos. 08-103 and 08-113 (2008)) and their designation to districts for the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on January 16, 2009.

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

Sincerely,


Christopher Coates
Chief, Voting Section

GUIDELINES ON VOTER REGISTRATION

The North Carolina State Board of Elections by publication in the North Carolina Register pursuant to GS § 163-82.12, gives notice of adoption of new voter registration guidelines:

1) HANDLING INCOMPLETE VOTER REGISTRATION APPLICATIONS

a) General Statute 163-82.2 provides that the Executive Director of the State Board of Elections is the “Chief State Election Official” of North Carolina for purposes of P.L. 103-31, The National Voter Registration Act of 1993 (hereinafter “NVRA”). As such the Executive Director is responsible for the coordination of State responsibilities under the NVRA. The NVRA and North Carolina statute, in conjunction with 42 U.S.C. 15483 (HAVA), provides for a mail voter registration application. According to state and federal law, the North Carolina mail voter registration application is designed to elicit essential information from those individuals who are seeking to register to vote. The essential information that must be received from a voter registration applicant includes the following:

- (1) Signature (42 USC § 1973gg-7(b)(2); GS § 163-82.6)
- (2) Response to checkbox question, “Are you a citizen of the United States of America?” (42 USC § 15483(b)(4); GS § 163-82.4)

Counties may only suspend applications where a response to the citizenship checkbox has been omitted if the applicant did not list a place of birth in the United States. If the applicant did indicate a place of birth in the United States, but failed to check the citizenship box, the county board shall accept the place of birth as evidence that the applicant is a citizen and process the voter registration application accordingly.

- (3) Response to checkbox question: “Will you be 18 years of age on or before election day?” (42 USC § 15483(b)(4); GS § 163-82.4)

Counties may only suspend applications where a response to the age checkbox has been omitted if the applicant did not indicate their date of birth. If the applicant did indicate their date of birth, the county board shall accept the date of birth as evidence that the applicant is at least 18 years old and process the voter registration application accordingly.

- (4) Residence address (GS § 163-82.4)
- (5) Name (GS § 163-82.4)
- (6) Date of birth (GS § 163-82.4)

b) If an applicant for voter registration omits any essential element as outlined above on a voter registration application, then the county board of elections is required to notify the applicant of the omission and provide an opportunity for the applicant to correct the application. Pursuant to N.C.G.S. § 163-82.4, a voter has until 5:00 P.M. on the day before the county canvass to complete any required item on their voter registration form in order to be considered an eligible voter.

c) Administratively, applications that are awaiting completion cannot be fully processed in the Statewide Elections Information Management System (SEIMS). Under the statutory authority referenced above, the Executive Director has outlined administrative guidelines for the handling of incomplete voter registration applications. These administrative guidelines are guided by state and federal law, including the list maintenance requirements under the NVRA and GS § 163-82.14. In setting out the guidelines below, it is the premise of the State Board of Elections that eligible citizens should be afforded every opportunity to become North Carolina registered voters. Voter registration applicants who omit required information from their registration applications shall be given ample chances to correct the omission. The guidelines for handling incomplete applications are as follows:

- (1) **Notice of Omission of Required Element:** As long as the county has enough information to identify and contact the applicant, the individual should be notified of the deficiency of a required element on their voter registration application. County boards are required to notify the applicant in writing that their applications are incomplete. While county boards are encouraged to send the notice as soon as practicable, they must send the notice no later than ten (10) days from the county board’s receipt of the application. The notice shall clearly state that the applicant has until 5:00 P.M. on the day before the canvass of the current election, as defined in GS § 163-55(c), to complete their voter registration application. If and when the applicant satisfies the missing requirement, the county board of elections will then continue the normal processing of the application in the statewide voter registration database. Incomplete applications that are awaiting required elements will be placed in a holding queue of the statewide voter

registration database, the Incomplete Queue (hereafter “I-Queue”). County boards of elections to the highest degree reasonably possible shall attempt to contact applicants with incomplete applications and provide them with the opportunity to register to vote.

- (2) **Requirement of Second Notice of Omission of Required Element:** Forty-five (45) days prior to a general election or general municipal election, county boards should review the applications in their I-Queue and mail, if enough information is available, a second notice to any applicant whose first notice was mailed more than sixty (60) days before the election. The notice shall clearly state that the applicant has until 5:00 P.M. on the day before the canvass of the current election, as defined in GS § 163-55(c) to complete their voter registration application. The notice shall also advise the applicant of the option of registering to vote in person at a one-stop absentee voting site pursuant to GS § 82.6A. If a person with a pending incomplete voter registration application subsequently registers at a one-stop voting site, the incomplete application can thereafter be removed from the I-Queue.
 - (3) **Removal of Application:** If a new voter registration applicant does not complete all required elements by 5:00 P.M. on the day before the canvass of the current election, as defined in GS § 163-55(c), for which they would have otherwise met the registration deadline, then the county board of elections shall:
 - (a) Remove the application from the Incomplete Queue
 - (b) Applications that are removed from the I-Queue due to failure to correct the omission of a required element will be archived and placed in an Incomplete-Archive Queue (hereafter “Archive Queue”).
 - (c) If an applicant whose registration application is pending in the Archive Queue subsequently registers or provides the missing information that will complete his application, then the pending application will be removed from the Archive Queue.
 - (d) Incomplete applications that remain in the Archive Queue through two elections for federal office will be removed from the statewide voter registration database.
 - (4) **Handling of Changes to Voter Registration:** While an existing voter’s registration record should contain all required information, if an existing voter attempts to update his record within the county, but fails to sign the update application, then the voter should be notified and mailed a copy of his original update application. If the voter does not sign and return the application by 5:00 P.M. on the day before the current election, for which they would have otherwise met the registration deadline, then the voter’s record shall remain unchanged.
- d) Initial Incomplete Queue Clean Up -- Applicants with incomplete applications that are currently in the I-Queue will be sent special notices by the State Board of Elections that will require the applicant to respond to the appropriate county board of elections within 30 days. If the applicant fails to provide the missing information that is preventing the proper processing of their application before the expiration of the 30-day period, the application will be placed in the Archive Queue and will remain therein for two elections for federal office as outlined above.
 - e) Provisional Research -- County boards of elections must search the pool of incomplete applications in both the I-Queue and Archive Queue for their county when conducting their provisional research. If any provisional voter is found to be in either of the incomplete queues, as long as they have provided the previously omitted element in their provisional applications, then their provisional ballot shall be counted pursuant to GS § 163-82.4(e). The provisional application and ballot would only be valid in the same county in which a voter has a pending incomplete application. Any necessary verification mailings shall be conducted.

2) TRANSMITTING IMPROPERLY DIRECTED VOTER REGISTRATION APPLICATIONS

- a) County boards of elections that receive voter registration applications that have been improperly directed to the wrong county shall:
 - (1) If the applicant resides in another county within North Carolina, the county board who receives the misdirected application shall mail the application to the correct county. If the misdirected application is received within seven (7) days of the registration deadline for a primary or general election during even-numbered years, then in addition to mailing the original, the misdirected application must be transmitted electronically to the correct county board of elections.

- (2) If the applicant resides in another state, the county board that receives the misdirected application shall mail the application to the chief election official in the state in which the applicant actually resides.

3) PROCEDURES FOR USING THE NATIONAL CHANGE OF ADDRESS PROGRAM

- a) Effective November 23, 2008, the post office revised the Move Update Standard in its Domestic Mail Manual (DMM). According to the new policy, discounted first-class mailings and all standard mailings, are subject to the Move Update Standard. Essentially, prior to mailing, all addresses must be checked by using an approved updating method. The update must have taken place within 95 days of the mailing. The USPS permits various methods of updating addresses; however, based on the nature of our agency, the National Change of Address system (NCOA) appears to be the only viable method.
- b) The following types of mailings are subject to the Move Update Standard:
 - (1) Precinct or Polling change notices;
 - (2) No contact notices;
 - (3) Confirmations sent to existing addresses in SEIMS; or
 - (4) Other administrative mailings sent to existing addresses in SEIMS.
- c) Addresses that are newly obtained directly from voters on voter registration applications/update forms or by some other approved method are not subject to the Move Update Standard. The types of mailings that would not be subject to the Move Update Standard include:
 - (1) Verifications sent to voters by county boards of elections as a result of new applications for voter registration;
 - (2) Verifications sent to voters by county boards of elections as a result of address or name changes initiated by voters;
or
 - (3) Address Confirmation Cards sent to a voter's forwarding address as a result of a county board receiving from the postal service a returned verification notice that included a forwarding address.
- d) Each quarter (January, April, July, and October), the State Board of Elections, will run the statewide voter registration database against the National Change of Address Program to determine if any registered voters have changed their address with the United States Post Office. Temporary address changes will be excluded. The State Board of Elections will make available to the county boards of elections a report showing any voter record with a reported change of address with the United States Postal Service. The State Board of Elections will report those address changes that return as an exact or probable match. The county boards of elections will be required to check the quarterly NCOA report to determine if any registered voters within their county have likely moved. If it is determined that any registered voter is likely to have moved, then the county board of elections shall send a NCOA authentication mailing to the voter at his new address under the following guidelines:
 - (1) If the NCOA match returns a new address within the voter's existing county, then the county board is required to send a NCOA mailing to the registered voter within 30 days asking the voter to confirm whether he has moved within the county. The voter will be asked to sign and return the NCOA mailing confirming the address change before a change of address in the voter registration database can be effected. If and when the voter returns the NCOA mailing, then the change will be made to the voter record. If the voter does not return the NCOA mailing within 30 days, or the mailing is returned undeliverable, then the county board shall then send a forwardable address confirmation mailing to the voter's existing address and follow the appropriate list maintenance procedures;
 - (2) If the NCOA match returns a new address within a county in which the voter is not currently registered, then within 30 days, the board of elections for the county in which the voter is currently registered shall notify the voter that if he has moved, he is no longer eligible to vote in his old county and must register to vote in his new county of residence. The notice shall include a voter registration application. No change will be made to the voter registration database until such time that the voter registers in a new county or returns the NCOA mailing confirming the voter's address. If the voter does not register to vote in the new county within 30 days, or return the NCOA mailing within 30 days, or the NCOA mailing is returned as undeliverable, then the county board shall then send a forwardable address confirmation mailing to the voter's existing address and follow the appropriate list maintenance procedures.

- (3) If the NCOA match returns a new address within a new state, then the voter's current county board of elections will be required to send a NCOA mailing within 30 days asking the voter to confirm whether he has moved outside of North Carolina. The voter will be asked to sign and return the mailing in order to authenticate the address change. If and when the voter returns the NCOA mailing, then the voter will be removed as a voter in the county of his previous residence. If the voter does not return the NCOA mailing within 30 days, or the mailing is returned as undeliverable, then the county board shall then send a forwardable address confirmation mailing to the voter's existing address, and follow the appropriate list maintenance procedures.

4) LEGACY DATES OF BIRTH

The records of many registered voters in the Statewide Voter Registration database predate the requirement that a date of birth is needed to register to vote. The records of these voters contain dates of birth with 01/01/1900. Unless the voter submits a change of information to their voter record, these default legacy dates

**SUMMARY OF NOTICE OF
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY
Wal-Mart Stores East, LP, Prospective Developer**

Pursuant to N.C.G.S. § 130A-310.34, Wal-Mart Stores East, LP has filed with the North Carolina Department of Environment and Natural Resources (“DENR”) a Notice of Intent to Redevelop a Brownfields Property (“Property”) in Charlotte, Mecklenburg County, North Carolina. The Property consists of one parcel comprising a total of approximately 18.79 acres, south of East Independence Boulevard and west of Pierson Drive (site of the Amity Gardens Shopping Center) in downtown Charlotte. Environmental contamination exists on the Property in soil and groundwater. Future use of the Property under the Brownfield Agreement is limited to retail and parking uses. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Wal-Mart Stores East, LP, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) a description of completed and 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 Charlotte-Mecklenburg Public Library, 310 N. Tryon St., Charlotte, NC 28202 by contacting Joyce Reimann at that address or at (704) 416-0152 or at jreimann@plcmc.org; 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, and/or requests for a public meeting, 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 Wal-Mart Stores East, LP, as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the 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 April 16, 2009. 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

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

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

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Health Service Regulation intends to amend the rules cited as 10A NCAC 14C .2601-.2602.

Proposed Effective Date: August 1, 2009

Public Hearing:

Date: June 2, 2009

Time: 10:00 a.m.

Location: Room 201 Council Building, NC Division of Health Service Regulation, Dorothea Dix Campus, 701 Barbour Drive, Raleigh, NC 27603

Reason for Proposed Action: *The Certificate of Need rules are being amended in response to the agency's receipt of a petition for rule-making. The amendments would require applicants for a CON to apply for designation to either demonstrate that existing involuntary beds within the service area are operating at below their effective capacity levels and could therefore serve more involuntary patients or agree to designate the proposed new beds as being available to involuntary patients. This will enable the CON Section to consider whether the needs of this important part of the psychiatric inpatient population are being served.*

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, Division of Health Service Regulation, 2701 Mail Service Center, Raleigh, NC 27699-2701, fax (919) 733-2757, email DHSR.RulesCoordinator@ncmail.net

Comment period ends: June 15, 2009

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 919-431-3000.

Fiscal Impact:

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

CHAPTER 14 – DIRECTOR, DIVISION OF HEALTH SERVICE REGULATION

SUBCHAPTER 14C – CERTIFICATE OF NEED REGULATIONS

SECTION .2600 – CRITERIA AND STANDARDS FOR PSYCHIATRIC BEDS

10A NCAC 14C .2601 DEFINITIONS

The definitions in this Rule will apply to all rules in this Section:

- (1) "Psychiatric Beds" means beds in:
 - (a) psychiatric units of general hospitals licensed under G.S. Chapter 131E-77, Article 5;
 - (b) free-standing psychiatric hospitals licensed under G.S. Chapter 122C-23, Article 2.
- (2) "Involuntary Admissions" means those persons admitted under the involuntary commitment procedure defined in G.S. Chapter 122, Article 5, Part 7.
- (3) "Service Area" means ~~the geographical area from which the proponent proposes to draw its clients.~~ the counties in the Mental Health Planning Area, as defined in the applicable State Medical Facilities Plan.
- (4) "Professional Staff" means any employee who provides treatment or habilitation services to a patient receiving psychiatric treatment in a general hospital, psychiatric hospital or inpatient unit of a community mental health center. This includes, but is not necessarily limited to, physicians licensed to practice medicine in North Carolina, psychiatric nurses, practicing psychologists or psychiatric social workers.

Authority G.S. 131E-177(1); 131E-183(b).

10A NCAC 14C .2602 INFORMATION REQUIRED OF APPLICANT

- (a) An applicant proposing to establish new psychiatric beds shall project resident origin by percentage by county of residence. All assumptions and the methodology for projecting occupancy shall be stated.
- (b) An applicant proposing to establish new psychiatric beds shall project an occupancy level for the entire facility for the first eight calendar quarters following the completion of the proposed project, including average length of stay. All assumptions and the methodology for projecting occupancy shall be stated.
- (c) The applicant shall provide documentation of the percentage of patients discharged from the facility that are readmitted to the facility at a later date.
- (d) An applicant proposing to establish new psychiatric beds shall describe the general treatment plan that is anticipated to be used by the facility and the support services to be provided, including provisions that will be made to obtain services for patients with a dual diagnosis of psychiatric and chemical dependency problems.
- (e) The applicant shall document the attempts made to establish working relationships with the health care providers and others that are anticipated to refer clients to the proposed psychiatric beds.
- (f) The applicant shall provide copies of any current or proposed contracts or agreements or letters of intent to develop contracts or agreements for the provision of any services to the clients served in the psychiatric facility.
- (g) The applicant shall document that the following items are currently available or will be made available following completion of the project:
 - (1) admission criteria for clinical admissions to the facility or unit;
 - (2) emergency screening services for the targeted population which shall include services for handling emergencies on a 24-hour basis or through formalized transfer agreements;
 - (3) client evaluation procedures, including preliminary evaluation and establishment of an individual treatment plan;
 - (4) procedures for referral and follow-up of clients to necessary outside services;
 - (5) procedures for involvement of family in counseling process;
 - (6) comprehensive services which shall include individual, group and family therapy; medication therapy; and activities therapy including recreation;
 - (7) educational components if the application is for child or adolescent beds;
 - (8) provision of an aftercare plan; and
 - (9) quality assurance/utilization review plan.
- (h) An applicant proposing to establish new psychiatric beds shall specify the primary site on which the facility will be located. If such site is neither owned by nor under option by the applicant, the applicant shall provide a written commitment to pursue acquiring the site if and when a certificate of need application is approved, shall specify at least one alternate site on which the facility could be located should acquisition efforts

relative to the primary site ultimately fail, and shall demonstrate that the primary site and alternate sites are available for acquisition.

(i) An applicant proposing to establish new psychiatric beds shall provide documentation to show that the services will be provided in a physical environment that conforms with the requirements in 10A NCAC 27G .0300.

(j) An applicant proposing to establish new adult or child/adolescent psychiatric beds shall provide:

- (1) documentation that adult or child/adolescent inpatient psychiatric beds designated for involuntary admissions in the licensed hospitals that serve the proposed mental health planning area were utilized at less than 70 percent for facilities with 20 or more beds, less than 65 percent for facilities with 10 to 19 beds, and less than 60 percent for facilities with one to nine beds in the most recent 12 month period prior to submittal of the application; or
- (2) a written commitment that the applicant will accept involuntary admissions and will meet the requirements of 10A NCAC 26C .0103 for designation of the facility, in which the new psychiatric beds will be located, for the custody and treatment of involuntary clients, pursuant to G.S. 122C-252.

Authority G.S. 131E-177(1); 131E-183.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Dental Examiners intends to adopt the rule cited as 21 NCAC 16G .0106, amend the rule cited as 21 NCAC 16H .0203, and repeal the rule cited as 21 NCAC 16D .0201.

Proposed Effective Date: August 1, 2009

Public Hearing:

Date: April 30, 2009

Time: 6:00 p.m.

Location: Board Office, 507 Airport Blvd., Ste. 105, Morrisville, NC 27560

Reason for Proposed Action:

21 NCAC 16D .0201 – The Dental Board proposes to repeal this rule to eliminate the requirement that instructors take and pass the North Carolina licensure examination for dentists.

21 NCAC 16G .0106 – The Dental Board proposes to adopt this rule to permit dental hygiene schools to operate extension facilities and conduct off campus hygiene classes at Board approved sites, including non-profit health care facilities serving low income populations, state and county institutions with

resident populations, hospitals, state or county health departments and area health education centers.

21 NCAC 16H .0203 – The Dental Board proposes to amend this rule to eliminate the requirement that coronal polishing courses be offered by a community college.

Procedure by which a person can object to the agency on a proposed rule: Members of the public may object by sending written objections to Bobby D. White, Chief Operations Officer, N.C. Board of Dental Examiners, 507 Airport Boulevard, Ste. 105, Morrisville, NC 27560.

Comments may be submitted to: Bobby D. White, 507 Airport Blvd., Ste. 105, Morrisville, NC 27560

Comment period ends: June 15, 2009

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 919-431-3000.

Fiscal Impact:

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

SUBCHAPTER 16D - PROVISIONAL LICENSURE: DENTISTS

SECTION .0200 - EXAMINATIONS

21 NCAC 16D .0201 CLINICAL EXAMINATION

Applicants for an instructor's license shall be required to take and pass the licensure examination for dentists.

Authority G.S. 90-28; 90-29.5; 90-48.

SUBCHAPTER 16G – DENTAL HYGIENISTS

SECTION .0100 – DENTAL HYGIENISTS

21 NCAC 16G. 0106 DENTAL HYGIENE SCHOOL EXTENSION FACILITIES AND OFF CAMPUS CLASSES

(a) Dental hygiene schools may operate extension facilities and conduct off-campus hygiene classes in which dental hygiene services are provided to members of the public at Board

approved sites, including non-profit health care facilities serving low income populations, state and county institutions with resident populations, hospitals, state or county health department and area health education centers.

(b) Dental hygiene schools which operate extension facilities or conduct hygiene classes off-campus must notify the Dental Board of the location and nature of each facility or off campus course location, the names of the students assigned thereto, and the names and qualifications of all instructors functioning therein.

(c) No student enrolled in an off-campus dental hygiene class or extension facility may receive fees, compensation or remuneration of any kind for providing dental hygiene services in accordance with G.S. 90-29(c)(4) or G.S. 90-233(c)(2).

Authority G.S. 90-29(c)(4); G.S. 90-233(c)(2).

SUBCHAPTER 16H - DENTAL ASSISTANTS

SECTION .0200 – PERMITTED FUNCTIONS OF DENTAL ASSISTANT

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

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

- (1) Take impressions for study models and opposing casts which will not be used for construction of dental appliances, but which may be used for the fabrication of adjustable orthodontic appliances, nightguards and the repair of dentures or partials;
(2) Apply sealants to teeth that do not require mechanical alteration prior to the application of such sealants, provided a dentist has examined the patient and prescribed the procedure;
(3) Insert matrix bands and wedges;
(4) Place cavity bases and liners;
(5) Place and/or remove rubber dams;
(6) Cement temporary restorations using temporary cement;
(7) Apply acid etch materials/rinses;
(8) Apply bonding agents;
(9) Remove periodontal dressings;
(10) Remove sutures;
(11) Place gingival retraction cord;
(12) Remove excess cement;
(13) Flush, dry and temporarily close root canals;
(14) Place and remove temporary restorations;
(15) Place and tie in or untie and remove orthodontic arch wires;
(16) Insert interdental spacers;

- (17) Fit (size) orthodontic bands or brackets;
- (18) Apply dentin desensitizing solutions;
- (19) Perform extra-oral adjustments which affect function, fit or occlusion of any temporary restoration or appliance;
- (20) Initially form and size orthodontic arch wires and place arch wires after final adjustment and approval by the dentist;
- (21) Polish the clinical crown using only;
 - (A) a hand-held brush and appropriate polishing agents; or
 - (B) a combination of a slow speed handpiece (not to exceed 10,000 rpm) with attached rubber cup or bristle brush, and appropriate polishing agents.

(b) A Dental Assistant II must complete a course in coronal polishing consisting of at least seven hours before using a slow speed handpiece with rubber cup or bristle brush attachment. ~~The course must be offered by a community college.~~ A polishing procedure shall in no way be represented to the patient as a prophylaxis and no specific charge shall be made for such unless the dentist has performed an evaluation for calculus, deposits, or accretions and a dentist or dental hygienist has removed any substances detected.

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

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of Administrative Hearings intends to adopt the rules cited as 26 NCAC 03 .0401-.0403.

Proposed Effective Date: August 1, 2009

Public Hearing:

Date: June 15, 2009

Time: 9:00 a.m.

Location: 1711 New Hope Church Road, Raleigh, NC 27609

Reason for Proposed Action: The General Assembly enacted S.L. 2007, s. 10.15A(h1) as rewritten by S.L. 2008-118, s. 3.13, effective July 1, 2008. Section 10.15A(h2) provides "(2) Simple Procedures...in order to complete the case as quickly as possible." Federal guidelines require that these cases be decided within 90 days from the filing of the petition, including the final agency decision. Therefore, the normal timeframes for hearings with OAH are considerably shortened. The simplified procedures will allow OAH to rapidly proceed to hearing in an expeditious manner while safeguarding the procedural and substantive due process rights of the parties to an impartial hearing.

Procedure by which a person can object to the agency on a proposed rule: Written objections to the rules should be sent to Don Overby, Administrative Law Judge, Office of Administrative

Hearings, 1711 New Hope Church Road, Raleigh, NC 27609 and postmarked no later than June 15, 2009. The objection letter should clearly state which rule the objection is to and the reason for the objection.

Comments may be submitted to: Don Overby, Administrative Law Judge, 1711 New Hope Church Road, Raleigh, NC 27609, email Don.Overby@oah.nc.gov

Comment period ends: June 15, 2009

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 919-431-3000.

Fiscal Impact:

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

CHAPTER 03 - HEARINGS DIVISION

SECTION .0400 – SIMPLIFIED PROCEDURES FOR MEDICAID APPLICANT AND RECIPIENT APPEALS

26 NCAC 03 .0401 HEARING PROCEDURES RULES

(a) The rules in 26 NCAC 03 .0100 apply to contested Medicaid cases commenced by Medicaid applicants or recipients under S.L. 2008-107, s. 10.15A.(h1) as rewritten by S.L. 2008-118, s. 3.13 except:

- (1) 26 NCAC 03 .0101(a);
- (2) 26 NCAC 03 .0102(3);
- (3) 26 NCAC 03 .0103(a);
- (4) 26 NCAC 03 .0104;
- (5) 26 NCAC 03 .0107;
- (6) 26 NCAC 03 .0108;
- (7) 26 NCAC 03 .0109;
- (8) 26 NCAC 03 .0112(b), (c), (e), (f), (g);
- (9) 26 NCAC 03 .0115;
- (10) 26 NCAC 03 .0117;
- (11) 26 NCAC 03 .0118;
- (12) 26 NCAC 03 .0120(e);
- (13) 26 NCAC 03 .0123;
- (14) 26 NCAC 03 .0124;
- (15) 26 NCAC 03 .0125; and

(16) 26 NCAC 03 .0127(a).

(b) Nothing in this Section affects discretionary powers granted to an administrative law judge as set out in G.S. 150B-33(b).

Authority G.S. 7A-751(a); S.L. 2008-107, s. 10.15A.(h1) as rewritten by S.L. 2008-118, s. 3.13.

**26 NCAC 03 .0402 MEDIATION SETTLEMENT
CONFERENCE RULES**

The rules in 26 NCAC 03 .0200 do not apply to contested Medicaid cases commenced by Medicaid applicants or recipients under S.L. 2008-107, s. 10.15A.(h1) as rewritten by S.L. 2008-118, s. 3.13.

Authority G.S. 7A-751(a); S.L. 2008-107, s. 10.15A.(h1) as rewritten by S.L. 2008-118, s. 3.13.

**26 NCAC 03 .0403 EXPEDITED HEARINGS
PROCEDURES FOR COMPLEX CONTESTED CASES**

The rules in 26 NCAC 03 .0300 do not apply to contested Medicaid cases commenced by Medicaid applicants or recipients under S.L. 2008-107, s. 10.15A.(h1) as rewritten by S.L. 2008-118, s. 3.13.

Authority G.S. 7A-751(a); S.L. 2008-107, s. 10.15A.(h1) as rewritten by S.L. 2008-118, s. 3.13.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday, March 19, 2009 9:00 a.m. at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3100. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Jim R. Funderburke - 1st Vice Chair
David Twiddy - 2nd Vice Chair
Keith O. Gregory
Jerry R. Crisp
Jeffrey P. Gray

Appointed by House

Jennie J. Hayman - Chairman
John B. Lewis
Clarence E. Horton, Jr.
Daniel F. McLawhorn
Curtis Venable

COMMISSION COUNSEL

Joe Deluca (919)431-3081
Bobby Bryan (919)431-3079

RULES REVIEW COMMISSION MEETING DATES

April 16, 2009 May 21, 2009
June 18, 2009 July 16, 2009

RULES REVIEW COMMISSION

March 19, 2009

MINUTES

The Rules Review Commission met on Thursday, March 19, 2009, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Jerry Crisp, Jim Funderburk, Jeff Gray, Jennie Hayman, Clarence Horton, Dan McLawhorn and David Twiddy.

Staff members present were: Joseph DeLuca and Bobby Bryan, Commission Counsel; Angel Chen, Tammara Chalmers, and Dana Vojtko.

The following people were among those attending the meeting:

John Aldridge	Department of Justice
Jane Gilchrist	Department of Justice
Jim Burnette, Jr.	Department of Agriculture and Consumer Services
Patrick Jones	Department of Agriculture and Consumer Services
Ann Wall	Department of the Secretary of State
B. M. Brogden, Jr.	Department of the Secretary of State
Kevin O'Barr	Department of Labor
Wayne Woodard	Department of Justice
Nadine Pfeiffer	DHHS/Division of Health Service Regulation
Drexdal Pratt	DHHS/Division of Health Service Regulation
Nancy Hemphill	Medical Board
Christina Apperson	Medical Board
Mike Abraczinskas	DENR/Division of Air Quality
Gary Saunders	DENR/Division of Air Quality
John Hoomani	Department of Labor
Erin Gould	Department of Labor
Kevin Beauregard	Department of Labor
Katie Cornetto	Department of Public Instruction
Tammy Denning	Department of Transportation

Amanda Reeder	DHHS/Division of Mental Health, Developmental Disabilities and Substance Abuse Services
Mark D. Selph	Licensing Board for General Contractors
Andrea Borden	DHHS/Division of Mental Health, Developmental Disabilities and Substance Abuse Services
Gretchen Aycok	Department of Administration
Denise Stanford	Licensing Board for General Contractors
Nancy Pate	Department of Environment and Natural Resources
David McLeod	Department of Agriculture and Consumer Services
David Stokes	Wildlife Resources Commission
Joan Troy	Wildlife Resources Commission

APPROVAL OF MINUTES

The meeting was called to order at 9:01 a.m. with Mr. Funderburk presiding. He reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts as required by NCGS 138A-15(e). Vice Chairman Funderburk asked for any discussion, comments, or corrections concerning the minutes of the February 19, 2009 meeting. There were none and the minutes were approved as distributed.

FOLLOW-UP MATTERS

10A NCAC 13P .0905 – Medical Care Commission. The Commission approved the rewritten rule submitted by the agency.

10A NCAC 27G .0504 – Commission for Mental Health. The Commission after some discussion allowed the agency to withdraw its proposed amendments to this rule. Mr. McLawhorn initially moved to approve the withdrawal and approve the original rule. However it was decided that such action was unnecessary and that if the Commission took no action, the agency's request to withdraw the proposed amendment would be honored. The rule will continue in the NCAC in its current form.

Chairman Hayman arrived and presided over the remainder of the meeting.

12 NCAC 07D .0402, .0501 – Private Protective Services Board. No rewritten rules have been submitted and no action was taken.

15A NCAC 02D .1205, .1212 – Environmental Management Commission. The Commission objected to Rules .1205 and .1212 based on failure to comply with the Administrative Procedure Act. In Rule .1205(a)(4) page 2, lines 8-11, the agency requires the waste combustor to make reductions of at least 75% or to a level of 29 parts per million "whichever is more stringent." This is a change from the rule substantively approved by the RRC in February that allowed the combustor to emit at the level "whichever is less stringent." The language change relating to more or less stringent levels was based on a staff technical change request. Originally the rule did not have any provision as to which to comply with. The rule literally allowed the combustor to choose which to comply with. In most rules of this type where there are alternative compliance levels, the agency usually has specified the standard to make the compliance choice, and often it is "more stringent." The agency did clarify it by choosing language that in effect continued the choice that was then in the rule and allow the combustor to go with whatever level was less stringent. When the rule went back before the EMC in March the language and compliance requirement was reversed to "more stringent." That change amounts to a substantial change in the rule, which the previous change did not, by producing an effect that could not reasonably have been expected based on the proposed text of the rule. The agency in its original notice of text never proposed changing the choice the combustor had of which level to comply with. G.S. 150B-21.12(c) prohibits an agency from taking such action without republishing the rule change, taking comment, and holding a public hearing. This constitutes a failure to comply with the APA. The same condition and analysis applies to Rule .1212.

21 NCAC 14H .0105 – Board of Cosmetic Art Examiners. No rewritten rule has been submitted and no action was taken.

LOG OF FILINGS

Chairman Hayman presided over the review of the log of permanent rules.

All permanent rules were approved unanimously with the following exceptions:

Prior to the review of the permanent rules from the Criminal Justice Education and Training Standards Commission, Commissioner Gray recused himself and did not participate in any discussion or vote concerning the rules in Subchapters 09B and 09H because he is the registered lobbyist for the State Lodge of Fraternal Order of Police which actively lobbied for passage of the enabling legislation for the retired law enforcement officer concealed carry (implementation of federal law).

12 NCAC 09B .0205: Criminal Justice Education and Training Standards Commission - The Commission objected to this rule based on ambiguity. In (b)(5)(D), it is not clear what the topical areas and institutional hours are. The rule says eight hours in the area of physical fitness is required. Then apparently as a subunit of physical fitness 46 more hours is required. If the (i) and (ii) are not part of the 8 hours of required physical fitness, they should not be listed as sub-parts. If they are then the number of hours does not make sense. If (ii) is a topical area, it is not clear what "1 hour-3 days a week" means. This objection applies to existing language in the Rule.

12 NCAC 09B .0301: Criminal Justice Education and Training Standards Commission - The Commission objected to this rule based on ambiguity and lack of statutory authority. There is no authority cited for the agency to take any of the actions listed in paragraphs (e) and (f) against a person certified as an instructor. G.S. 17C-6 (a)(6) and (7) give the Commission the authority to establish minimum standards for instructors and to certify instructors who meet those standards. G.S. 17C-6(a)(8) gives the Commission the authority to investigate to determine if individuals are complying with the statutes. At no place is the Commission specifically given any authority to take any action against any person certified as an instructor. In addition G.S. 17C-11, entitled "Compliance; enforcement" only applies to criminal justice officers, not instructors. In addition, in (f)(5), it is not clear what is meant by "unprofessional personal conduct." This objection applies to existing language in the Rule.

Commissioners Crisp, Funderburk, and Twiddy voted for the motion to object to Rule .0205 and Rule .0301 and to approve the remainder of the rules in Subchapter 09B. Commissioners McLawhorn and Horton voted against the motion.

12 NCAC 09C .0306: Criminal Justice Education and Training Standards Commission - The Commission objected to the rule based on ambiguity. In (a)(2), it is not clear to whom an employing agency is to submit a fingerprint check. 12 NCAC 09B .0103 requires the agency to forward an applicant's fingerprints to the SBI to check against state and federal files, but it is not clear if that is the same as submitting a fingerprint check. It is also not clear what would constitute "up-to-date." This objection applies to existing language in the Rule.

12 NCAC 09C .0310: Criminal Justice Education and Training Standards Commission - This rule was withdrawn by the agency and re-filed for the next month's meeting.

12 NCAC 09H .0102: Criminal Justice Education and Training Standards Commission - The Commission objected to this rule based on ambiguity. In (a), it is not clear what is required by the requirement that qualified retired law enforcement officers qualify in accordance with the standards outlined in 12 NCAC 09E .0105(1). That rule tells what must be covered in a training course. It is not clear if this rule means that a course or courses must be taken or if something else is required.

13 NCAC 07F .0901: Department of Labor - The Commission approved this rule, however the Commission has received requests from more than 10 persons clearly requesting legislative review of the rule and therefore it is subject to a delayed effective date.

13 NCAC 07F .0903: Department of Labor - The Commission objected to this rule based on ambiguity. In (16), it is not clear what is meant by "nationally recognized certification requirements." If there are one or more organizations whose certifications are viewed as "nationally recognized" by the agency, perhaps they should be listed. Otherwise, how does one determine if the requirements are "nationally recognized?" In (56) and (75), it is not clear how to determine if a testing laboratory is "nationally recognized." In (67), it is not clear how to determine if an organization is "widely recognized" and "independent." In (78), it is not clear how to determine if an entity is "widely recognized."

13 NCAC 07F .0904: Department of Labor - The Commission objected to this rule based on ambiguity. In (b)(1)(A), and (E), because the definition of "nationally recognized accrediting agency" is unclear, it is unclear who can accredit. This also means that (c)(1)(A) and (B)(i) and (c)(2)(B) are unclear. In (c)(1)(B)(iii), it is not clear what is meant by "nationally recognized test development criteria." In (c)(2)(A), it is not clear what is meant by "nationally recognized test administration standards." In (c)(2)(C), it is not clear what is meant by "nationally recognized auditing standards." In (e)(2)(B), it is not clear how to determine if testing meets "industry recognized criteria."

13 NCAC 07F .0905: Department of Labor - The Commission objected to this rule based on ambiguity. Because the definition of "Qualified Evaluator (third party)" in Rule .0903 is unclear, the use of "third party qualified evaluator" in (a)(1) is also unclear.

13 NCAC 07F .0916: Department of Labor - The Commission objected to this rule based on ambiguity. In (n)(1)(B)(i), it is not clear what distance constitutes "near."

13 NCAC 07F .0919: Department of Labor - The Commission objected to this rule based on ambiguity. In (d)(2), it is not clear what is meant by a "national consensus standard."

13 NCAC 07F .0920: Department of Labor - The Commission objected to this rule based on ambiguity. Because the definition of "certified welder" in Rule .0103 is unclear, in (5)(e) of this Rule, it is not clear what is meant by "certified welder."

13 NCAC 07F .0921: Department of Labor - The Commission objected to this rule based on ambiguity. In (f)(2)(A), it is not clear who must certify weights and scales.

19A NCAC 02D .0601, .0607, .0633, .0644: Department of Transportation - The Commission approved these rules. Commissioners Crisp, McLawhorn, and Horton voted to approve the rules. Commissioners Twiddy, Funderbark and Gray voted against the motion to approve. Chairman Hayman broke the tie by voting to approve the rules.

21 NCAC 12 .0202: Licensing Board for General Contractors - The Commission objected to this rule based on lack of statutory authority. The Commission said that "demolition" as used in (a)(1) and other portions of this rule is not within the definition in G.S. 87-1, cited as the board's authority for this rule. There is no authority cited to extend the jurisdiction over contractors to those who engage in only demolition.

21 NCAC 32K .0208: Medical Board - The Commission objected to this rule based on failure to comply with the requirements of the APA. The agency indicates that a notice of text for this rule has not been published in the North Carolina Register. The agency has failed to comply with the requirements of the APA by publishing a notice of the text of the proposed rule in the NCR and accepting comment on it for 60 days.

25 NCAC 01I .2002: State Personnel Commission - The Commission objected to this rule based on ambiguity. It is unclear in (a)(1)(C) what the standards are for determining whether a rehired employee shall be required to undergo a probationary period. The rule allows the decision whether to require a probationary period to be discretionary on the part of the employer. There are no standards indicated to determine whether an employee shall be required to be on probation or immediately placed on permanent status.

Prior to the review of the permanent rules from the Office of Administrative Hearings, Commissioner Gray recused himself and did not participate in any discussion or vote concerning these rules because of the obvious conflict of interest with the RRC's staff reviewing these rules; he served in the role of a "Staff Attorney" to review these rules.

26 NCAC 03 .0120: Office of Administrative Hearings - The Commission objected to this rule based on lack of necessity. Paragraph (a) needs to be deleted in its entirety and the remaining paragraphs re-lettered (a) through (g) accordingly. Paragraph (a) merely repeats NCGS §150B-25(d) for Article 3 hearings and NCGS §150B-40(a) for Article 3A hearings therefore it is unnecessary.

COMMISSION PROCEDURES AND OTHER BUSINESS

The meeting adjourned at 10:46 a.m.

The next scheduled meeting of the Commission is Thursday, April 16, 2009 at 9:00 a.m.

Respectfully Submitted,

Dana Vojtko
Publications Coordinator

LIST OF APPROVED PERMANENT RULES
March 19, 2009 Meeting

ADMINISTRATION, DEPARTMENT OF

<u>Definitions</u>	01 NCAC 43A .0102
<u>Sensitive and Confidential Data</u>	01 NCAC 43A .0201
<u>Compressed Gases, Flammable, Nuclear, Chemical, Biologica...</u>	01 NCAC 43A .0202

<u>Order of Priority in Disposition</u>	01	NCAC 43A .0304
 PESTICIDE BOARD		
<u>Proprietorship</u>	02	NCAC 09L .0801
<u>Notification Prior to Delivery</u>	02	NCAC 09L .0802
<u>Storage Tank Specifications</u>	02	NCAC 09L .0803
<u>Labeling Requirements</u>	02	NCAC 09L .0804
<u>Record Requirements</u>	02	NCAC 09L .0805
<u>Location Requirements</u>	02	NCAC 09L .0806
<u>Safety Requirements</u>	02	NCAC 09L .0807
<u>Notification of Storage Tank Requirements</u>	02	NCAC 09L .0808
<u>Compliance Requirements</u>	02	NCAC 09L .0809
<u>Adoption by Reference</u>	02	NCAC 09L .0810
<u>Record Keeping Requirements</u>	02	NCAC 09L .1402
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This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge
JULIAN MANN, III*

*Senior Administrative Law Judge
FRED G. MORRISON JR.*

ADMINISTRATIVE LAW JUDGES

Beecher R. Gray	Randall May
Selina Brooks	A. B. Elkins II
Melissa Owens Lassiter	Joe Webster
Don Overby	

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Bennett Short v. Medicaid	08 DHR 2226	Mann	12/18/08
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Naomi J. Silver v. DHHS	08 DHR 2257	Gray	01/22/09
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Laverne Jones, Jeffrey's Rest Home v. DHHS	08 DHR 2343	Webster	02/23/09
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Emmanuel House, Erthel J. Anderson v. DHHS, Div. of Medical Asst.	08 DHR 2382	Gray	12/10/08
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Michael L. Scriven v. Private Protective Services Board	07 DOJ 1483	Elkins	03/25/08
Lamuel Tommy Anderson v. North Carolina Department of Justice Campus Police Program	07 DOJ 1500	Joseph	06/03/08
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Terry Hill DAQ 2007-015 v. DENR, Division of Air Quality	07 EHR 0937	Morrison	04/08/08
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The Village of Walnut Creek PWS ID#NC0496155 v. DENR Public Water Supply Section	08 EHR 1892	Gray	11/18/08
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Tabernacle Week Day School Cynthia M. Doyle v. DENR, Public Water Supply Section	08 EHR 1984	Mann	10/20/08
Michael Chapman FV Productions v. Stanly County Environmental Health Dennis R. Joyner, Health Director Division of Environment Health Terry Pierce, Director	08 EHR 1986	Lassiter	11/03/08
Carl J. Peters and Color Works v. City of Raleigh	08 EHR 2005	Joseph	10/28/08
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Ronald Caleb White v. Employment Security Commission UI Division 08 ESC 2568 Joseph 12/12/08

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Sandra Vanderbeek v. Teachers' and State Employees' Comprehensive Major Medical Plan 07 INS 1130 Overby 03/12/08

Benjamin Brodey, Inger Brodey, Clara Brodey 07 INS 1139 Elkins 10/24/08

Nettie C Minshew v. North Carolina State Health Plan 07 INS 1319 Gray 09/08/08

Albert N. Whiting, by his daughter, Brooke E. Whiting v. Teachers' and State Employees' Comprehensive Major Medical Plan 07 INS 1431

Alesha D Carter v. State Health Plan 07 INS 1858 Lassiter 05/19/08

Maria Patricia Rivera v. Teachers' and State Employees' Comprehensive Major Medical Plan 08 INS 0035 Joseph 09/16/08

Esther A. Scott v. State Health Plan 08 INS 0819 Gray 10/31/08 23:16 NCR 1711

Judith Kay Klink v. State Health Plan Teachers' Comprehensive Health Plan 08 INS 0846 Overby 10/20/08

Michelle Patton v. Blue Cross Blue Shield State Health Plan 08 INS 1039 Joseph 12/04/08

David Danmyer for Nancy Danmeyer v. Teachers' and State Employees' Comprehensive Major Medical Plan 08 INS 1575 May 10/15/08

MISCELLANEOUS

Kevin Edral Douglas v. Wake County District Attorney, DMV 07 MIS 1976 Webster 05/12/08

Jeannie L Day v. City of Asheville Control, Brenda Sears Officer White 08 MIS 0895 Brooks 08/18/08

Promise Land Ministries Inc., Joel K. Wilson v. Mitchell County Tax Assessor and Board of Equalization 08 MIS 1447 May 09/17/08

Catherine Seay v. Judge Debra Sasser, Wake County District Court Civil Division 08 MIS 2295 Elkins 11/24/08

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Marsha A Early v. Durham County Department of Social Services 01 OSP 0279 Lassiter 04/02/08

Cheryl Best v. Columbus County Department of Social Services 06 OSP 2206 Lassiter 09/10/08

Scott Burgess v. N.C. Department of Crime Control and Public Safety, N.C. Highway Patrol 07 OSP 0052 Gray 07/16/08

Ralph Mitchell Foard v. Highway Patrol 07 OSP 0135 Webster 11/06/08

Divina P. Shields v. North Carolina State University 07 OSP 0317 Lassiter 07/11/08

Milton R. Perry v. DOT 07 OSP 0362 Lassiter 12/16/08 23:18 NCR 1920

Jacqueline B. Maynard v. UNC 07 OSP 0575 Webster 04/08/08

Warren R. Follum v. NCSU 07 OSP 0577 Webster 03/21/08

Sharon P. House v. UNC 07 OSP 0630 Webster 04/08/08

Marcus Guy v. A&T University 07 OSP 0760 Webster 09/16/08

Michael Phillips v. A&T State University 07 OSP 0833 Overby 11/12/08

Pam Moses v. Macon County Health Department 07 OSP 0945 Overby 06/30/08

Cassandra F. Barner v. Halifax County Department of Social Serv. 07 OSP 1186 Joseph 05/16/08 23:05 NCR 528

Michael Shelton Woody v. DENR, Division of Forest Resources 07 OSP 1255 Brooks 05/13/08

Kellee M. Buck v. Dare County Department of Social Services 07 OSP 1385 Overby 05/27/08

Dennis E. Hrynkow v. Dept. of Insurance 07 OSP 1400 Joseph 04/03/08

Stacey M. Gague v. N.C. Department of Corrections 07 OSP 1479 Overby 06/09/08

Betty J. LaBombard v. Hoke County Department of Social Services 07 OSP 1860 Joseph 10/01/08

James Dobaly v. North Carolina Department of Health and Human Services 07 OSP 1873 Lassiter 07/02/08

Adley K. Prager v. Dept. of Crime Control and Public Safety and Butner Public Safety 07 OSP 2011 Webster 05/29/08

Charlene J. Shaw v. Peter Bucholz, Hoke Correctional Institution 07 OSP 2012 Joseph 04/07/08

Jacqueline Burkes v. DOC, Hoke 4320, Mr. Peter Bucholz 07 OSP 2047 Joseph 04/07/08

Charles Jones v. Bryan Beatty, Secretary of Crime Control & Public Safety and The Dept. of Crime Control & Public Safety (NC Highway Patrol) 07 OSP 2222 Morrison 06/05/08 23:01 NCR 147

Norman K. Goering v. Crime Control and Public Safety, Highway Patrol 07 OSP 2256 Joseph 07/29/08 23:05 NCR 547

Brenda S. Williamson v. DHHS 08 OSP 0058 Gray 10/15/08

Kimberly James v. UNC-Charlotte 08 OSP 0146 Webster 05/08/08

Nancy Hester v. Guilford County AOC Pretrial Services 08 OSP 0224 Overby 06/19/08

Elizabeth Frazier v. Western Carolina University 08 OSP 0246 Brooks 12/09/08 23:16 NCR 1722

Ray Stanford Williams Jr. v. NC Department of Cultural Resources 08 OSP 0529 Morrison 08/19/08

Jacqueline Yvette Lowry v. Durham County, Department of Social Services 08 OSP 0552 May 10/08/08

Laura L. Holliman v. Caledonia Correctional Inst. 08 OSP 0591 Gray 07/08/08

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Sharon V Blackmon v. Office of Administrative Hearings	08 OSP 0624	Gray	09/19/08	
Richard D. Lincoln v. DOT	08 OSP 0801	Gray	05/27/08	
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RESPIRATORY CARE BOARD

Angelique Thompson v. Respiratory Care Board	07 RCB 1176	Gray	03/13/08	23:01 NCR 153
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Richard C Garrard Jr. v. NC Department of Secretary of State	07 SOS 2080	Brooks	09/12/08	
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Mary C. Gessell v. UNC Hospitals	08 UNC 0981	Joseph	09/18/08	
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Charles P. Pool v. Well Contractors Certification Commission	08 WCC 0514	Gray	07/15/08	
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Lisa Roddy v. Wildlife Resources Commission	08 WRC 0970	Brooks	06/24/08	
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