

NORTH CAROLINA REGISTER

VOLUME 24 • ISSUE 05 • Pages 185 - 240

September 1, 2009

I. PROPOSED RULES

Environment and Natural Resources, Department of Coastal Resources Commission	187 – 204
Justice, Department of Private Protective Services Board	185 – 187
Occupational Licensing Boards and Commissions Substance Abuse Professional Practice Board	204 – 218

II. APPROVED RULES..... 219 – 237

Administrative Hearings, Office of Administrative Hearings, Office of Health and Human Services, Department of Health Service Regulation, Division of MH/DD/SAS, Division of Public Health, Commission for Justice, Department of Justice Academy Occupational Licensing Boards and Commissions Dental Examiners, Board of Massage and Bodywork Therapy, Board of Revenue, Department of Department State Personnel, Office of State Personnel Commission	
---	--

III. CONTESTED CASE DECISIONS

Index to ALJ Decisions	238 – 240
------------------------------	-----------

PUBLISHED BY

The Office of Administrative Hearings
Rules Division
6714 Mail Service Center
Raleigh, NC 27699-6714
Telephone (919) 431-3000
Fax (919) 431-3104

Julian Mann, III, Director
Camille Winston, Deputy Director
Molly Masich, Codifier of Rules
Dana Vojtko, Publications Coordinator
Julie Edwards, Editorial Assistant
Tammara Chalmers, Editorial Assistant

Contact List for Rulemaking Questions or Concerns

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

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

Office of Administrative Hearings
Rules Division
1711 New Hope Church Road (919) 431-3000
Raleigh, North Carolina 27609 (919) 431-3104 FAX

contact: Molly Masich, Codifier of Rules molly.masich@oah.nc.gov (919) 431-3071
Dana Vojtko, Publications Coordinator dana.vojtko@oah.nc.gov (919) 431-3075
Julie Edwards, Editorial Assistant julie.edwards@oah.nc.gov (919) 431-3073
Tammara Chalmers, Editorial Assistant tammara.chalmers@oah.nc.gov (919) 431-3083

Rule Review and Legal Issues

Rules Review Commission
1711 New Hope Church Road (919) 431-3000
Raleigh, North Carolina 27609 (919) 431-3104 FAX

contact: Joe DeLuca Jr., Commission Counsel joe.deluca@oah.nc.gov (919) 431-3081
Bobby Bryan, Commission Counsel bobby.bryan@oah.nc.gov (919) 431-3079

Fiscal Notes & Economic Analysis

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

contact: Nathan Knuffman, Asst. Budget Officer osbmruleanalysis@ncmail.net (919)807-4728

Governor's Review

Eddie Speas eddie.speas@nc.gov
Legal Counsel to the Governor (919) 733-5811
116 West Jones Street
Raleigh, North Carolina 27603

Legislative Process Concerning Rule-making

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

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

County and Municipality Government Questions or Notification

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

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

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

contact: Erin L. Wynia ewynia@nclm.org

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.

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 12 – DEPARTMENT OF JUSTICE

None

Notice is hereby given in accordance with G.S. 150B-21.2 that the Private Protective Services Board intends to adopt the rules cited as 12 NCAC 07D .0405, .1301-.1307.

Proposed Effective Date: January 1, 2010

Public Hearing:

Date: September 16, 2009

Time: 2:00 p.m.

Location: 1631 Midtown Place, Suite 104, Raleigh, NC 27609

Reason for Proposed Action: The reason for the rulemaking is to set out requirements for continuing legal education to ensure that licensees remain qualified. In addition, the rulemaking is to set out requirements for a private investigator's use of a badge to ensure that only authorized badges are used.

Procedure by which a person can object to the agency on a proposed rule: Objections to the rules shall be submitted before the end of the comment period in writing to Terry Wright, Director, Private Protective Services Board, 1631 Midtown Place, Suite 104, Raleigh, NC 27609.

Comments may be submitted to: Terry Wright, PPSB Director, 1631 Midtown Place, Suite 104, Raleigh, NC 27609.

Comment period ends: November 2, 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)

SUBCHAPTER 07D - PRIVATE PROTECTIVE SERVICES BOARD

SECTION .0400 - PRIVATE INVESTIGATOR: COUNTERINTELLIGENCE

12 NCAC 07D .0405 PRIVATE INVESTIGATOR'S USE OF A BADGE

While engaged in their official duties, a private investigator shall be allowed to carry, possess, and display a badge that has been approved by the Board, the North Carolina Sheriff's Association, and the North Carolina Association of Chief's of Police. Said badge shall be an exact duplicate as shown below except for the licensee's name and license number. The badge shall be gold with black or dark blue lettering. The State seal shall be in color. Any deviation from the below design shall be deemed an unauthorized badge and shall constitute a violation of the statute and rules.



Authority G.S. 74C-5(12).

SECTION .1300 – CONTINUING EDUCATION

12 NCAC 07D .1301 DEFINITIONS

In addition to the definitions set forth in 12 NCAC 07D .0104, the following definitions shall apply to this Section:

- (1) "continuing education" or "CE" refers to any educational activity approved by the Board to be a continuing education activity.
- (2) "credit hour" means 60 minutes of continuing education instruction.
- (3) "year" refers to the calendar year after the issuance of a new or renewal license.

- (4) "licensee" shall refer to an individual who holds a private protective services license issued by the Board.

Authority G.S. 74C-2; 74C-4; 74C-5; 74C-22.

12 NCAC 07D .1302 REQUIRED CONTINUING EDUCATION HOURS

Each licensee shall complete at least 12 credit hours of continuing education training during each two year renewal period. Credit shall be given only for classes that have been approved by the Board. A licensee who attends a complete meeting of a regularly scheduled meeting of the Private Protective Services Board shall receive one credit hour for each meeting that the licensee attends, with credit being given for a maximum of two meetings per year with no more than four credit hours per renewal period.

Authority G.S. 74C-2; 74C-4; 74C-5; 74C-22.

12 NCAC 07D .1303 ACCREDITATION STANDARDS

(a) CE courses may obtain the sanction of the Private Protective Services Board by submitting the following information to the Board for consideration:

- (1) the nature and purpose of the course;
- (2) the course objectives or goals;
- (3) the outline of the course, including the number of training hours for each segment; and
- (4) the identity of the instructor.

(b) To determine if a course will receive sanctioning from the Private Protective Services Board, the Board shall complete the following review:

- (1) The matter will be referred to the Training and Education Committee for the appointment of a sub-committee that shall review the course under consideration. The sub-committee shall consist of at least two industry members of the Training and Education Committee. Other members of the sub-committee may be appointed at the discretion of the Training and Education Committee Chairman.
- (2) The sub-committee shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objectives.
- (3) When the sub-committee completes its review, it shall report to the Training and Education Committee. The Training and Education Committee shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objective. The Training and Education Committee shall then report the findings with a recommendation of acceptance or denial to the Private Protective Services Board.

(c) Upon receipt of the Training and Education Committee report, the Private Protective Services Board will determine by majority vote if the course will be sanctioned for continuing education credits. In making its determination, the Board shall

review the course to determine if the course is pertinent to the industry, and if the course meets its stated objective.

(d) Each approved course shall remain a validly approved course for four years from the date of approval by the Board, unless the criteria of Subparagraph (a)(4) of this Rule materially changes.

Authority G.S. 74C-2; 74C-4; 74C-5; 74C-22.

12 NCAC 07D .1304 NON-RESIDENT LICENSEE CONTINUING EDUCATION CREDITS

A non-resident licensee shall obtain the required continuing education credits as set forth in 12 NCAC 07D .1303. If a non-resident licensee resides in a state that requires continuing education for a private protective services business license, then the continuing education courses to be offered in the state of residence may be considered by the North Carolina Private Protective Services Board for sanctioning in North Carolina on an individual course basis. In determining if the course is to be sanctioned, the Board shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objection.

Authority G.S. 74C-2; 74C-4; 74C-5; 74C-22.

12 NCAC 07D .1305 RECORDING AND REPORTING CONTINUING EDUCATION CREDITS

(a) Each licensee shall be responsible for recording and reporting continuing education credits to the Board at the time of license renewal, and for each course taken such report shall include a certificate of course completion that is signed by at least one course instructor, indicates the name of the licensee who completed the course, indicates the date of course completion, and indicates the number of hours taken by the licensee. Credit shall not be given if a certificate of course completion is dated more than two years from the license renewal date. Each course instructor shall be required to maintain a course roster and shall verify the identify of each participant by a government issued photo identification, such as a driver's license. Said roster shall be delivered to the Board's office within two weeks of the completion date of the course.

(b) All applications for renewal of a license shall have a CE Certificate(s) attached verifying completion of the required number of credit hours. If an applicant is filing an application designated as "new" and the applicant has been licensed for any period of time within the previous two years, the applicant shall attach a CE Certificate(s) verifying completion of the required number of credit hours. An applicant shall not be required to submit a CE Certificate if the applicant is filing an application designated as a "transfer" or "duplicate" and if the applicant has a current license issued by the Board.

Authority G.S. 74C-2; 74C-4; 74C-5; 74C-22.

12 NCAC 07D .1306 NON-COMPLIANCE

If a licensee fails to comply with this Section of the rules, his license shall not be renewed.

Authority G.S. 74C-2; 74C-4; 74C-5; 74C-22.

12 NCAC 07D .1307 CREDIT FOR CE COURSES

Licenses shall receive credit for completion of CE courses approved by the Board after January 1, 2010. After January 1, 2012, all licenses shall submit certificates of CE completion with their renewal applications.

Authority G.S. 74C-2; 74C-4; 74C-5; 74C-22.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07H .0208, .0309, .1704-.1705.

Proposed Effective Date: January 1, 2010

Public Hearing:

Date: September 21, 2009

Time: 4:00 p.m.

Location: Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557

Reason for Proposed Action:

15A NCAC 07H .0208 – General Use Standards contain guidelines for water dependent development, Primary Nursery Areas and Submerged Aquatic Vegetation. Broader amendments to the Docks and Piers and Shorelines Stabilization rules has afforded the Commission an opportunity to clarify other specifics of 07H .0208 and to remove outdated provisions as well as correct vague or ambiguous language in accordance with APA guidelines.

15A NCAC 07H .1704-.1705 – The Coastal Resources Commission is proceeding with rule making in order to make changes to its Specific Use Standards regulating the use of sandbags as temporary erosion control structures under its Emergency General Permit 15A NCAC 07H .1704-.1705. Additional changes have also been made to provide consistency with other rules and correct ambiguous language.

15A NCAC 07H .0309 – Based upon recommendations made by the N.C. Environmental Management Commission, the North Carolina General Assembly is currently considering legislation that would set up a permitting process for wind energy facilities in North Carolina. In addition to giving the CRC permitting authority for wind energy facilities in CAMA counties, this legislation would define wind energy facilities as water dependent structures, potentially allowing these structures to be constructed in North Carolina's Sounds and ocean waters following an environmental review. In an effort to complement the efforts of the EMC and the General Assembly, the CRC proposes the addition of exception language for wind facility transmission lines to 15A NCAC 07H .0309.

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

Comments may be submitted to: Jim Gregson, 400 Commerce Avenue, Morehead City, NC 28557, phone (252)808-2808, fax (252)247-3330.

Comment period ends: November 2, 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 07 - COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0200 – THE ESTUARINE AND OCEAN SYSTEMS

15A NCAC 07H .0208 USE STANDARDS

(a) General Use Standards

- (1) Uses which are not water dependent shall not be permitted in coastal wetlands, estuarine waters, and public trust areas. Restaurants, residences, apartments, motels, hotels, trailer parks, private roads, factories, and parking lots are examples of uses that are not water dependent. Uses that are water dependent may include: utility easements; docks; wharfs; boat ramps; dredging; bridges and bridge approaches; revetments, bulkheads; culverts; groins; navigational aids; mooring pilings; navigational channels; simple access channels and drainage ditches. crossings, docks, wharves, boat ramps, dredging, bridges and bridge approaches, revetments, bulkheads, culverts, groins, navigational aids, mooring pilings, navigational channels, access channels and drainage ditches.
(2) Before being granted a permit by permit, the CRC or local permitting authority, there shall be a finding authority shall find that the

applicant has complied with the following standards:

- (A) The location, design, and need for development, as well as the construction activities involved shall be consistent with the ~~stated management objective.~~ objective of the Estuarine and Ocean System AEC and shall be sited and designed to avoid significant adverse impacts upon the productivity and biologic integrity of coastal wetlands, shellfish beds, submerged aquatic vegetation as defined by the Marine Fisheries Commission, and spawning and nursery areas.
- ~~(B) Before receiving approval for location of a use or development within these AECs, the permit letting authority shall find that no suitable alternative site or location outside of the AEC exists for the use or development and, further, that the applicant has selected a combination of sites and design that will have a minimum adverse impact upon the productivity and biologic integrity of coastal marshland, shellfish beds, beds of submerged aquatic vegetation, spawning and nursery areas, important nesting and wintering sites for waterfowl and wildlife, and important natural erosion barriers (cypress fringes, marshes, clay soils).~~
- ~~(C)(B)~~ Development shall ~~not violate~~ comply with state and federal water and air quality standards.
- ~~(D)(C)~~ Development shall not cause ~~major or irreversible damage to valuable documented archaeological or historic resources.~~ resources as identified by the N.C. Department of Cultural Resources.
- ~~(E)(D)~~ Development shall not ~~measurably increase siltation.~~
- ~~(F)(E)~~ Development shall not create stagnant water bodies.
- ~~(G)(F)~~ Development shall be timed to ~~have minimum adverse significant affect~~ avoid significant adverse impacts on life cycles of estuarine and ocean resources.
- ~~(H)(G)~~ Development shall not ~~impede jeopardize the use of the waters for navigation or create undue interference with access to, or use of, for other public trust rights in public trust areas or estuarine waters.~~

- (3) When the proposed development is in conflict with the general or specific use standards set forth in this Rule, the CRC may approve the development if the applicant can demonstrate that the activity associated with the proposed project will have public benefits as identified in the findings and goals of the Coastal Area Management Act, that the public benefits clearly outweigh the long range adverse effects of the project, that there is no reasonable ~~and prudent~~ alternate site available for the project, and that all reasonable means and measures to mitigate adverse impacts of the project have been incorporated into the project design and ~~will shall~~ be implemented at the applicant's expense. ~~These measures~~ Measures taken to mitigate or minimize adverse impacts ~~may shall~~ include actions that will:
 - (A) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
 - (B) restore the affected environment; or
 - (C) compensate for the adverse impacts by replacing or providing substitute resources.
- (4) Primary nursery areas are those areas in the estuarine and ocean system where initial post larval development of finfish and crustaceans takes place. They are usually located in the uppermost sections of a system where populations are uniformly early juvenile stages. They are ~~officially~~ designated and described by the N.C. Marine Fisheries Commission (MFC) in ~~15A NCAC 3B .1405~~ and by the N.C. Wildlife Resources Commission (WRC) in ~~15A NCAC 10C .0110~~.
- (5) Outstanding Resource Waters are those estuarine waters and public trust areas classified by the N.C. Environmental Management Commission (EMC), ~~pursuant to Title 15A, Subchapter 2B .0216 of the N.C. Administrative Code as Outstanding Resource Waters (ORW) upon finding that such waters are of exceptional state or national recreational or ecological significance.~~ In those estuarine waters and public trust areas classified as ORW by the ~~Environmental Management Commission (EMC),~~ EMC no permit required by the Coastal Area Management Act shall be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC, or ~~Marine Fisheries Commission (MFC)~~ MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site specific information, ~~materially~~ degrade

the water quality or outstanding resource values unless such degradation is temporary values.

- (6) Beds of submerged aquatic vegetation (SAV) are those habitats in public trust and estuarine waters vegetated with one or more species of submergent vegetation. These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the presence of above ground leaves or the below ground rhizomes and propagules. In defining SAVs, the CRC recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not intend the SAV definition and its implementing rules to apply to or conflict with the non-development control activities authorized by that Act. Marine Fisheries Commission. Any rules relating to SAVs shall not apply to non-development control activities authorized by the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et seq.).

(b) Specific Use Standards

- (1) Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas areas, highly productive shellfish beds, beds as identified by the MFC, beds of submerged aquatic vegetation, vegetation as defined by the MFC, or significant areas of regularly or irregularly flooded coastal wetlands.wetlands except as otherwise allowed within this Subchapter. Navigation channels, canals and boat basins shall also comply with the following standards:

- (A) Navigation channels and canals may be allowed through narrow fringes of regularly and irregularly flooded coastal wetlands if the loss of wetlands will have no significant adverse impacts on fishery resources, water quality or adjacent wetlands, and, if there is no reasonable alternative that would avoid the wetland losses.
- (B) All ~~spoil dredged material from new construction~~ shall be confined landward of regularly and irregularly flooded coastal wetlands and stabilized to prevent entry of sediments into the adjacent water bodies or ~~marsh~~ coastal wetlands.
- (C) Spoil Dredged material from maintenance of channels and canals through irregularly flooded wetlands shall be placed on non-wetland areas, remnant spoil piles, or disposed of by a method having no significant, long

~~term~~ long-term wetland impacts. Under no circumstances shall ~~spoil dredged material~~ be placed on regularly flooded wetlands. New dredged material disposal areas shall not be located in the buffer area as outlined in 15A NCAC 07H .0209(d)(10).

- (D) Widths of ~~the~~ excavated canals and channels shall be the minimum required to meet the applicant's needs and provide adequate but not impair water circulation.
- (E) Boat basin design shall maximize water exchange by having the widest possible opening and the shortest practical entrance canal. Depths of boat basins shall decrease from the waterward end inland.
- (F) Any canal or boat basin shall be excavated no deeper than the depth of the connecting channels. waters.
- (G) ~~Canals for the purpose of multiple residential development shall have:~~
 - (i) ~~no septic tanks unless they meet the standards set by the Division of Environmental Management and the Division of Environmental Health;~~
 - (ii) ~~no untreated or treated point source discharge;~~
 - (iii) ~~storm water routing and retention areas such as settling basins and grassed swales.~~
- (H)(G) Construction of finger canal systems shall not be allowed. Canals shall be either straight or meandering with no right angle corners.
- (I)(H) Canals shall be designed so as not to create an erosion hazard to adjoining property. Design may include bulkheading, shoreline stabilization, vegetative stabilization, or adequate setbacks based on soil characteristics.
- (J)(I) Maintenance excavation in canals, channels and boat basins within primary nursery areas and ~~beds~~ areas of submerged aquatic vegetation as defined by the MFC shall be avoided. However, when essential to maintain a traditional and established use, maintenance excavation may be approved if the applicant meets all of the following ~~criteria as shown by clear and convincing evidence accompanying the permit application.~~ criteria. This Rule Part does not

affect restrictions placed on permits issued after March 1, 1991.

- (i) The applicant demonstrates and documents that a water-dependent need exists for the excavation; ~~and~~
- (ii) There exists a previously permitted channel ~~which that~~ was constructed or maintained under permits issued by the State or Federal government. If a natural channel was in use, or if a human-made channel was constructed before permitting was necessary, there shall be ~~clear~~ evidence that the channel was continuously used for a specific purpose; ~~and~~
- (iii) Excavated material can be removed and placed in ~~an~~ approved a disposal area in accordance with Part (b)(1)(B) of this Rule without ~~significantly~~ impacting adjacent nursery areas and ~~beds of~~ submerged aquatic ~~vegetation;~~ vegetation as defined by the MFC; and
- (iv) The original depth and width of a human-made or natural channel ~~will shall~~ not be increased to allow a new or expanded use of the channel.

(2) Hydraulic Dredging

- (A) The terminal end of the dredge pipeline shall be positioned at a distance sufficient to preclude erosion of the containment dike and a maximum distance from spillways to allow ~~adequate~~ settlement of suspended solids.
- (B) ~~Dredge spoil~~ Dredged material shall be either confined on high ground by ~~adequate~~ retaining structures or deposited on beaches for purposes of renourishment, if the material is ~~suitable, deposited on beaches for purposes of renourishment, with the exception of (G) of this Subsection (b)(2); suitable in accordance with the Rules in this Subchapter except as provided in Part (G) of this Subparagraph.~~
- (C) Confinement of excavated materials shall be ~~on high ground~~ landward of ~~regularly and irregularly flooded~~

~~marshland~~ all coastal wetlands and with adequate shall employ soil stabilization measures to prevent entry of sediments into the adjacent water bodies or ~~marsh;~~ coastal wetlands.

- (D) Effluent from diked areas receiving disposal from hydraulic dredging operations shall be contained by pipe, trough, or similar device to a point waterward of emergent vegetation or, where local conditions require, below ~~mean low water;~~ normal low water or normal water level.
 - (E) When possible, effluent from diked disposal areas shall be returned to the area being dredged.
 - (F) A water control structure shall be installed at the intake end of the effluent pipe.
 - (G) Publicly funded projects shall be considered by review agencies on a case-by-case basis with respect to dredging methods and ~~spoil~~ dredged material disposal.
 - (H) ~~Dredge spoil~~ Dredged material from closed shellfish waters and effluent from diked disposal areas used when dredging in closed shellfish waters shall be returned to the closed shellfish waters.
- (3) Drainage Ditches
- (A) Drainage ditches located through any ~~marshland~~ coastal wetland shall not exceed six feet wide by four feet deep (from ground surface) unless the applicant shows that larger ditches are ~~necessary for adequate drainage;~~ necessary.
 - (B) ~~Spoil~~ Dredged material derived from the construction or maintenance of drainage ditches through regularly flooded marsh shall be placed landward of these marsh areas in a manner that will insure that entry of sediment into the water or marsh will not occur. ~~Spoil~~ Dredged material derived from the construction or maintenance of drainage ditches through irregularly flooded marshes shall be placed on ~~nonwetlands~~ non-wetlands wherever feasible. Non-wetland areas include relic disposal sites.
 - (C) Excavation of new ditches through high ground shall take place landward of ~~a temporary~~ an earthen plug or other methods to minimize siltation to adjacent water bodies.

- (D) Drainage ditches shall not have a significant adverse ~~effect~~ impact on primary nursery areas, productive shellfish beds, ~~beds of~~ submerged aquatic ~~vegetation,~~ vegetation as defined by the MFC, or other ~~documented important~~ estuarine habitat. ~~Particular attention shall be placed on~~ Drainage ditches shall be designed so as to minimize the effects of freshwater inflows, sediment, and ~~nutrient introduction.~~ the introduction of nutrients to receiving waters. Settling basins, water ~~gates,~~ gates and retention structures are examples of design alternatives that may be used to minimize sediment introduction.
- (4) Nonagricultural Drainage
- (A) Drainage ditches shall be designed so that restrictions in the volume or diversions of flow are minimized to both surface and ground water.
- (B) Drainage ditches shall provide for the passage of migratory organisms by allowing free passage of water of sufficient depth.
- (C) Drainage ditches shall not create stagnant water pools or ~~significant~~ changes in the velocity of flow.
- ~~(D) Drainage ditches shall not divert or restrict water flow to important wetlands or marine habitats.~~
- (5) Marinas. Marinas are defined as any publicly or privately owned dock, basin or wet boat storage facility constructed to accommodate more than 10 boats and providing any of the following services: permanent or transient docking spaces, dry storage, fueling facilities, haulout facilities and repair service. Excluded from this definition are boat ramp facilities allowing access only, temporary docking and none of the preceding services. Expansion of existing facilities shall also comply with these standards for all development other than maintenance and repair necessary to maintain previous service levels. Marinas shall also comply with the following standards:
- (A) Marinas shall be sited in non-wetland areas or in deep waters (areas not requiring dredging) and shall not disturb ~~valuable shallow water,~~ shellfish resources, submerged aquatic ~~vegetation, and~~ vegetation as defined by the MFC, wetland habitats, except for dredging necessary for access to high-ground sites. The following four alternatives for siting marinas are listed in order of preference for the least damaging alternative; marina projects shall be designed to have the highest of these four priorities that is deemed feasible by the permit letting agency:
- (i) an upland basin site requiring no alteration of wetland or estuarine habitat and providing ~~adequate~~ adequate flushing by tidal or wind generated water ~~circulation;~~ circulation or basin design characteristics;
- (ii) an upland basin site requiring dredging for access when the necessary dredging and operation of the marina will not result in ~~the~~ significant degradation of adverse impacts to existing fishery, shellfish, or wetland resources and the basin design shall provide ~~adequate~~ flushing by tidal or wind generated water circulation;
- (iii) an open water site located outside a primary nursery area which utilizes piers or docks rather than channels or canals to reach deeper water; and
- (iv) an open water marina requiring excavation of no intertidal habitat, and no dredging greater than the depth of the connecting channel.
- (B) Marinas which require dredging shall not be located in primary nursery areas nor in areas which require dredging through primary nursery areas for access. Maintenance dredging in primary nursery areas for existing marinas shall ~~be considered on a case by case basis under~~ comply with the standards set out in Part ~~(b)(1)(F)~~ (b)(1)(I) of this Rule.
- (C) To minimize coverage of public trust areas by docks and moored vessels, dry storage marinas shall be used where feasible.
- (D) Marinas to be developed in waters subject to public trust rights (other than those created by dredging upland basins or canals) for the purpose of providing docking for residential developments shall be allowed no more than 27 square feet of public

- trust areas for every one linear foot of shoreline adjacent to these public trust areas for construction of docks and mooring facilities. The 27 square feet allocation shall not apply to fairway areas between parallel piers or any portion of the pier used only for access from land to the docking spaces.
- (E) To protect water quality ~~of~~ in shellfishing areas, marinas shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure is anticipated to result from the location of the marina. In compliance with 33 U.S. Code Section 101(a)(2) of the Clean Water Act and North Carolina Water Quality Standards adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish ~~apparently~~ are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption. The Division of Coastal Management shall consult with the Division of Marine Fisheries ~~shall be consulted~~ regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish ~~which that~~ have been harvested or are available for harvest in the area where harvest will be affected by the development.
- (F) Marinas shall not be located without written consent from the ~~controlling parties in areas~~ leaseholders or owners of submerged lands ~~which that~~ have been leased from the state or deeded by the state.
- (G) Marina basins shall be designed to promote flushing through the following design criteria:
- (i) the basin and channel depths shall gradually increase toward open water and shall never be deeper than the waters to which they connect; and
 - (ii) when possible, an opening shall be provided at opposite ends of the basin to establish flow-through circulation.
- (H) Marinas shall be designed ~~to minimize adverse effects on navigation and public use of public trust areas so that the capability of the waters to be used for navigation or for other public trust rights in estuarine or public trust waters are not jeopardized~~ while allowing the applicant ~~adequate~~ access to deep waters.
- (I) Marinas shall be located and constructed so as to avoid adverse impacts on navigation throughout all federally maintained channels and their ~~immediate~~ boundaries as designated by the US Army Corps of Engineers. This includes mooring sites (permanent or temporary), speed or traffic reductions, or any other device, either physical or regulatory, that may cause a federally maintained channel to be restricted.
- (J) Open water marinas shall not be enclosed within breakwaters that preclude circulation sufficient to maintain water quality.
- (K) Marinas which require dredging shall provide acceptable areas according to Part (b)(1)(B) of this Rule to accommodate disposal needs for future maintenance ~~dredging. Proof of the ability to truck dredging, including the ability to remove the spoil dredged material from the marina site to an acceptable disposal area will be acceptable.~~ site.
- (L) Marina design shall comply with all applicable requirements for management of stormwater ~~runoff~~ runoff as required by the EMC. Stormwater management systems shall not be located within the 30-foot buffer area outlined in 15A NCAC 07H .0209(d).
- (M) Marinas shall post a notice prohibiting the discharge of any waste from boat toilets and explaining the availability of ~~information on~~ local pump-out services.
- (N) Boat maintenance areas shall be designed so that all scraping, sandblasting, and painting will be done over dry land with adequate collection and containment devices ~~to~~

- that prevent entry of waste materials into adjacent waters.
- (O) All marinas shall comply with all applicable standards for docks and piers, ~~bulkheading, shoreline stabilization, dredging and spoil disposal.~~ dredged material disposal of this Rule.
- (P) All applications for marinas shall be reviewed by the Division of Coastal Management to determine their potential impact to coastal resources and compliance with applicable ~~standards.~~ standards of this rule. Such review shall also consider the cumulative impacts of marina development.
- (Q) Replacement of existing marinas to maintain previous service levels shall be allowed provided that the ~~preceding rules~~ standards for marina development within this section are complied with to the maximum extent possible, with ~~due~~ consideration being given to replacement ~~costs,~~ costs and service needs.
- (6) ~~Docks and Piers.~~ Piers and Docking Facilities.
- (A) ~~Docks and piers~~ Piers shall not exceed six feet in width. ~~Wider docks and piers~~ Piers greater than six feet in width shall be permitted only if the greater width is necessary for safe use, to improve public ~~access;~~ access, or to support a water dependent use that cannot otherwise occur.
- ~~(B) Any portion of a dock or pier (either fixed or floating) extending from the main structure and six feet or less in width shall be considered either a "T" or a finger pier.~~
- ~~(B) The total square footage of shaded impact for docks and mooring facilities (excluding the pier) allowed shall be 8 square feet per linear foot of shoreline with a maximum of 2,000 square feet. In calculating the shaded impact, uncovered open water slips shall not be counted in the total. Projects requiring dimensions greater than those stated in this Rule shall be permitted only if the greater dimensions are necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur. Size restrictions shall not apply to marinas.~~
- ~~(C) Any portion of a dock or pier (either fixed or floating) greater than six feet~~
- ~~wide shall be considered a platform or deck.~~
- ~~(C) Piers shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking.~~
- ~~(D) The combined area of all "T"s, finger piers, platforms, and decks must not exceed a combined total area of four square feet per linear foot of shoreline. Projects requiring dimensions greater than those stated in this Rule shall be permitted only if the greater dimensions are necessary for safe use, or to support a water dependent use that cannot otherwise occur.~~
- ~~(E) "T"s, platforms and decks shall have no more than six feet of any dimension extending over coastal wetlands.~~
- ~~(F)(D) Docks, piers, "T"s and associated structures~~ Docking facilities built over coastal wetlands ~~must~~ shall have no more than six feet of any dimension extending over coastal wetlands and shall be elevated at least three feet ~~over the~~ above any coastal wetland substrate measured from the bottom of the decking.
- ~~(G)(E) Boathouses~~ A boathouse shall not exceed 400 square feet except to accommodate a demonstrated need for a larger boathouse and shall have sides extending no farther than one-half the height of the walls and only covering the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline. Size restrictions shall not apply to marinas.
- ~~(H)(F) The total area enclosed by boat lifts an individual boat lift shall not exceed 400 square feet.~~ feet except to accommodate a demonstrated need for a larger boat lift.
- ~~(I)(G) Piers, docks, decks, platforms and boat houses~~ Piers and docking facilities shall be single story. They may be roofed ~~but~~ but shall not be designed to allow second story use.
- ~~(J)(H) Pier and docking facility length shall be limited by:~~
- (i) not extending beyond the established pier or docking facility length along the

same shoreline for similar use; (This restriction shall not apply to piers 100 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public);

(ii) not extending into the channel portion of the water body; and

(iii) not extending more than one-fourth the width of a natural water body, or human-made canal or basin. Measurements to determine widths of the water body, canals or basins shall be made from the waterward edge of any coastal wetland vegetation ~~which~~ that borders the water body. The one-fourth length limitation shall not apply in areas where the U.S. Army Corps of Engineers, or a local government in consultation with the Corps of Engineers, has established an official pier-head line. The one-fourth length limitation shall not apply when the proposed pier is located between longer piers or docking facilities within 200 feet of the applicant's property. However, the proposed pier or docking facility ~~cannot~~ shall not be longer than the pier head line established by the adjacent ~~piers,~~ piers or docking facilities, nor longer than ~~1/3~~ one-third the width of the water body.

~~(K)~~(I) Piers or docking facilities longer than 400 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least 1 foot each 100 foot increment of ~~pier~~ length longer than 400 feet, or, if the additional length is necessary to span some obstruction to navigation. Measurements to determine ~~pier~~ lengths shall be made from the waterward edge of any coastal wetland vegetation ~~which~~ that borders the water body.

~~(L)~~(J) Piers and docking facilities shall not interfere with the access to any

riparian property and shall have a minimum setback of 15 feet between any part of the pier or docking facility and the adjacent property owner's areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the pier or docking facility commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the pier. Application of this Rule may be aided by reference to the approved diagram in 15A NCAC 07H .1205(q) illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable.

~~(M)~~(K) Applicants for authorization to construct a ~~dock or pier~~ or docking facility shall provide notice of the permit application or exemption request to the owner of any part of a shellfish franchise or lease over which the proposed dock or pier would extend. The applicant shall allow the lease holder the opportunity to mark a navigation route from the pier to the edge of the lease.

(7) ~~Bulkheads and Shore Stabilization Measures~~

(A) Bulkhead alignment, for the purpose of shoreline stabilization, shall approximate ~~mean—the location of~~ normal high water or normal water level.

(B) Bulkheads shall be constructed landward of ~~significant marshland or marshgrass fringes.~~ coastal wetlands

- in order to avoid significant adverse impacts to the resources.
- (C) Bulkhead ~~fill~~ backfill material shall be obtained from an upland source approved by the Division of Coastal Management pursuant to this Section, or if the bulkhead is a part of a permitted project involving excavation from a non-upland source, the material so obtained may be contained behind the bulkhead.
- (D) Bulkheads ~~or other structures employed for shoreline stabilization~~ shall be permitted below ~~approximate mean~~ normal high water or normal water level only when the following standards are met:
- (i) the property to be bulkheaded has an identifiable erosion problem, whether it results from natural causes or adjacent bulkheads, or it has unusual geographic or geologic features, e.g. steep grade bank, which will cause the applicant unreasonable hardship under the other provisions of this Rule;
 - (ii) the bulkhead alignment extends no further below ~~approximate mean~~ normal high water or normal water level than necessary to allow recovery of the area eroded in the year prior to the date of application, to align with adjacent bulkheads, or to mitigate the unreasonable hardship resulting from the unusual geographic or geologic features;
 - (iii) the bulkhead alignment will not ~~result in significant adverse impacts to~~ adversely impact public trust rights or ~~to~~ the property of adjacent riparian owners;
 - (iv) the need for a bulkhead below ~~approximate mean~~ normal high water or normal water level is documented ~~in the Field Investigation Report or other reports prepared~~ by the Division of Coastal Management; and
 - (v) the property to be bulkheaded is in a ~~non-oceanfront~~ non-oceanfront area.
- (E) Where possible, sloping rip-rap, gabions, or vegetation shall be used rather than ~~vertical seawalls~~ bulkheads.
- (8) Beach Nourishment
- (A) Beach creation or maintenance may be allowed to enhance water related recreational facilities for public, commercial, and private ~~use~~ use consistent with the following:
- (i) Beaches may be created or maintained in areas where they have historically been found due to natural processes.
 - (ii) Material placed in the water and along the shoreline shall be clean sand and free from pollutants. Grain size shall be equal to that found naturally at the site.
 - (iii) Beach creation shall not be allowed in primary nursery areas, nor in any areas where siltation from the site would pose a threat to shellfish beds.
 - (iv) Material shall not be placed on any coastal wetlands or submerged aquatic vegetation as defined by MFC.
 - (v) Material shall not be placed on any submerged bottom with significant shellfish resources as identified by the Division of Marine Fisheries during the permit review.
 - (vi) Beach construction shall not create the potential for filling adjacent navigation channels, canals or boat basins.
- ~~(B) Beaches may be created or maintained in areas where they have historically been found due to natural processes. They will not be allowed in areas of high erosion rates where frequent maintenance will be necessary.~~
- ~~(C)~~(B) Placing unconfined sand material in the water and along the shoreline shall not be allowed as a method of shoreline erosion control.
- ~~(D) Material placed in the water and along the shoreline shall be clean sand free from pollutants and highly~~

- ~~erodible finger material. Grain size shall be equal to or larger than that found naturally at the site.~~
- ~~(E)(C)~~ Material from dredging projects may be used for beach nourishment if:
- (i) it is first handled in a manner consistent with ~~rules governing spoil disposal; dredged material disposal as set forth in this Rule.~~
 - (ii) it is allowed to ~~dry; dry prior to being placed on the beach;~~ and
 - (iii) only that material of acceptable grain size as set forth in Support (b)(8)(A)(ii) of this Rule is removed from the disposal site for placement on the beach. Material shall not be placed directly on the beach by dredge or dragline during maintenance excavation.
- ~~(F) Beach creation shall not be allowed in any primary nursery areas, nor in any areas where siltation from the site would pose a threat to shellfish beds.~~
- ~~(G) Material shall not be placed on any coastal wetlands or beds of submerged aquatic vegetation.~~
- ~~(H) Material shall not be placed on any submerged bottom with significant shellfish resources.~~
- ~~(I) Beach construction shall not create the potential for filling adjacent or nearby navigation channels, canals, or boat basins.~~
- ~~(J)(D)~~ Beach construction shall not violate comply with state and federal water quality standards.
- ~~(K)(E)~~ Permit The renewal of ~~these permits~~ for beach nourishment projects shall require an evaluation ~~of~~ by the Division of Coastal Management any adverse impacts of the original work.
- ~~(L)(F)~~ Permits issued for ~~this development~~ beach nourishment shall be limited to authorizing beach nourishment only one time during the life of the permit. Permits may be renewed for maintenance work or repeated need for nourishment.
- (9) ~~Wooden and Riprap~~ Groins
- (A) Groins shall not extend more than 25 feet waterward of the mean normal high water or normal water level unless a longer structure is justified by ~~site specific conditions, sound engineering and design principals.~~ site specific conditions and by an individual who meets any North Carolina occupational licensing requirements for the type of structure being proposed and approved during the application process.
- (B) Groins shall be set back a minimum of 15 feet from the adjoining ~~property~~ riparian lines. The setback for rock groins shall be measured from the toe of the structure. This setback may be waived by written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the groin commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the groin.
 - (C) Groins shall pose no threat to navigation.
 - (D) The height of groins shall not exceed ± one foot above mean normal high water or ~~the~~ normal water level.
 - (E) No more than two structures shall be allowed per 100 feet of shoreline unless the applicant provides evidence that more structures are needed for shoreline stabilization.
 - (F) "L" and "T" sections shall not be allowed at the end of groins.
 - (G) Riprap material used for groin construction shall be free from loose dirt or any other pollutant ~~in other than non-harmful quantities~~ and of a size sufficient to prevent its movement from the site by wave and current action.
- (10) "Freestanding Moorings".
- (A) A "freestanding mooring" is any means to attach a ship, boat, vessel, floating structure or other water craft to a stationary underwater device, mooring buoy, buoyed anchor, or piling (as long as the piling is not associated with an existing or proposed pier, dock, or boathouse).
 - (B) Freestanding moorings shall be permitted only:
 - (i) to riparian property owners within their riparian corridors; or
 - (ii) to any applicant proposing to locate a mooring buoy consistent with a water use plan that ~~may~~ be

- ~~incorporated into~~ is included
in either the local zoning or
land use plan.
- (C) All ~~approved~~ mooring fields shall provide ~~suitable~~ an area for access to any mooring(s) and other land based operations ~~which shall include but not be limited to~~ wastewater pumpout, trash disposal and vehicle parking.
- ~~(D) If the agreement referenced in specific condition in Part (b)(10)(C) of this Rule is terminated or the facility no longer exist, the permit shall become null and void and the permitted project removed from the AEC.~~
- ~~(E)(D)~~ To protect water quality of shellfishing areas, mooring fields shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure is anticipated to result from the location of the mooring field. In compliance with Section 101(a)(2) of the Federal Water Pollution Control Act, 33 U.S.C. 1251 (a)(2), and North Carolina Water Quality Standards adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish ~~apparently~~ are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption. The Division of Marine Fisheries shall be consulted regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish ~~which that~~ have been harvested or are available for harvest in the area where harvest will be affected by the development.
- ~~(F)(E)~~ Moorings shall not be located without written consent from the ~~controlling parties leaseholders or owners in areas~~ leaseholders or owners in areas of submerged lands ~~which that~~ that have been leased from the state or deeded by the state.
- ~~(G)(F)~~ Moorings shall be located and constructed so as to avoid adverse impacts on navigation throughout all federally maintained ~~channels and their immediate boundaries.~~ channels.
- This includes mooring sites (permanent or temporary), speed or traffic reductions, or any other device, either physical or regulatory, ~~that~~ which may cause a federally maintained channel to be restricted.
- ~~(H)(G)~~ Open water moorings shall not be enclosed within breakwaters that preclude circulation ~~sufficient to maintain water quality, and degrade water quality in accordance with EMC standards.~~
- ~~(H)(H)~~ Moorings and the associated land based operation design shall comply with all applicable requirements for management of stormwater ~~runoff.~~ runoff in accordance with EMC standards.
- ~~(I)(I)~~ Mooring fields shall have posted in view of patrons a notice prohibiting the discharge of any waste from boat toilets or any other discharge and explaining the availability of ~~information on~~ local pump-out services and waste disposal.
- ~~(K)(J)~~ Freestanding moorings associated with commercial shipping, public service or temporary construction/salvage operations may be permitted without a public ~~sponsor and shall be evaluated on a case by case basis.~~ sponsor.
- ~~(L)(K)~~ Freestanding mooring buoys and piles shall be evaluated based upon the arc of the swing including the length of the vessel to be moored. Moorings and the attached vessel shall not interfere with the access of any riparian owner nor shall it block riparian access ~~by blocking to~~ channels, deep water, etc. which allows riparian access. Freestanding moorings shall not interfere with the ability of any riparian owner to place a pier for access.
- ~~(M)(L)~~ Freestanding moorings shall not be established in submerged cable/pipe crossing areas or in a manner ~~which that~~ interferes with the operations of an access through any bridge.
- ~~(N)(M)~~ Freestanding moorings shall be marked or colored in compliance with U.S. Coast Guard and ~~N.C. Wildlife Resource Commission~~ the WRC requirements and the required marking maintained for the life of the mooring(s).
- ~~(O)(N)~~ The type of material used to create a mooring must be free of pollutants

- and of a design and type of material so as to not present a hazard to navigation or public safety.
- (P) ~~Existing freestanding moorings (i.e. buoys/pilings) may be maintained in place for two years. However, if the moorings(s) deteriorate or are damaged such that replacement is necessary during the two year period, the mooring(s) then shall comply with those guidelines of the Division in place at that time. In any event, existing moorings shall comply with these Rules within two years.~~
- (11) Filling of Canals, Basins and Ditches - ~~Notwithstanding~~ Notwithstanding the general use standards for estuarine systems as set out in ~~7H-0208(a)~~ Paragraph (a) of this Rule, filling canals, basins and ditches shall be allowed ~~if~~ if all of the following conditions are met:
- (A) the area to be filled was not created by excavating lands which were below the normal high water or normal water level; ~~and~~
- (B) if the area was created from wetlands, the elevation of the proposed filling does not exceed the elevation of said wetlands so that wetland function will be restored; ~~and~~
- (C) the filling will not adversely impact any designated primary nursery area, shellfish bed, ~~bed of~~ submerged aquatic ~~vegetation~~; vegetation as defined by the MFC, coastal wetlands other than a narrow fringe around the shoreline, recognized wetlands, public trust right or established public trust usage; and
- (D) the filling will not adversely affect the value and enjoyment of property of any riparian ~~owner; and owner.~~
- (E) ~~the filling will further some policy of the Commission such as retreating from erosion or avoiding water quality degradation.~~
- (12) "Submerged Lands Mining"
- (A) Development Standards. Mining of submerged lands shall meet all the following ~~standards; standards.~~
- (i) The biological productivity and biological significance of mine sites, or borrow sites used for sediment extraction, ~~must shall~~ shall be evaluated for significant adverse impacts and a ~~reasonable~~ protection strategy for these natural functions and values provided with the state approval request or permit ~~application; application;~~
- (ii) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and significant benthic communities identified by the Division of Marine Fisheries or the WRC shall be avoided; avoided;
- (iii) Mining shall avoid significant archaeological resources as defined in Rule .0509 of this Subchapter; shipwrecks identified by the ~~Division of Archives and History; Department of Cultural Resources;~~ and unique geological features that require protection from uncontrolled or incompatible development as identified by the Division of Land Resources pursuant to ~~G.S. 113A-113(b)(4)(g); G.S. 113A-113(b)(4)(g);~~
- (iv) Mining activities shall not be conducted on or within 500 meters of significant biological ~~communities;~~ communities identified by the Division of Marine Fisheries or the WRC; such as high relief hard bottom areas. High relief is defined for this standard as relief greater than or equal to one-half meter per five meters of horizontal ~~distance; distance;~~
- (v) Mining activities shall be timed to minimize impacts on the life cycles of estuarine or ocean ~~resources.~~ resources; and
- (vi) Mining activities shall not affect potable groundwater ~~supplies; supplies,~~ wildlife, freshwater, estuarine, or marine fisheries.
- (B) Permit Conditions. Permits for submerged lands mining may be conditioned on the applicant amending the mining proposal to include ~~any~~ measures ~~reasonably~~ necessary to insure compliance with the provisions of the Mining Act and the guidelines for development set out in this Subchapter. Permit conditions shall also include:

(i) Monitoring shall be required ~~to the extent necessary of the applicant~~ to ensure compliance with all applicable development ~~standards. standards; and~~ standards; and ~~Implementation of monitoring is the responsibility of the applicant.~~

(ii) A determination of the necessity and feasibility of restoration ~~will shall~~ be made by the Division of Coastal Management as part of the ~~permit, permit~~ or consistency ~~review, review~~ process. Restoration ~~will shall~~ be ~~deemed~~ necessary where it will facilitate recovery of the pre-development ecosystem. Restoration ~~will shall~~ be considered feasible unless, after consideration of all practicable restoration alternatives, ~~it is determined~~ the Division of Coastal Management determines that the adverse effects of restoration outweigh the benefits of the restoration on estuarine or ocean resources. If restoration is determined to be necessary and feasible, then the applicant shall ~~be required to~~ submit a restoration plan to ~~DCM the~~ Division of Coastal Management for approval prior to the initiation of any mining activities.

(C) Dredging activities for the purposes of mining natural resources ~~must shall~~ be consistent with the development standards set out in this Rule.

(D) Mitigation. Where mining cannot be conducted consistent with the development standards set out in this Rule, the applicant may request mitigation approval under 15A NCAC 07M .0700.

(E) Public Benefits Exception. Projects that conflict with these standards, but provide a public benefit, may be approved pursuant to the standards set out in Subparagraph (a)(3) of this Rule.

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

SECTION .0300 - OCEAN HAZARD AREAS

15A NCAC 07H .0309 USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS

(a) The following types of development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of the Subchapter if all other provisions of this Subchapter and other state and local regulations are met:

- (1) campsites;
- (2) driveways and parking areas with clay, packed sand or gravel;
- (3) elevated decks not exceeding a footprint of 500 square feet;
- (4) beach accessways consistent with Rule .0308(c) of this Subchapter;
- (5) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less;
- (6) uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, packed sand or gravel, and a footprint of 200 square feet or less;
- (7) temporary amusement stands;
- (8) sand fences; and
- (9) swimming pools.

In all cases, this development shall be permitted only if it is landward of the vegetation ~~line; line or static vegetation line,~~ whichever is applicable; involves no alteration or removal of primary or frontal dunes which would compromise the integrity of the dune as a protective landform or the dune vegetation; has overwalks to protect any existing dunes; is not essential to the continued existence or use of an associated principal development; is not required to satisfy minimum requirements of local zoning, subdivision or health regulations; and meets all other non-setback requirements of this Subchapter.

(b) Where application of the oceanfront setback requirements of Rule .0306(a) of this Subchapter would preclude placement of permanent substantial structures on lots existing as of June 1, 1979, ~~single family residential structures~~ buildings shall be permitted seaward of the applicable setback line in ocean erodible areas, but not inlet hazard areas or unvegetated beach areas, if each of the following conditions are met:

- (1) The development is set back from the ocean the maximum feasible distance possible on the existing lot and the development is designed to minimize encroachment into the setback area;
- (2) The development is at least 60 feet landward of the vegetation ~~line; line or static vegetation line,~~ whichever is applicable;
- (3) The development is not located on or in front of a frontal dune, but is entirely behind the landward toe of the frontal dune;
- (4) The development incorporates each of the following design standards, which are in addition to those required by Rule .0308(d) of this Subchapter.

- (A) All pilings shall have a tip penetration that extends to at least four feet below mean sea level;
- (B) The footprint of the structure shall be no more than 1,000 square feet ~~or 40 percent of the lot size, whichever is greater.~~ feet, and the total floor area of the structure shall be no more than 2,000 square feet. For the purpose of this Section, roof-covered decks and porches that are structurally attached shall be included in the calculation of footprint;
- (C) Driveways and parking areas shall be constructed of clay, packed sand or gravel except in those cases where the development does not abut the ocean and is located landward of a paved public street or highway currently in use. In those cases concrete, asphalt or turfstone may also be used.
- (D) No portion of a building's total floor area, including elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, may extend oceanward of the total floor area of the landward-most adjacent building. When the geometry or orientation of a lot precludes the placement of a building in line with the landward most adjacent structure of similar use, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, static vegetation line or measurement line, whichever is applicable, a distance no less than 30 times the shoreline erosion rate or 60 feet, whichever is greater; and
- (E) Development setbacks shall be calculated from the shoreline erosion rate in place at the time of permit issuance.

(5) All other provisions of this Subchapter and other state and local regulations are met. If the development is to be serviced by an on-site waste disposal system, a copy of a valid permit for such a system shall be submitted as part of the CAMA permit application.

(c) Reconfiguration of lots and projects that have a grandfather status under Paragraph (b) of this Rule shall be allowed provided that the following conditions are met:

- (1) Development is setback from the first line of stable natural vegetation a distance no less than that required by the applicable exception;

- (2) Reconfiguration shall not result in an increase in the number of buildable lots within the Ocean Hazard AEC or have other adverse environmental consequences; and
- (3) Development on lots qualifying for the exception in Paragraph (b) of this Rule shall meet the requirements of Paragraphs (1) through (5) of that Paragraph.

For the purposes of this Rule, an existing lot is a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership. The footprint is defined as the greatest exterior dimensions of the structure, including covered decks, porches, and stairways, when extended to ground level.

(d) The following types of water dependent development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of this Section if all other provisions of this Subchapter and other state and local regulations are met:

- (1) ~~piers providing public access (excluding any pier house, office, or other enclosed areas); and access; and~~
- (2) maintenance and replacement of existing state-owned bridges and causeways and accessways to such bridges.

~~(e) Where application of the oceanfront setback requirements of Rule .0306(a) of this Section would preclude replacement of a pier house associated with an existing ocean pier, replacement of the~~ Replacement or construction of a pier house associated with an ocean pier shall be permitted if each of the following conditions are is met:

- (1) ~~The associated ocean pier provides public access for fishing or and other recreational purposes whether on a commercial, public, or nonprofit basis;~~
- (2) ~~The pier house is set back from the ocean the maximum feasible distance while maintaining existing parking and sewage treatment facilities and is designed to reduce encroachment into the setback area; Commercial, non-water dependent uses of the ocean pier and associated pier house shall be limited to restaurants and retail services. Residential uses, lodging, and parking areas shall be prohibited;~~
- (3) ~~The pier house shall not be enlarged beyond its original dimensions as of January 1, 1996; be limited to a maximum of two stories;~~
- (4) ~~A new pier house shall not exceed a footprint of 5,000 square feet and shall be located landward of mean high water;~~
- (5) ~~A replacement pier house may be rebuilt not to exceed its most recent footprint or a footprint of 5,000 square feet, whichever is larger;~~
- (4)(6) ~~The pier house shall be rebuilt to comply with all other provisions of this Subchapter; and~~
- (5)(7) ~~If the associated pier has been destroyed or rendered unusable, replacement or expansion of the associated pier house shall be permitted~~

only if the pier is ~~also~~ being replaced and returned to its original function.

(f) In addition to the development authorized under Paragraph (d) of this Rule, small scale, non-essential development that does not induce further growth in the Ocean Hazard Area, such as the construction of single family piers and small scale erosion control measures that do not interfere with natural ~~ocean front~~ oceanfront processes, shall be permitted on those non-oceanfront portions of shoreline that exhibit features characteristic of an Estuarine Shoreline. Such features include the presence of wetland vegetation, and lower wave energy and ~~lower~~ erosion rates than in the adjoining Ocean Erodible Area. Such development shall be permitted under the standards set out in Rule .0208 of this Subchapter. For the purpose of this Rule, small scale is defined as those projects which are eligible for authorization under 15A NCAC 07H .1100, .1200 and 07K .0203.

(g) Transmission lines necessary to transmit electricity from an offshore energy-producing facility may be permitted provided that each of the following conditions is met:

- (1) The transmission lines are buried under the ocean beach, nearshore area, and primary and frontal dunes, all as defined in Rule 07H .0305, in such a manner so as to ensure that the placement of the transmission lines involves no alteration or removal of the primary or frontal dunes; and
- (2) The design and placement of the transmission lines shall be performed in a manner so as not to endanger the public or the public's use of the beach.

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

SECTION .1700 - GENERAL PERMIT FOR EMERGENCY WORK REQUIRING A CAMA AND/OR A DREDGE AND FILL PERMIT

15A NCAC 07H .1704 GENERAL CONDITIONS

(a) Work permitted by means of an emergency general permit shall be subject to the following limitations:

- (1) No work shall begin until an onsite meeting is held with the applicant and appropriate Division of Coastal Management representative so that the proposed emergency work can be appropriately marked. Written authorization to proceed with the proposed development can be issued during this visit.
- (2) No work shall be permitted other than that which is necessary to reasonably protect against or reduce the imminent danger caused by the emergency to restore the damaged property to its condition immediately before the emergency, or to re-establish necessary public facilities or transportation corridors.
- (3) Any permitted erosion control projects shall be located no more than 20 feet waterward of the ~~endangered structure.~~ imminently threatened

structure or the right-of way in the case of roads. If a building or road is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet seaward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or their designee.

- (4) Fill materials used in conjunction with emergency work for storm or erosion control shall be obtained from an upland source. Excavation below MHW in the Ocean Hazard AEC may be allowed to obtain material to fill sandbags used for emergency protection.
- (5) Structural work shall meet sound engineering practices.
- (6) This permit allows the use of oceanfront erosion control measures for all oceanfront properties without regard to the size of the existing structure on the property or the date of construction.

(b) Individuals shall allow authorized representatives of the Department of Environment and Natural Resources to make inspections at any time deemed necessary to be sure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed herein.

~~(c) There shall be no unreasonable interference with Development shall not jeopardize the use of the waters for navigation or for other public trust rights in public trust areas or estuarine waters, use of the waters during or after construction.~~

(d) This permit will not be applicable to proposed construction where the Department has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality; air quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights.

(e) This permit does not eliminate the need to obtain any other state, local, or federal authorization.

(f) Development carried out under this permit must be consistent with all local requirements, CAMA rules, and local land use plans, storm hazard mitigation, and post-disaster recovery plans current at the time of authorization.

Authority G.S. 113-229(c1); 113A-107(a),(b); 113A-113(b); 113A-118.1.

15A NCAC 07H .1705 SPECIFIC CONDITIONS

(a) Temporary Erosion Control Structures in the Ocean Hazard AEC.

- (1) Permittable temporary erosion control structures shall be limited to sandbags placed

- ~~above landward of~~ mean high water and parallel to the shore.
- (2) Temporary erosion control structures as defined in Subparagraph (1) of this Paragraph ~~may shall~~ be used to protect only imminently threatened roads and associated right of ways, and buildings and ~~their~~ associated septic systems. A structure ~~will shall~~ be considered ~~to be~~ imminently threatened if its foundation, septic system, or, right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is ~~not no~~ obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, ~~tend to~~ increase the risk of imminent damage to the structure.
- (3) Temporary erosion control structures ~~may shall~~ be used to protect only the principal structure and its associated septic system, but not ~~such~~ appurtenances ~~such~~ as pools, gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.
- (4) Temporary erosion control structures may be placed seaward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
- (5) Temporary erosion control structures ~~must shall~~ not extend more than 20 feet past the sides of the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the structure to be protected or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet seaward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal management or their designee.
- (6) ~~The permittee shall be responsible for the removal of remnants of all or portions of any damaged temporary erosion control structure.~~
- (7)(6) ~~A temporary~~ Temporary erosion control ~~structure~~ structures may remain in place for up to two years after the date of approval if ~~it is~~ they are protecting a building with a total floor area of 5000 sq. ft. or less, ~~less and its associated septic system,~~ or, for up to five years ~~if the~~ for a building ~~has~~ with a total floor

- area of more than 5000 sq. ft. and its associated septic system. ~~A temporary~~ Temporary erosion control ~~structure~~ structures may remain in place for up to five years if ~~it is~~ they are protecting a bridge or a road. The property owner shall be responsible for removal of the temporary structure within 30 days of the end of the allowable time period. ~~A temporary sandbag erosion control structure with a base width not exceeding 20 feet and a height not exceeding 6 feet may remain in place for up to five years or until May 2008, whichever is later, regardless of the size of the structure it is protecting if the community in which it is located is actively pursuing a beach nourishment project as of October 1, 2001.~~
- (7) Temporary sandbag erosion control structures may remain in place for up to five years from the date of approval if they are located in a community that is actively pursuing a beach nourishment project, and up to eight years from the date of approval if they are located in an Inlet Hazard Area adjacent to an inlet for which a community is actively pursuing an inlet relocation project. For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment or inlet relocation project if it has:
- (A) ~~been issued a~~ an active CAMA permit, where necessary, approving such project, or
- (B) ~~an ongoing feasibility study by the been identified by a U.S. Army Corps of Engineers~~ Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local ~~or federal~~ necessary money, when ~~necessary~~ necessary; or
- (C) received a favorable economic evaluation report on a federal project approved prior to 1986. ~~If beach nourishment is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void and existing sandbags are subject to all applicable time limits set forth in Parts (1) through (15) of this Subparagraph. Sandbag structures within nourishment project areas that exceed the 20 foot base width and 6 foot height limitation may be reconstructed to meet the size limitation and be eligible for this time extension: otherwise they must be~~

~~removed by May 1, 2000 pursuant to Part (15) of this Subparagraph. project; or~~

- (D) is in the planning stages of a project that has been designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and has been initiated by a local government or community with a commitment of local or state funds to construct the project and the identification of the financial resources or funding bases necessary to fund the beach nourishment or inlet relocation project.

If beach nourishment or inlet relocation is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable time limits set forth in Subparagraph (6) of this Paragraph.

- (8) Once the temporary erosion control structure is determined to be unnecessary due to relocation or removal of the threatened ~~structure or beach nourishment~~, structure, a storm protection project constructed by the U.S. Army Corps of Engineers, a large scale beach nourishment project or an inlet relocation project, it ~~must~~ shall be removed by the permittee within 30 ~~days~~ days of official notification by the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.
- (9) Removal of temporary erosion control structures shall not be required if they are covered by dunes with ~~vegetation sufficient to be considered~~ stable and ~~natural~~. natural vegetation.
- (10) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
- ~~(10)~~(11) Sandbags used to construct temporary erosion control structures shall be tan in color and ~~three 3 to five-5~~ feet wide and ~~seven 7 to 15~~ feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed ~~six 6~~ feet.
- ~~(11)~~(12) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
- ~~(12)~~(13) Excavation below mean high water in the Ocean Hazard AEC may be allowed to obtain material to fill sandbags used for emergency protection.
- ~~(13)~~(14) An imminently threatened structure may only be protected once regardless of ~~ownership~~. ownership unless the threatened structure is located in an Inlet Hazard Area and in a community that is actively pursuing an inlet

relocation project in accordance with Subparagraph (7) of this Paragraph. Existing temporary erosion control structures located in Inlet Hazard Areas may be eligible for an additional eight year permit extension provided that the structure being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subparagraph and the community in which it is located is actively pursuing an inlet relocation project in accordance with Subparagraph (7) of this Paragraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Subparagraph ~~(7)~~ (6) or (7) shall begin at the time the initial erosion control structure is installed. For the purpose of this rule:

- (A) a building and septic system will be considered as separate structures.
- (B) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each section of sandbags shall begin at the time that section is installed in accordance with Subparagraph ~~(7)~~ (6) or (7) of this Rule.

- ~~(14)~~(15) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Subparagraph ~~(7)~~(6) or (7) of this Rule.
- ~~(15)~~ Existing sandbag structures that have been properly installed prior to May 1, 1995 shall be allowed to remain in place according to the provisions of Subparagraphs (7), (8) and (9) of this Paragraph with the pertinent time periods beginning on May 1, 1995.

(b) Erosion Control Structures in the Estuarine Shoreline, Estuarine Waters, and Public Trust AECs. Work permitted by this general permit shall be subject to the following limitations:

- (1) no work shall be permitted other than that which is necessary to reasonably protect against or reduce the imminent danger caused by the emergency or to restore the damaged property to its condition immediately before the emergency;
- (2) the erosion control structure shall be located no more than 20 feet waterward of the ~~endangered structure~~; imminently threatened structure. If a building or road is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat shore profile or accelerated erosion, temporary erosion control structures may be

located more than 20 feet seaward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or their designee.

(3) fill material used in conjunction with emergency work for storm or erosion control in the Estuarine Shoreline, Estuarine Waters and Public Trust AECs shall be obtained from an upland source.

(c) Protection, Rehabilitation, or Temporary Relocation of Public Facilities or Transportation Corridors.

(1) Work permitted by this general permit shall be subject to the following limitations:

(A) no work shall be permitted other than that which is necessary to ~~reasonably~~ protect against or reduce the imminent danger caused by the emergency or to restore the damaged property to its condition immediately before the emergency;

(B) the erosion control structure shall be located no more than 20 feet waterward of the ~~endangered structure;~~ imminently threatened structure or the right-of-way in the case of roads. If a public facility or transportation corridor is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat shore profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet seaward of the facility or corridor being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or their designee;

(C) any fill materials used in conjunction with emergency work for storm or erosion control shall be obtained from an upland source except that dredging for fill material to protect public facilities or transportation corridors will be considered in accordance with standards in 15A NCAC 07H .0208;

(D) all fill materials or structures associated with temporary relocations which are located within Coastal Wetlands, Estuarine Water, or Public Trust AECs shall be removed after the emergency event has ended and the area restored to pre-disturbed conditions.

(2) This permit only authorizes the immediate protection or temporary rehabilitation or relocation of existing public facilities. Long-term stabilization or relocation of public facilities shall be consistent with local governments' post-disaster recovery plans and policies which are part of their Land Use Plans.

Authority G.S. 113-229(cl); 113A-107(a),(b); 113A-113(b); 113A-118.1.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 68 – SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the Substance Abuse Professional Practice Board intends to adopt the rule cited as 21 NCAC 68 .0217, amend the rules cited as 21 NCAC 68 .0204-.0205, .0207-.0209, .0211-.0216, .0220-.0224, .0501, .0503-.0505, .0507-.0509, .0511-.0512 and repeal the rule cited as 21 NCAC 68 .0210.

Proposed Effective Date: January 1, 2010

Public Hearing:

Date: November 2, 2009

Time: 10:00 a.m.

Location: 11 Glenwood Avenue, Suite A, Raleigh, NC 27603

Reason for Proposed Action: *Enactment of Session Law 2005-431 and Session Law 2008-130. Changes in polices by the IC & RC/AODA, Inc. Need to clarify existing rules. Changes in fees pursuant to law.*

Procedure by which a person can object to the agency on a proposed rule: *Any person may submit comments to the Board either orally or in writing at the Public Hearing. All other written comments must be received by the Board no later than the commencement of the Public Hearing. Written comments should be mailed to: Ms. Anna Misenheimer, North Carolina Substance Abuse Professionals Certification Board, P.O. Box 10126, Raleigh, NC 27605*

Comments may be submitted to: *Anna Misenheimer, 11 Glenwood Avenue, Suite A, Raleigh, NC 27603, email anna@recanc.com*

Comment period ends: November 2, 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: A copy of the fiscal note can be obtained from the agency.

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

SECTION .0200 –CREDENTIAL

21 NCAC 68 .0202 REGISTRATION PROCESS FOR BOARD CREDENTIAL

(a) Individuals ~~may shall~~ register with the Board ~~at the beginning of their entry into the field prior to providing professional services.~~ This allows the Board to review the applicant's materials including education, training, experience and supervision contracts and provide the applicant with ~~a clear~~ an understanding of his or her standing in the ~~certification~~ credentialing process.

(b) ~~Although early registration is not required, it will provide better direction through the process.~~ To register, the applicant shall send the following to the Board:

- (1) Completed registration form provided by the Board;
- (2) Documentation of ~~required high school graduation or completion of GED, as well as documentation of any baccalaureate or advanced degree the applicant may have completed;~~ the degree required for a credential;
- (3) A signed supervision contract provided by the Board documenting the proposed supervision process by an ~~approved applicant~~ supervisor;
- (4) A signed form attesting to the applicant's ~~commitment~~ promise to adhere to the ethical standards of the Board;
- (5) Documentation of three hours of educational training in ethics; ~~and~~
- (6) Completed criminal history record check;
- (7) Job description evidencing applicant is practicing under the scope of practice for the credential sought;
- (8) Current resume;
- (9) Completed special needs statement revealing special testing needs on a form provided by the Board if applicable; and
- (6)(10) A check or money order in the amount as set in G.S. 90-113.38 (b) that is non-refundable and made payable to the Board.

(c) Once the materials are determined by the Board to be in order the applicant shall be granted registration status.

~~(d) If a Registrant performs services as a counselor, in order for this experience to be considered toward certification at a later date, the Registrant shall receive supervision from an approved supervisor at a ratio of one hour of supervision for every ten hours of practice.~~

~~(e)(d) Registration with the Board shall be for a period of no more than five years unless the Registrant resubmits the documents and pays the fees set forth in this Rule. as set out in G.S. 90-113.40A.~~

(e) An applicant shall become a Registrant upon receipt of written notification from the Board.

Authority G.S. 90-113.30; 90-113.33; 90-113.38; 90-113.39; 90-113.40; 90-113.40A.

21 NCAC 68 .0204 SUPERVISED PRACTICUM FOR CERTIFIED SUBSTANCE ABUSE COUNSELOR AND LICENSED CLINICAL ADDICTIONS SPECIALIST

(a) ~~The process of supervision utilized to train All applicants for the Certified Substance Abuse Counselor or the Clinical Addictions Specialist credential shall be provided complete a 300 hour supervised practicum supervised by an approved applicant supervisor and the practicum shall cover all twelve core functions of the Substance Abuse Counselor. Counseling. Verification of at least ten hours of supervised practice must this supervised practicum shall be made in each of the core functions of this Rule. These 120 hours of supervised practice the supervised practicum shall be divided into one hour of supervision for every 10 hours of practice in each one of the 12 core functions. These core functions are:~~

- (1) Screening to determine a client is appropriate and eligible for admission to a particular program;
- (2) Intake to provide the administrative and initial assessment procedures for admission to a program;
- (3) Orientation of the client to the general nature and goals of the program, rules governing client conduct, notice of the hours during which services are available, treatment costs to be borne by the client, if any, and client's rights;
- (4) An assessment to identify and evaluate for the purpose of the development of a treatment plan an individual's strengths, weaknesses, problems and needs;
- (5) The treatment planning process whereby the counselor and client identify and rank problems needing resolution, establish agreed upon immediate and long term goals, and decide on a treatment process and the resources to be utilized;
- (6) Counseling to assist individuals, families, or groups in achieving objectives through exploration of a problem and its ramifications, examination of attitudes and feelings,

consideration of alternative solutions, and making decisions;

- (7) Case management activities which bring services, agencies, resources or people together within a planned framework of action toward the achievement of established goals;
- (8) Providing those crisis intervention services which respond to an alcohol or other drug abuser's needs during acute emotional and physical distress;
- (9) Provision of client education information to individuals and groups describing alcohol and other drug abuse and the available services and resources;
- (10) Referring the client whose needs cannot be met by the counselor or agency to other support systems and community resources available;
- (11) Charting the results of the assessment and treatment plan while writing reports, progress notes, discharge summaries and other client-related data necessary for the compilation of necessary reports and recordkeeping; and
- (12) Consultation with substance abuse and other professionals to assure comprehensive, quality care for the client.

(b) The remaining 180 hours of ~~this Supervised Practice supervised practicum~~ shall be in the core function areas but may be distributed at the discretion of the supervisor. areas.

(c) Upon completion of the 300 hours, the supervisor shall complete an evaluation form reviewing the ~~Counselor Intern's Substance Abuse Counselor's or Clinical Addictions Specialist's~~ professional development and provide it to the Board, documenting the 300 hours of practice, including 30 hours of ~~supervision. supervision~~ on a form provided by the Board.

(d) ~~This training~~ This supervised practicum may be completed as part of an academic course of study in a regionally accredited college or university or it may be developed in the work setting as long as it is supervised by an approved applicant supervisor. ~~The Supervised Practice shall take place within a setting whose primary focus is the treatment of alcohol and drug abuse.~~

(e) The 300 hours of supervised practical training provided by an applicant supervisor shall be completed as part of the required two years postgraduate supervised substance abuse counseling experience.

Authority G.S. 90-113.30; 90-113.31; 90-113.33; 90-113.34; 90-113.39; 90-113.40.

21 NCAC 68 .0205 CERTIFIED SUBSTANCE ABUSE COUNSELOR CERTIFICATION

Requirements for certification as a Certified Substance Abuse Counselor shall be as follows:

- (1) Successful completion of ~~at least 6000 hours of~~ paid or volunteer supervised experience earned in not less than three years, as set out in G.S. 90-113.40(a), or if a graduate of a Board-approved master's degree program, a total of 3,000 hours of paid or volunteer supervised

~~experience in the field, 300 hours of which shall be supervised practice.~~ If the work setting is not exclusively substance abuse focused, the applicant may accumulate experience proportional to the substance abuse services performed;

- (2) Board approved education and training of at least 270 clock hours as follows:

- (a) Substance Abuse Specific (SAS) education and training in the amount of at least 190 hours;
- (b) Up to 80 hours may be directed toward general professional skill building to enhance counselor development;
- (c) No more than 25% of the 270 hours (67.5) hours may be inservice education received within the applicant's organization by staff of the same organization;
- (d) ~~At 270~~ The 190 Substance Abuse Specific clock hours needed for initial certification must be in the core competencies. Core competencies are listed as follow:
 - (i) Basic ~~alcoholism,~~ alcoholism and drug addiction and cross-addiction knowledge;
 - (ii) Screening, intake, orientation and assessment;
 - (iii) Individual, group and family counseling and intervention techniques;
 - (iv) Case management, treatment planning, reporting and record keeping;
 - (v) Crisis intervention skills;
 - (vi) Prevention and education;
 - (vii) Consultation, referral and networking that utilizes community resources;
 - (viii) Ethics, legal issues, and confidentiality;
 - (ix) Special populations which include but are not limited to individuals or groups with specific ethnic, cultural, sexual orientation, and gender characteristics as well as persons dealing with HIV, ~~co-occurring disabilities~~ disabilities, persons with criminal justice related issues and perinatal issues;
 - (x) Physiology and pharmacology of alcohol and other drugs that include the

- (xi) Psychological, emotional, personality and developmental issues; and
- (xii) Traditions and philosophies of 12-step and other recovery support groups;
- (e) Of the 270 clock hours, applicants for certification as a Substance Abuse Professional must document ~~42~~ six hours of HIV/AIDS/STDS/TB/Bloodborne pathogens training and ~~education and education,~~ six hours professional ethics ~~training and education;~~ education, and six hours of education to be selected from the following:
 - (i) Nicotine Dependence;
 - (ii) Psychopathology;
 - (iii) Evidence-Based Treatment Approaches;
 - (iv) Substance Abuse Issues In Older Adults; and
 - (v) Substance Abuse Issues Affecting Veterans;
- (3) A ~~one hundred dollar (\$100.00) oral examination and case preparation fee plus a one hundred twenty-five dollar (\$125.00) written exam fee and a one hundred twenty-five dollar (\$125.00) non-refundable registration fee, unless previously paid. The applicant may request a reexamination and pay a non-refundable reexamination fee of one hundred dollars (\$100.00) for the oral examination fee and one hundred fifty dollars (\$150.00) as set out in G.S. 90-113.38(c) for the written exam fee if a passing score is not achieved and at least three months have passed from the date of failed test;~~
- (4) Successful completion of the IC&RC/AODA, Inc. or its successor organization written exam;
- (5) ~~Successful completion of an IC&RC/AODA, Inc. or its successor organization oral examination and case presentation administered by the Board following review and approval by the Board of the requirements in this Rule;~~
- (6)(5) Completed evaluation forms and contracts for ~~supervision, supervision, these~~ These forms must be mailed directly to the Board by three references: a supervisor, co-worker, and colleague;
- (7)(6) A signed form attesting to the applicant's adherence to the Ethical Standards of the Board;

- (8)(7) Documentation of high school graduation, completion of GED, baccalaureate or advanced degree;
- (9)(8) Completed registration forms;
- (10)(9) Resume; and
- (11)(10) Job description ~~which~~ that verifies job function.

Authority G.S. 90-113.30; 90-113.31; 90-113.33; 90-113.36; 90-113.39; 90-113.40.

21 NCAC 68 .0207 CERTIFICATION OR LICENSURE PERIOD

Certification or licensure is for a period of two years after which ~~recertification~~ re-credentialing is necessary.
Authority G.S. 90-113.30; 90-113.37; 90-113.33.

21 NCAC 68 .0208 CONTINUING EDUCATION REQUIRED FOR COUNSELOR, CRIMINAL JUSTICE ADDICTIONS PROFESSIONAL AND PREVENTION CONSULTANT RE-CREDENTIALING

(a) Each ~~certified~~ credentialed Counselor, Criminal Justice Addictions Professional and Prevention Consultant shall receive 60 hours of Board approved, as set out in these Rules, education during the current ~~certification~~ re-credentialing period ~~which that~~ shall be documented. No more than 25 percent may be in-service education. A minimum of 30 hours shall be substance abuse specific ~~(SAS) (SAS), and no more than 25 percent may be in-service education.~~ The education may include a combination of hours including attending ~~workshops, receiving clinical supervision and providing~~ conducting workshops.

(b) ~~Recertification~~ Re-credentialing educational guidelines as a Substance Abuse Professional require:

- (1) No more than 25 percent may be in-service education, received within your organization by staff of the same employment.
- (2) No more than 25 percent of workshop presentation with one hour of presentation translating to one hour of education. Workshop presentation shall be a part of an event pre-approved by the Board as set out in these Rules.
- (3) ~~No more than 25 percent of Alcohol/Drug Education Traffic School (ADETS) and Drug Education School (DES) events.~~
- (4)(3) An applicant shall include documentation of each event submitted.
- (5)(4) All applicants shall include ~~six~~ three hours of HIV/AIDS/STDS/TB/Bloodborne pathogens training and ~~education and education,~~ three hours of professional ethics training and education and three hours of nicotine dependence training and education for each ~~recertification, re-credentialing.~~
- (6)(5) No more than 50 percent self study, ~~pre-approved~~ approved by the Board as set out in these Rules.

(c) To be ~~recertified~~, re-credentialed, a ~~certified~~ credentialed professional ~~must shall~~ submit the following:

- (1) A completed application form with continuing education documented; ~~and~~
- (2) A post-certification supervision contract signed by a practice supervisor and supervisee; and
- ~~(2)~~(3) A non-refundable one hundred twenty-five dollar (\$125.00) recertification fee.

(d) To be re-credentialed, a Criminal Justice Addictions Professional and a Certified Substance Abuse Counselor shall submit a post-certification supervision contract signed by a Practice Supervisor and supervisee.

Authority G.S. 90-113.30; 90-113.33; 90-113.37; 90-113.38; 90-113.39.

21 NCAC 68 .0209 RECIPROCITY

(a) If a Criminal Justice Addictions Professional, Substance Abuse Counselor, Prevention Consultant, Clinical Supervisor, or Clinical Addictions Specialist holds a license or certification issued by an IC&RC/AODA, Inc. member board or a successor organization as a criminal justice additions professional, certified substance abuse counselor (to include alcohol and other drugs), certified Prevention Consultant, certified Clinical Supervisor, or certified Licensed Clinical Addictions Specialist, the person may transfer this certification credential to North Carolina by applying a transfer fee as assessed by the IC&RC/AODA, Inc. or its successor organization.

(b) The reciprocal ~~certification effective issue date of the credential shall remain the same as in the previous state. reflect the date the credential is awarded by the Board.~~

(c) At the time when ~~recertification~~ North Carolina credentialing is required, it will be the individual's responsibility to submit an application for ~~recertification. North Carolina credentialing.~~ For the period of the first ~~recertification North Carolina credentialing in North Carolina,~~ the Board shall accept the member's former ~~State state recertification credentialing requirements for the purpose of reciprocal recertification. re-credentialing.~~ At the end of this ~~recertification credentialing~~ period, it shall be the individual's responsibility to conform to the ~~recertification re-credentialing~~ requirements of North Carolina in effect at the time of ~~recertification. re-credentialing.~~

(d) If a substance abuse professional not credentialed by a member of the IC7&RC/AODA, Inc. or its successor organization moves to North Carolina, that person may apply for the CSAC in a none-reciprocal manner if he or she:

- (1) Documents that he or she is credentialed by the state occupational licensing board recognized by that state or jurisdiction; or
- (2) Documents that he or she holds an NCAC I or NCAD II through the National Certification Commission of the National Association of Alcohol and Drug Abuse Counselors; and
- (3) Submits the required registration fee of one hundred twenty five dollars (\$125.00).

(e) Persons who obtain the CSAC through this process shall meet all other requirements for maintaining the credentialing

including submitting for a full criminal background check as required for all new applicants.

(f) As an IC&RC/AODA, Inc. member Board, all rights and privileges conferred by the awarded credential shall be recognized by the Board. The determination of whether or not these rights and privileges conferred by the awarded credential shall be recognized by other independent entities shall be made pursuant to the rules established by these entities.

Authority G. S. 90-113.30; 90-113.33; 90-113.37; 90-113.38.

21 NCAC 68 .0210 CONVERSION

~~(a) Alcoholism and drug abuse counselors may convert to substance abuse counselors as prescribed by ICRC/AODA or maintain their alcohol or drug abuse certification.~~

~~(b) A person with either of the single credentials shall not be eligible for reciprocity or the international certificate through the ICRC/AODA.~~

~~(c) The conversion fee shall be two hundred twenty five dollars (\$225.00) with twenty five dollars (\$25.00) of this fee due when the application packet is requested.~~

Authority G.S. 90-113.30; 90-113.33.

21 NCAC 68 .0211 PROCESS FOR CLINICAL SUPERVISOR CERTIFICATION

Requirements for certification as a Clinical Supervisor shall be:

- (1) Applicant shall obtain and maintain ~~certification a license~~ as a ~~Substance Abuse Counselor, Clinical Addictions Specialist, Specialist or a substance abuse specialty credential offered by an organization granted deemed status by the Board in order to be eligible for Clinical Supervisor Certification;~~
- (2) All applicants shall be required to hold a master's degree or higher education in a human services field with a clinical application from a regionally accredited college or university;
- (3) ~~8,000 hours or four years full-time experience in the field of alcohol and other drug abuse (10,000 hours to insure reciprocity pursuant to IC&RC/AODA, Inc. or its successor organization's requirements); Documentation signed by the Certified Clinical Supervisor of 4000 hours or two years full-time experience as a Substance Abuse Clinical Supervisor, supervised in a ratio of one hour supervision for every 80 hours of practice in the field of alcohol and other drug abuse;~~
- (4) Thirty hours of clinical supervision specific education for initial certification and 15 hours of clinical supervision specific education for re-certification (which will occur every two years). These hours shall be reflective of clinical supervision or clinical supervision of the twelve core functions or performance domains in their clinical application and practice and may also be used as ~~re-certification re-credentialing~~ hours for

~~Substance Abuse Counselor or Clinical Addictions Specialist. Specialist certification.~~ For the purpose of re-certification as a Clinical Supervisor, 25 percent of the required total hours may be obtained by providing supervision of a Criminal Justice Addictions Professional, Prevention Consultant, Substance Abuse Counselor or Clinical Addictions Specialist;

- (5) Three letters of ~~reference:~~ reference. ~~one~~ One from a substance abuse professional who can attest to supervisory competence and two from either substance abuse counselors who have been supervised by the candidate or substance abuse professionals who can attest to the applicant's competence;
- (6) Successful completion of an IC&RC/AODA, Inc. or its success or organization's written examination;
- (7) Payment of all application fees. A fee of twenty-five dollars (\$25.00) shall be submitted to the Board with a letter of intent in order to receive the application packet. Also, an applicant shall submit with a completed registration packet a registration fee of one hundred twenty-five dollars (\$125.00) and a written examination fee of one hundred twenty-five dollars (\$125.00).
- (8) A fee of one hundred twenty-five dollars (\$125.00) shall be required as a recertification fee.

Authority G.S. 90-113.30; 90-113.33; 90-113.34; 90-113.38; 90-113.40; 90-113.41; 90-114.41A.

21 NCAC 68 .0212 PROCESS FOR RESIDENTIAL FACILITY DIRECTOR CERTIFICATION

(a) Residential facility director certification may be obtained and continued by any person ~~certified~~ credentialed as a Substance Abuse Counselor or Clinical Addictions Specialist.

- (b) Requirements for certification shall be as follows:
- (1) 50 hours of academic and didactic management specific training;
 - (2) Recommendation of applicant's current supervisor;
 - (3) Positive recommendation of a colleague and co-worker of the applicant; and
 - (4) An application packet fee of twenty-five dollars (\$25.00), a registration fee of one hundred twenty-five dollars (\$125.00), and a certification fee of one hundred twenty-five dollars (\$125.00).

(c) In addition to meeting the continuing education requirements ~~provided~~ to practice as a Certified Counselor or Clinical Addictions Specialist, in order to maintain certification as a Residential Facility Director, the applicant shall take 40 hours of continuing education every two years and maintain documentation of such training. Anyone allowing certification

to lapse beyond three months of the re-certification due date shall reapply as a new applicant.

Authority G.S. 90-113.30; 90-113.33; 90-113.35; 90-113.38; 90-113.39; 90-113.40.

21 NCAC 68 .0213 CONTINUING EDUCATION APPROVAL POLICY

(a) The Board shall approve educational events for professional ~~certification.~~ credentialing. One certified hour is defined as one contact hour of participation in an organized continuing education experience. Continuing education used to meet the ~~certification~~ credentialing requirements shall be reviewed and ~~approved by the Board.~~ approved according to these Rules. If the sponsor does not obtain ~~credit~~ approval from the Board, the individual participants shall be responsible for supplying all of the required information for each continuing education session at the time of request for ~~certification or re-certification~~ credentialing or re-credentialing or conversion. The Standards ~~and Credentials~~ Committee shall review requests ~~once monthly.~~ quarterly. Submission of approval requests ~~should~~ shall be ~~postmarked~~ received 45 days prior to opening day of the event.

(b) Any applicant for training approval shall ~~submit:~~ submit a training approval request form including:

- (1) Title of course, date, location, individual or organization sponsor, whether it will be held only once or recurring.
- (2) Presenter(s) who shall attach a resume outlining expertise in the subject area and content of the session.
- (3) ~~Brief but thorough~~ A description of the contents of a track, course, seminar, and the type of credit hours being requested, to include substance abuse specific or general skill building, requested to indicate if it is substance abuse specific, general skill building, or required training pursuant to other specialized credentials including Criminal Justice Addictions Professionals, Clinical Supervisors, Residential Facility Directors, or Prevention Consultants.
- (4) Agenda, to include the breakdown of time including a 15 minute break for every two hours of education and amount of time allowed for meals.
- (5) ~~Application for training approval shall include a copy of the objective evaluation tool to be used.~~
- (6) ~~A summary of evaluation that shall be submitted to the Board within 45 days following the program date(s).~~
- (5) The sponsor or individual seeking approval shall pay an annual fee as follows:
 - (A) \$25.00 for up to 10 hours;
 - (B) \$50.00 for more than 10 hours and up to 20 hours;
 - (C) \$75.00 for more than 20 hours and up to 30 hours;

(D) \$100.00 for more than 30 hours and up to 40 hours;

(E) \$125.00 for more than 40 hours.

~~(c) The Board may review programs by sending a Board member or designee to monitor the event or a portion of the event. When fulfilling this quality assurance role, the designated Board member shall present a letter of introduction to the presenter. The Board member shall not receive certification or recertification hours for attendance at these events.~~

~~(d) Certification hours may be awarded only for actual hours completed.~~

~~(e) Certificates shall not be released until the event ends or they shall be modified to reflect the actual hours completed.~~

~~(f) Providers of Board approved events shall be required to document attendance at individual events for schools, courses, curricula and conferences.~~

~~(g) Event sponsors shall maintain attendance and evaluation records for no less than three years.~~

~~(h)(c) Training approved by IC&RC/AODA, Inc. or its successor organization member boards and organizations granted deemed status shall be accepted with documentation of completion.~~

~~(i)(d) Employer inservice events In-service training shall meet the same requirements as set out in Paragraphs (a)(b) through (h) of this Rule. Inservice includes any event provided in the applicant's organization by a person under the same employment as the applicant (military employment is considered within the same department). However, if 20% of the participants persons who are non-employees of the sponsoring and presenting agency, agency are invited to participate, then it is not considered in-service and Board pre-approval shall be required. the standard fee schedule shall be in effect. Education received within the organization by outside trainers is not considered inservice.~~

~~(j) Credit shall not be given for the following:~~

- ~~(1) Banquet speakers unless the content meets the requirements in this Rule;~~
- ~~(2) Making one's own case presentation; or~~
- ~~(3) Registration time.~~

~~(k)(e) Presenters shall be given one hour of credit for every one hour presented. However, if the original presentation is repeated, hours can only be credited for the original presentation.~~

~~(l)(f) The Board may revise or rescind credit hours if information is received documenting that a previously approved event was not presented as it was approved.~~

Authority G.S. 90-113.30; 90-113.33; 90-113.38; 90-113.39; 90-113.40.

21 NCAC 68 .0214 UNIVERSITY SUBSTANCE ABUSE SPECIALTY CURRICULA

(a) The Standards Committee shall be notified by of a request from a school of its intent to provide for approval of a "Substance Abuse Specialty" curricula.

~~(b) The Chairperson of the Standards Committee shall ask members of the Curriculum Review Subcommittee of the Standards Committee to set up an appointment with the appropriate faculty and representatives of the applicant school for a site review.~~

~~(e)(b) The Chairperson of the Curriculum Review Subcommittee shall contact the applicant school's representative to schedule the site review and Upon notification of the school's intent to provide a substance abuse specialty curriculum, the Board shall inform the representative school that the following information shall be needed from the applicant ~~for the site review itself:~~ school:~~

- ~~(1) Curricula description including number of hours of substance abuse specific credits;~~
- ~~(2) Information as to how the educational requirements for HIV and ethics substance abuse specialty shall be met within the curricula; curricula pursuant to G.S. 90-113.41A(a)(2) a-k;~~
- ~~(3) The names and resume of any faculty who shall be teaching the substance abuse curricula;~~
- ~~(4) The name of the school in which the substance abuse curricula shall be housed and organizational contact information; and~~
- ~~(5) Specific guidelines and information on the field experience that shall be required of students including current substance abuse specific field placements and supervision.~~

~~(d) The Chairperson of the Curriculum Review Committee shall follow up the telephoned exchange of information with an official letter outlining the requirements for a site review.~~

~~(e)(c) The Curricula Review Subcommittee Standards Committee shall conduct a site visit and review of curricula to determine if the proposal meets educational, hour, substance abuse specific, supervised experience, and instructor rules of the Board: specific and supervised experience qualifications.~~

~~(f)(d) The Curricula Review Subcommittee of the Standards Committee shall make a recommendation to the Standards Committee for approval or disapproval of the curricula: present recommendations to the Board.~~

~~(g)(e) The school shall be notified of the recommendation of the Standards Committee to the Board and shall have the opportunity to make a presentation to the Board to support its request. The Board shall notify the school of the status of its request and any recommendation.~~

~~(h) Upon a recommendation by the Standards Committee for approval, the Board shall make a final determination of the approval or disapproval of the curricula.~~

~~(i)(f) The curricula shall be approved submitted for review for a period of every three years. Application for extension of the curricula shall be made 90 days prior to the ~~effective date of the extension:~~ current expiration date.~~

Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40.

21 NCAC 68 .0215 VERIFICATION

(a) Application for verification of ~~certification~~ credential shall be made to the Board.

(b) A request for verification shall be made in writing and submitted with a check or money order in the amount of twenty-five dollars (\$25.00).

Authority G.S. 90-113.30; 90-113.33; 90-113.38; 90-113.40.

21 NCAC 68 .0216 BACKGROUND INVESTIGATION

(a) Every applicant for ~~registration or certification~~ an initial credential issued pursuant to Article 5C of Chapter 90 of the General Statutes shall provide, at her or his expense, a ~~criminal history record check~~ completed fingerprint card and accompanying release of information form, provided by the Board, meeting the standards set by the State Bureau of Investigation and obtained within 60 days of the date ~~when~~ the applicant submits all the prerequisites for ~~registration or certification~~; his or her credential. ~~This record check shall be made from information the applicant can access from local, State, and national files in any jurisdiction in which the applicant was subject to conviction. If the applicant is unable to obtain the report from the issuing agency due to the agency's denial of a request for the report, a verified statement listing all of the applicant's criminal convictions (to include all crimes appearing in the categories listed below) shall satisfy this requirement.~~

(b) The applicant shall provide any additional information regarding any pending charge or conviction as requested by the Board.

(c) An applicant shall submit a verified statement listing all criminal convictions received by the applicant, subsequent to the date of the application. Failure to make full and accurate disclosure shall be grounds for immediate application ~~denial~~, denial or other disciplinary action applicable to ~~registration or certification~~ registration, certification, or licensure pursuant to G.S. 90-113.44.

(d) ~~Applications with criminal~~ Criminal histories from any jurisdiction shall be categorized ~~according to the seriousness of the offense. The category shall be determined by the most serious offense,~~ as defined by North Carolina law.

(e) The categories of crimes (committed as separate incidents) are as follows:

- (1) Category I. The following crimes:
 - (A) ~~Homicide or attempted murder;~~ Murder, attempted murder, or manslaughter of a child 16 or under; or
 - (B) Sexual assault, including ~~but not limited to~~ attempted sexual assault, rape, indecent liberties with a child, molestation, ~~and or~~ sexual assault of a ~~child~~; child, or the attempt to commit any of the aforementioned crimes.
- (2) Category II. ~~Crimes~~ The following crimes that primarily result in bodily or emotional harm to others, including:
 - (A) ~~Manslaughter;~~ Manslaughter of a person over 16 years of age;
 - (B) Kidnapping or attempted kidnapping;
 - (C) Arson of an occupied dwelling;
 - (D) Robbery with a dangerous weapon or attempted ~~robbery;~~ robbery with a dangerous weapon;
 - (E) Assault (felony); Felony assault other than a sexual assault;
 - (F) ~~Larceny from the person;~~
 - (G) ~~One or more felony DWIs;~~

- (~~H~~)(F) Burglary; and First degree burglary;
- (~~I~~) ~~Sale and delivery violations of the North Carolina Controlled Substances Act resulting in a felony conviction.~~
- (G) Trafficking in controlled substances as it is defined in Article 5 of Chapter 90 of the General Statutes; or
- (H) Any other felony that results in bodily or emotional harm to another.
- (3) Category III. ~~Listed misdemeanors;~~ The following misdemeanors and felonies that do not primarily result in bodily or emotional harm to ~~others including;~~ others:
 - (A) ~~Any combination of three or more misdemeanors from Category IV shall be reclassified as a Category III offense;~~
 - (~~B~~)(A) Three or more DWIs not prosecuted as a felony; DWIs within the most recent seven years;
 - (~~C~~)(B) Assault (misdemeanor);
 - (D)(C) Larceny not from the person; Felony larceny;
 - (~~E~~)(D) Financial Fraud, obtaining property by false pretenses, financial transaction card theft or fraud; theft;
 - (~~F~~)(E) Unauthorized use of a motor vehicle; an aircraft;
 - (~~G~~)(F) Unlawfully carrying a weapon;
 - (~~H~~)(G) Theft of a vehicle;
 - (~~I~~)(H) Falsification of government documentation (felony); and
 - (~~J~~)(I) Arson of an unoccupied dwelling, dwelling or other building within the curtilage;
 - (J) Burglary other than in the first degree;
 - (K) Sale and delivery violations of the North Carolina Controlled Substances Act resulting in a felony conviction;
 - (L) Embezzlement;
 - (M) Forgery;
 - (N) Any burning of property prosecuted as a felony;
 - (O) Robbery not with a dangerous weapon;
 - (P) Perjury;
 - (Q) Felony receiving and possessing stolen goods; or
 - (R) Breaking and entering
 - (S) Any other felony not otherwise categorized.
- (4) Category IV. ~~Misdemeanors not otherwise listed that do not primarily result in bodily or emotional harm to others including;~~ The following misdemeanors:
 - (A) Any combination of three or more Category V incidents, offenses, except offenses occurring within the

same incident shall be considered a single offense; ~~three misdemeanor DWIs shall be a reclassified as a Category III offense;~~

- (B) Two DWIs; DWIs within the most recent seven years;
- (C) Possession of a controlled substance;
- (D) Injury or damage to property;
- (E) Resisting arrest;
- (F) Larceny;
- (G) Prostitution;
- (H) Criminal mischief;
- (I) Driving while license suspended or ~~revoked; and~~ revoked;
- (J) Falsification of government ~~documents.~~ documents;
- (K) Any misdemeanor burning; or
- (L) Any other misdemeanor not otherwise categorized.

(5) Category V. Category V offenses are:

- (A) ~~One DWI;~~ DWI within the most recent seven years;
- (B) Disorderly conduct; ~~and~~
- (C) Intoxicated and disruptive in ~~public.~~ public;
- (D) Three or more incidents resulting in worthless check convictions; or
- (E) Shoplifting or concealment.

~~(f) The Board shall determine if the conviction is related to the duties and responsibilities of a substance abuse professional. The Board shall consider the following factors:~~

- ~~(1) The nature and seriousness of the crime;~~
- ~~(2) The extent to which a registration or certification might offer an opportunity to engage in further criminal activity of the same type; and~~
- ~~(3) The relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a substance abuse professional.~~

~~(g) If the Board determines that the conviction does not relate to the duties and responsibilities of a substance abuse professional, the Board shall continue to process the registration or certification application.~~

~~(h) If the Board determines that the conviction does relate to the duties and responsibilities of a substance abuse professional:~~

(f) The following sanctions have been established by the Board according to the categories of crimes:

- (1) An applicant with a Category I conviction shall have at least 15 years elapsed since the applicant has completed all aspects of his or her sentence received as a result of the last Category I conviction to be eligible for ~~registration or certification.~~ registration, certification, or licensure.
- (2) An applicant with a Category II conviction shall have at least 10 years elapsed since the applicant has completed all aspects of his or her sentence received as a result of the last

~~Category II conviction to be eligible for registration or certification.~~ certification or licensure. Notwithstanding a Category II conviction, an applicant may be registered no sooner than five years following the date the applicant has completed all aspects of his or her sentence.

(3) An applicant with a Category III conviction shall have at least five years elapsed since the applicant has completed all aspects of his or her sentence received as a result of the last Category III conviction to be eligible for ~~registration or certification.~~ certification or licensure. Notwithstanding a Category III conviction, an applicant may be registered immediately following the date the applicant has completed all aspects of his or her sentence.

(4) An applicant with a Category IV conviction shall have at least three years elapsed since the applicant has completed all aspects of his or her sentence received as a result of the last Category IV conviction to be eligible for ~~registration or certification.~~ certification or licensure. Notwithstanding a Category IV conviction, an applicant may register immediately following the date the applicant has completed all aspects of his or her sentence.

(5) An applicant with a Category V conviction shall have at least one year elapsed since the applicant has completed all aspects of his or her sentence received as a result of the last Category V conviction to be eligible for ~~registration or certification.~~ certification or licensure. Notwithstanding a Category V conviction, an applicant may register immediately following the date the applicant has completed all aspects of his or her sentence.

(g) If a waiting period prior to licensure as a driver of a motor vehicle results from a conviction for a DWI offense, this waiting period shall not be considered an aspect of an applicant's sentence required to be completed prior to the awarding of a credential.

~~(i) If the person's criminal activity is related to a history of chemical dependency, the Board shall also consider the person's efforts and success in achieving and maintaining recovery. Applicants with a history of chemical dependency shall demonstrate evidence of treatment or rehabilitation and at least two years of continuous recovery.~~

~~(j)(h)~~ (h) An individual whose application is denied or whose registration is suspended or revoked may request a hearing under the procedure established in Article 5C of Chapter 90 and Chapter 150B of the North Carolina General Statutes and the North Carolina Administrative Code.

Authority G.S. 90-113.30; 90-113.31; 90-113.33; 90-113.40; 90-113.41A; 90-113.44.

21 NCAC 68.0217 SUPERVISED PRACTICUM FOR CRIMINAL JUSTICE ADDICTIONS PROFESSIONAL CERTIFICATION

(a) All applicants for the Criminal Justice Addictions Professional Certification shall complete 300 hours supervised practicum. The applicant supervisor shall:

- (1) Train the Criminal Justice Addictions Professional and cover all criminal justice performance domains as set out in G.S. 90-113.31(B)(6);
- (2) Submit verification that at least 10 hours of supervised practice was provided in each of the performance domains; and
- (3) Provide verification of at least one hour of supervision for every 10 hours of practice in each one of the performance domains on a supervisor evaluation form provided by the Board.

(b) The remaining hours of the supervised practicum shall be in any of the performance domains.

(c) Upon completion of 300 hours, the applicant supervisor shall:

- (1) Complete an evaluation form reviewing Criminal Justice Addictions Professional's development as a professional;
- (2) Document the 300 hours of practice to include 30 hours of supervision by the applicant supervisor; and
- (3) Submit this information to the Board on a form provided by the Board.

(d) The supervised practicum may be completed as part of an academic course of study in a regionally accredited college or university or it may be developed in the work setting as long as it is supervised by an applicant supervisor. The supervised practicum shall take place within a criminal justice addiction professional setting to include a workplace for law enforcement, the judiciary, or corrections.

Authority G.S. 90-113.31A; 90-113.31B(6); 90-113.40; 90-113.40B.

21 NCAC 68.0220 NOTICE TO APPLICANT OF FAILURE TO SATISFY BOARD

Whenever the Board has determined that a ~~an application person is deficient, who has duly made application to take an examination to be given by the Board, showing the person's education, training and other qualifications required by the Board or that a person who has taken and passed an examination given by the Board has failed to satisfy the Board of the applicant's qualifications to be examined or to be issued a certificate of certification for any cause other than failure to pass an examination,~~ the Board shall notify ~~such person~~ the applicant of its decision and indicate in what respect the applicant has failed to satisfy the Board. The applicant may inquire with the Board Administrator if more information is needed to clarify the nature of the deficiency.

Authority G.S. 90-113.33; 90-113.39; 90-113.40.

21 NCAC 68.0221 APPLICANT HEARING

Upon denial, suspension or revocation of a credential, ~~If the an applicant so may requests request a hearing upon submission of a written statement detailing and provides the Board with a statement of the reason for the request, request.~~ this person The applicant shall be given a formal hearing before the Board. Notice of the time and place of the public hearing shall be provided to the applicant. The burden of satisfying the Board of the applicant's qualifications for ~~certification or licensure~~ shall be upon the applicant. Following the hearing, the Board shall determine whether he or she is qualified to be examined or is entitled to be ~~certified, credentialed,~~ whichever is the next appropriate step in the process.

Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40.

21 NCAC 68.0222 ETHICS INQUIRY

(a) Information which is the basis for an inquiry into the issue of whether the applicant meets the ethical standards of the Board may be referred to the Chairperson of the ~~Ethics Standards~~ Ethics Standards Committee for review and further investigation. The Chairperson may pursue the investigation of this matter pursuant to the procedures used to investigate ethics complaints against ~~applicants and certified professionals; applicants.~~ applicants. ~~Once the investigation is completed, the Ethics Chairperson shall report the results of the investigation to the Standards Committee for its review.~~

(b) Information which is the basis for an inquiry into the issue of whether the credentialed professional meets the ethical standards of the Board may be referred to the Chairperson of the ~~Ethics~~ Ethics Committee for review and further investigation. The Chairperson may pursue the investigation of this matter pursuant to the procedures used to investigate ethics complaints.

Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40; 90-113.44.

21 NCAC 68.0223 STANDARDS COMMITTEE ACTION

The Standards Committee may take any of the following actions:

- ~~(1) Approve the application;~~
- ~~(2) Remand the matter to the Ethics Chairperson for further inquiry in order to obtain additional information upon which to base a decision;~~
- ~~(3) Schedule a hearing by the Committee wherein the applicant may appear to answer questions or provide a statement to the Committee regarding the matter under inquiry;~~
- ~~(4) Request that the applicant undergo any psychological or physical testing or assessment which or by whom the Committee deems necessary, provide the results to the Committee for its review, and, in the discretion of the Committee, require that the applicant complete any prescribed intervention;~~
- ~~(5) Following notification to the applicant and the opportunity for the applicant to request a hearing by the Board, the Committee may~~

~~make a recommendation to the Board that the applicant shall not be certified.~~

- (1) ~~Review applications for credentialing and re-credentialing;~~
- (2) ~~Recommend or deny candidates for credentialing and re-credentialing;~~
- (3) ~~Review curricula requirements for Board approved training events;~~
- (4) ~~Review curricula requirements for Board approval of college or university courses; and~~
- (5) ~~Investigate complaints of illegal practice.~~

Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40.

21 NCAC 68 .0224 CREDENTIALING STATUS DENIED IF SERVING SENTENCE

~~Individuals~~ An individual making application for ~~certification a credential~~ who ~~are~~ is serving any part of a court-ordered ~~sentence; sentence,~~ including community service, supervised or unsupervised probation, or making restitution, shall be removed from the ~~certification~~ credentialing process. If any person is serving or begins serving such sentence during the course of the ~~certification~~ credentialing process, this person shall notify the Board. ~~Once the Board ascertains that the individual is serving a sentence, all fees shall be refunded.~~ If a driver license revocation or suspension period results from a conviction for a DWI offense or refusal to submit to breathalyzer or blood testing, this period shall not be considered an aspect of an applicant's sentence required to be completed prior to the awarding of a credential.

Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40; 90-113.44.

SECTION .0500 - ETHICAL PRINCIPLES OF CONDUCT FOR THE SUBSTANCE ABUSE PROFESSIONAL

21 NCAC 68 .0501 PURPOSE AND SCOPE

- (a) ~~The ethical guidelines principles governing the certified credentialed substance abuse professional are established to insure that the highest standards are followed for the professional practice in the alcohol and other drug abuse service delivery system. protect the public health, safety and welfare.~~
- (b) ~~The primary goal of this code is to set forth principles to guide the conduct of the substance abuse professional in the profession. professional. Violation The Board may deem violation of these standards may be deemed malpractice, gross negligence, incompetence, or engaging in conduct that could result in harm or injury to the public.~~
- (c) ~~Ethical principles shall provide a standard for the substance abuse professional in his or her professional roles, relationships and responsibilities. The substance abuse professional is charged to consider all principles that apply to the situation on which ethical judgment is to be exercised and to select a course of action consistent with the spirit as well as the letter of the ethical code.~~
- (d) ~~Upon approval of certification, submission of an application for a credential, each applicant shall review the ethical standards in these rules and return a signed statement signed statement to~~

~~the Board agreeing to abide by these standards. uphold the ethical principles of conduct.~~

Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40.

21 NCAC 68 .0503 COMPETENCE

- (a) ~~The substance abuse professional shall employ the requisite knowledge, skill and proficiencies of a substance abuse practitioner competently providing services within his or her scope of practice.~~
- (b) ~~The substance abuse professional shall strive to learn about cultural and ethnic values in order to provide the highest level of care for a client who possesses a diverse or unfamiliar cultural or ethnic background.~~
- (c) ~~The substance abuse professional shall provide the necessary interpretive services to any client or refer the person for necessary services.~~
- ~~(a)(d)~~ The substance abuse professional shall assist in eliminating prevention, intervention, and treatment treatment, and supervision practices by persons unqualified or unauthorized persons to practice in the field.
- ~~(b)(e)~~ The substance abuse professional who is aware knows of unethical conduct or of unprofessional modes of practice shall practices by a substance abuse professional shall report such violations to the appropriate certifying regulating authority.
- ~~(e)(f)~~ The substance abuse professional shall recognize boundaries and limitations of his or her competencies and not offer services or use techniques outside of these his or her professional competencies. competencies and scope of practice.
- (g) The substance abuse professional who identifies a need for services outside his or her skill, training or experience shall refer the client to an appropriate professional or shall seek supervision and training to provide the required services for the individual.
- (h) The substance abuse professional shall complete reports and record keeping functions in a manner that supports the client's treatment experience and the welfare.
- ~~(d)(i)~~ The substance abuse professional shall recognize the effect of negative impact impairment has on his or her functioning in public and professional performance and shall be willing to seek appropriate treatment for oneself or for a colleague. The substance abuse professional shall support peer assistance programs in this respect. shall seek an assessment by a Board-approved provider and follow the recommendations.
- ~~(f)(i)~~ No person applicant shall be certified credentialed as a substance abuse professional who is sentenced to an active or probationary term by the courts of this land and any part of the sentence is unserved. serving any part of a court-ordered sentence as specifically prohibited by 21 NCAC 68 .0224.

Authority G.S. 90-113.30; 90-113.34; 90-113.36; 90-113.37; 90-113.39; 90-113.40; 90-113.41; 90-113.43; 90-113.44.

21 NCAC 68 .0504 LEGAL STANDARDS AND ETHICAL STANDARDS

- (a) ~~The substance abuse professional shall uphold the legal and ethical codes which pertain to professional conduct.~~
- ~~(b)(a)~~ The substance abuse professional shall not claim either directly or by implication, professional or imply educational,

experiential or professional qualifications or affiliations that the substance abuse professional does not possess.

~~(e)(b)~~ The substance abuse professional shall not use ~~the affiliation with membership on~~ the North Carolina Substance Abuse Professional Certification Practice Board for purposes that are not consistent with ~~the stated purposes of the Board~~ these Rules. No Board member shall advertise, promise, or provide special treatment to any individual because of membership on the North Carolina Substance Abuse Professional Practice Board or its committees.

~~(d)~~ The substance abuse professional shall not associate with or permit the substance abuse professional's name to be used in connection with any services or products in a way that is misleading.

~~(e)(c)~~ The substance abuse professional associated with the development or promotion of books or other products offered for commercial sale shall insure that such books or other products offered for commercial sale shall insure that such books or products are presented in a professional and factual way. The substance abuse professional shall not lend his or her name to or participate in any professional or business relationship that may knowingly mislead the public.

(d) The substance abuse professional shall follow established guidelines on research with human subjects when he or she engages in such research.

Authority G.S. 90-113.30; 90-113.33; 90-113.43; 90-113.44; 90-113.45.

21 NCAC 68 .0505 EDUCATION AND TRAINING STANDARDS

~~(a)~~ The substance abuse professional shall respect limits of present understanding in public statements concerning alcoholism and other forms of drug addiction.

~~(b)~~ The substance abuse professional who represents the field of alcoholism and other drug abuse prevention, intervention, and treatment to clients, other professionals or to the general public.

~~(e)(a)~~ The substance abuse professional shall acknowledge and document shall provide the source for any materials and or techniques used. used when making either public statements or providing education and training.

~~(d)~~ The substance abuse professional who conducts training in alcohol or other drug abuse prevention, intervention, and treatment skills or techniques shall indicate to the audience the requisite training and qualifications required to properly perform these skills and techniques.

(b) The substance abuse professional shall not knowingly make false, deceptive, or fraudulent statements concerning his or her:

- (1) Training, experience, or competence;
- (2) Academic degrees;
- (3) Credentials;
- (4) Institutional or association affiliations;
- (5) Services;
- (6) Fees;
- (7) Publications or research findings; or concerning; and
- (8) The scientific or clinical basis for, or results or degree of success of his or her services.

Authority G.S. 90-113.30; 90-113.33; 90-113.44.

21 NCAC 68 .0507 CLIENT WELFARE

~~(a)~~ The substance abuse professional shall respect the integrity and protect the safety and welfare of the person or group with whom he or she is working. client.

~~(b)~~ The substance abuse professional shall ~~define for self and others~~ inform clients of the nature and direction of loyalties and responsibilities and keep all parties ~~concerned~~ participating in counseling or in receipt of other services informed of these commitments.

~~(c)~~ The substance abuse professional, in the presence of professional conflict, shall be concerned primarily with the welfare of the client.

~~(d)~~ The substance abuse professional shall ~~end a counseling or consulting relationship when the professional knows or should know that the client is not benefiting from it.~~ withdraw services only after giving consideration to all factors in the situation and taking care to minimize adverse actual or possible effects.

~~(e)~~ The substance abuse professional shall ~~shall~~, after minimizing any adverse impact, end a counseling or consulting relationship when the professional knows or should know that the client is not benefiting from services. ~~withdraw services only after giving consideration to all factors in the situation and taking care to minimize adverse actual or possible effects.~~

~~(f)~~ The substance abuse professional who anticipates the cessation or interruption of service to a client shall notify the client promptly and seek the cessation, transfer, referral, or continuation of service in relation to the client's needs and preferences.

~~(g)~~ The substance abuse professional who asks a client to reveal personal information from or about other professionals or allows information to be divulged shall inform the client concerning the duties and responsibilities resulting from dissemination of the information. ~~The information released or obtained with informed consent shall be used for expressed purposes only, unless the release is otherwise required by law.~~

~~(h)(g)~~ The substance abuse professional shall not use a client in a demonstration role in a workshop setting where such participation would foreseeably seriously harm the client.

~~(i)(h)~~ The substance abuse professional shall ~~ensure the presence of an appropriate setting for pre-clinical or clinical work to protect the client from harm and the substance abuse professional and the profession from censure.~~ deliver services in a setting that respects client privacy and confidentiality.

~~(j)(i)~~ The substance abuse professional shall collaborate with other health care professionals ~~in providing a supportive environment for the client who is receiving prescribed medications.~~ providing treatment or support services to persons served.

Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40; 90-113.43; 90-113.44.

21 NCAC 68 .0508 CONFIDENTIALITY

~~(a)~~ The substance abuse professional shall protect the privacy of clients current and former persons served and shall not disclose confidential information ~~acquired, in teaching, practice or investigation,~~ without consent.

(b) The substance abuse professional shall inform the ~~client person being served~~ and obtain ~~written agreement in areas likely to affect the client's participation including the recording of an interview,~~ permission for the use of interview material for training purposes and observation of an ~~interview by another person.~~ interview.

(c) The substance abuse professional shall make provisions for the maintenance of confidentiality and the ultimate disposition of confidential records. These provisions shall be consistent with the prohibition against disclosure of records or other information concerning any client in a federally-assisted alcohol or drug abuse program as it appears in 42 U.S.C. 290ee-3, the HIPAA Privacy Rule appearing in 45 CFR Sections 160 and 164 and State law.

(d) The substance abuse professional shall ~~reveal~~ disclose confidential information received in confidence only:

- (1) when there is clear and imminent danger to the client or to other persons or a medical emergency and then only to the appropriate professional worker or public authorities;
- (2) when compelled by law to provide such information; ~~or~~
- (3) ~~with written consent;~~ a proper consent form in writing issued pursuant to 42 U.S.C. 290ee-3; ~~or~~
- (4) for internal program communications and communications that do not disclose patient-identifying information.

(e) ~~The~~ With written consent the substance abuse professional shall discuss the information obtained in a clinical or consulting relationship only in a professional setting and only for a professional purpose ~~clearly~~ concerned with the case. Written and oral reports shall present only data germane to the purpose of the evaluation.

(f) The substance abuse professional shall use material in classroom teaching and writing only when the identity of the person involved is disguised adequately to prevent disclosure or documented permission is given by the party or the information is in the public domain.

Authority G.S. 90-113.30; 90-113.43; 90-113.44.

21 NCAC 68 .0509 CLIENT RELATIONSHIPS

(a) ~~The substance abuse professional shall inform the client and obtain the client's agreement in areas likely to affect the client's participation including the recording of an interview, the use of interview material for training purposes, or the observation of an interview by another person.~~

(b) ~~The substance abuse professional shall inform the designated guardian or responsible person of the circumstances that may influence the relationship, when the client is a minor or incompetent.~~

~~(c)~~(a) The substance abuse professional shall not enter into a professional relationship with members of one's immediate family or friends. ~~immediate family, friends or close associates.~~ For the purpose of this Rule "immediate family" means spouse, parent, sibling, child, grandparent, grandchild, stepchild, stepparent, parent-in-law, and child-in-law. ~~The professional~~

~~shall avoid dual relationships that could impair professional judgment or increase the risk of client exploitation.~~

(b) The professional shall avoid dual relationships that could impair professional judgment or increase the risk of exploitation of person being served.

~~(d)~~(c) Sexual ~~activity~~ exploitation or sexual contact of a substance abuse professional with a client shall be restricted as follows:

- (1) The substance abuse professional shall not engage in or solicit sexual ~~activity~~ exploitation or sexual contact with a current client.
- (2) The substance abuse professional shall not engage in or solicit sexual ~~activity~~ exploitation or sexual contact with a former client for ~~at least two~~ five years after the termination of the counseling or consulting relationship.
- (3) The substance abuse professional shall not engage in or solicit ~~sexual activity~~ sexual exploitation or sexual contact with any ~~person~~ client the professional knows to be a ~~current client~~ of currently in treatment at his or her own agency or place of professional employment.
- (4) The substance abuse professional ~~shall not~~ shall not knowingly engage in or solicit sexual ~~activity~~ exploitation or sexual contact with any ~~person the professional knows to be a~~ identified former client of his or her own agency or place of professional employment for ~~at least two~~ five years after the termination of the counseling or consulting relationship if both the professional was employed at the agency and the former client was a client of the agency during the same time period.
- (5) Because sexual activity with a client is harmful to the client, a substance abuse professional shall not engage in sexual intimacies with a former client even after a five-year interval unless the substance abuse professional who engages in such activity after the five years following cessation or termination of treatment bears the burden of demonstrating that there has been no exploitation in light of all relevant factors, including the following:
 - (A) The amount of time that has passed since treatment services were terminated;
 - (B) The nature and duration of the treatment services;
 - (C) The circumstances of termination;
 - (D) The client's personal history;
 - (E) The client's current mental status;
 - (F) The likelihood of adverse impact on the client and others; and
 - (G) Any statement made or action taken by the substance abuse professional during the course of treatment suggesting or inviting the possibility

of a post-termination sexual or romantic relationship with the client.

(d) The substance abuse professional shall not misuse his or her professional relationship for sexual, financial, or any other personal advantage.

Authority G.S. 90-113.30; 90-113.33; 90-113.34; 90-113.44.

21 NCAC 68 .0511 REMUNERATION

(a) The substance abuse professional shall establish financial arrangements in professional practice and in accord with the best interests of the ~~client~~, client or person served, the professional and of the profession.

(b) The substance abuse professional shall consider the ability of the ~~client~~ client or person served to meet the financial cost in establishing rates for professional services.

(c) The substance abuse professional shall not send or receive any ~~commission or~~ commission, rebate ~~rebate~~, or any other form of remuneration for referral of ~~clients~~ a client or a person served for professional services. ~~The substance abuse professional shall not engage in fee splitting.~~

(d) The substance abuse professional shall not accept a private fee or any other gift or gratuity having a cumulative value of twenty-five dollars (\$25.00) or more for professional work with a person who is receiving such services with the professional or through the professional's institution or agency. ~~The policy of a particular agency may make written provisions for private work with its clients by members of its staff and in such instances the client must be fully apprised of all policies affecting the client.~~

(e) A particular agency may make written provisions for private work with its clients or persons served by members of its staff and in such instances the client or person served shall be fully apprised of all policies affecting him or her. Additional referral options shall be presented to the client or person served if available.

(f) A substance abuse professional shall not use his or her employer's organization to actively solicit clients or persons served for one's private practice without written authorization from the employer.

Authority G.S. 90-113.30; 90-113.33; 90-113.44.

21 NCAC 68 .0512 RESPONSIBILITY OF SUPERVISOR TO SUPERVISEE

A ~~certified~~ professional who has received a credential from the Board and who is serving as a clinical or practice supervisor shall:

- (1) Be aware of his or her influential position with respect to ~~students, employees, and supervisees,~~ supervisees and therefore not exploit the trust and ~~dependency~~ reliance of such persons.
- (2) Avoid dual relationships that could impair professional judgment, increase the risk of exploitation, or ~~potentially~~ cause harm to the supervisee. To implement this standard the supervisor shall not:
 - (A) Instruct or supervise family members who are related by blood to the

second degree or marriage or a ~~member of person living in the supervisor's household as students or supervisees (related by marriage means related to spouse, brother-in-law, mother, and father-in-law; household;~~

- (B) Provide therapy or therapeutic counseling services to ~~students, employees, or~~ supervisees; or
 - (C) Solicit or engage in sexual activity or contact with ~~students or~~ supervisees during the period of supervision.
- (3) Be trained in and knowledgeable about supervision methods and techniques.
 - (4) ~~Shall supervise~~ Supervise or consult only within his or her knowledge, training, and competency.
 - (5) Guide his or her supervisee to perform services responsibly, competently, and ethically. The supervisor shall assign to his or her ~~employees, supervisees, and students~~ supervisees only those tasks or duties that these individuals can be expected to perform competently, based on the supervisee's education, experience, or training, either independently or with the level of supervision being provided.
 - (6) Not disclose the confidential information provided by a supervisee except:
 - (A) As mandated by law;
 - (B) To prevent harm to a ~~client, an organization, client~~ client or other ~~persons~~ person involved with the supervision;
 - ~~(C) Where the supervisee is a respondent or defendant in a civil, criminal, or disciplinary action;~~
 - ~~(D)~~ (C) In educational or training settings where there are multiple supervisors, and then only to other professional colleagues who share responsibility for the performance or training of the supervisee; or
 - ~~(E)~~ (D) If consent is obtained in writing, and then such information may be revealed only:
 - ~~(i) In accordance with the terms of the consent; and~~
 - ~~(ii) After being clear to the supervisee regarding the limits to confidentiality within the supervisory relationship, and pursuant to 21 NCAC 68 .0508 of the North Carolina Administrative Code.~~
 - (7) Establish and facilitate a process for providing evaluation of performance and feedback to a

supervisee. To implement this process the supervisee shall be informed of the timing of evaluations, methods, and levels of competency expected.

- (8) Not endorse ~~students or~~ supervisees for ~~certification, licensure,~~ credentialing, employment, or completion of an academic training program if they believe the supervisees are not qualified for the endorsement. ~~Supervisors~~ A supervisor shall develop a plan to assist ~~supervisees a~~

supervisee who ~~are~~ is not qualified for endorsement to become qualified.

- (9) Make financial arrangements for any remuneration with supervisees and organizations only if these arrangements are clear and in writing. All fees shall be disclosed to the supervisee prior to the beginning of supervision if practicable.

Authority G.S. 90-113.30; 90-113.33; 90-113.38; 90-113.39; 90-113.40.

APPROVED RULES

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

Rules approved by the Rules Review Commission at its meeting on July 16, 2009.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

HHS - HEALTH SERVICE REGULATION, DIVISION OF

<u>Definitions</u>	10A	NCAC	14C	.2601*	NCR 23:20
<u>Information Required of Applicant</u>	10A	NCAC	14C	.2602	NCR 23:20

HHS - MENTAL HEALTH, DIVISION OF

<u>Scope</u>	10A	NCAC	27G	.0601*	NCR 22:20
<u>Definitions</u>	10A	NCAC	27G	.0602*	NCR 22:20
<u>Incident Response Requirements for Categories A and B Pro...</u>	10A	NCAC	27G	.0603*	NCR 22:20
<u>Incident Reporting Requirements for Categories A and B Pr...</u>	10A	NCAC	27G	.0604*	NCR 22:20
<u>Local Management Entity Management of Incidents</u>	10A	NCAC	27G	.0605*	NCR 22:20
<u>Referral of Complaints to Local Management Entities Perta...</u>	10A	NCAC	27G	.0606*	NCR 22:20
<u>Complaints Pertaining to Category A or Category B Provide...</u>	10A	NCAC	27G	.0607	NCR 22:20
<u>Local Monitoring</u>	10A	NCAC	27G	.0608*	NCR 22:20
<u>Local Management Entity Reporting Requirements</u>	10A	NCAC	27G	.0609*	NCR 22:20
<u>Requirements Concerning the Need for Protective Services</u>	10A	NCAC	27G	.0610*	NCR 22:20

PUBLIC HEALTH, COMMISSION FOR

<u>Local WIC Agency Agreement and Budget</u>	10A	NCAC	43D	.0207*	NCR 23:18
<u>Waiting List</u>	10A	NCAC	43D	.0408*	NCR 23:18
<u>Determination of Financial Eligibility</u>	10A	NCAC	45A	.0202*	NCR 23:15

JUSTICE ACADEMY

<u>Name and Location</u>	12	NCAC	06A	.0101	NCR 23:19
<u>Mailing Address</u>	12	NCAC	06A	.0102	NCR 23:19
<u>Firearms</u>	12	NCAC	06A	.0603	NCR 23:19
<u>Valuables</u>	12	NCAC	06A	.0604	NCR 23:19
<u>Use by Public</u>	12	NCAC	06A	.0703	NCR 23:19
<u>Appeal Upon Unsatisfactory Completion of Course</u>	12	NCAC	06A	.0803	NCR 23:19

REVENUE, DEPARTMENT OF

<u>Parents and Teachers Associations</u>	17	NCAC	07B	.1603*	n/a G.S. 150B-1(d)(4)
<u>Sawdust Used as Fuel</u>	17	NCAC	07B	.2102*	n/a G.S. 150B-1(d)(4)
<u>LP Gas Sold to Farmers</u>	17	NCAC	07B	.2104*	n/a G.S. 150B-1(d)(4)
<u>Seafoods</u>	17	NCAC	07B	.2212*	n/a G.S. 150B-1(d)(4)

APPROVED RULES

<u>Subcontractors</u>	17	NCAC	07B	.2607*	n/a G.S. 150B-1(d)(4)
<u>Sales of Developed Film to Television Stations</u>	17	NCAC	07B	.3105*	n/a G.S. 150B-1(d)(4)
<u>Cable Service Providers</u>	17	NCAC	07B	.3106*	n/a G.S. 150B-1(d)(4)
<u>Memorial Stone Sales</u>	17	NCAC	07B	.3401*	n/a G.S. 150B-1(d)(4)
<u>Monument Manufacturers: Tools and Supplies</u>	17	NCAC	07B	.3402*	n/a G.S. 150B-1(d)(4)
<u>Machinists: Foundrymen: Pattern Makers</u>	17	NCAC	07B	.3501*	n/a G.S. 150B-1(d)(4)
<u>Molds: Dies: Retained by Seller</u>	17	NCAC	07B	.3504*	n/a G.S. 150B-1(d)(4)
<u>Molds: Dies: Record Keeping</u>	17	NCAC	07B	.3506*	n/a G.S. 150B-1(d)(4)
<u>Funeral Expenses</u>	17	NCAC	07B	.3601*	n/a G.S. 150B-1(d)(4)
<u>Death Benefit Payments</u>	17	NCAC	07B	.3603*	n/a G.S. 150B-1(d)(4)
<u>Sales of Lubricants</u>	17	NCAC	07B	.3702*	n/a G.S. 150B-1(d)(4)
<u>Premiums and Gifts</u>	17	NCAC	07B	.3801*	n/a G.S. 150B-1(d)(4)
<u>Redemption of Trading Stamps</u>	17	NCAC	07B	.3803*	n/a G.S. 150B-1(d)(4)
<u>Fertilizer and Seeds</u>	17	NCAC	07B	.4002*	n/a G.S. 150B-1(d)(4)
<u>Conditional Sales Contract</u>	17	NCAC	07B	.4413*	n/a G.S. 150B-1(d)(4)
<u>Receipts of Laundries, etc.</u>	17	NCAC	07B	.4501*	n/a G.S. 150B-1(d)(4)
<u>Equipment and Supplies for Laundries, etc.</u>	17	NCAC	07B	.4503*	n/a G.S. 150B-1(d)(4)
<u>Laundry Business: Interstate</u>	17	NCAC	07B	.4508*	n/a G.S. 150B-1(d)(4)
<u>Independent Cleaning Solicitors</u>	17	NCAC	07B	.4510*	n/a G.S. 150B-1(d)(4)
<u>Cleaning Machinery Repairs</u>	17	NCAC	07B	.4514*	n/a G.S. 150B-1(d)(4)

DENTAL EXAMINERS, BOARD OF

<u>In General</u>	21	NCAC	16B	.0201*	NCR 23:15
<u>Corporate or Limited Liability Company Name</u>	21	NCAC	16F	.0103*	NCR 23:15
<u>Certificate of Registration</u>	21	NCAC	16F	.0104*	NCR 23:15
<u>Eligibility Requirements</u>	21	NCAC	16Y	.0101*	NCR 23:15

MASSAGE AND BODYWORK THERAPY, BOARD OF

<u>Definitions</u>	21	NCAC	30	.0602*	NCR 23:18
--------------------	----	------	----	--------	-----------

STATE PERSONNEL COMMISSION

<u>Total State Service Defined</u>	25	NCAC	01D	.0112*	NCR 23:18
<u>Compensatory Time</u>	25	NCAC	01E	.1006*	NCR 23:16
<u>Posting and Announcement of Vacancies</u>	25	NCAC	01H	.0631*	NCR 23:18

ADMINISTRATIVE HEARINGS, OFFICE OF

<u>Hearing Procedures Rules</u>	26	NCAC	03	.0401	NCR 23:20
<u>Mediation Settlement Conference Rules</u>	26	NCAC	03	.0402	NCR 23:20
<u>Expedited Hearings Procedures for Complex Contested Cases</u>	26	NCAC	03	.0403	NCR 23:20

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 14C .2601 DEFINITIONS

The definitions in this Rule 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 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.

- (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.

History Note: Authority G.S. 131E-177(1); 131E-183; Eff. December 1, 1996; Temporary Amendment Eff. February 1, 2006; Amended Eff. August 1, 2009; November 1, 2006.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Eff. May 1, 1983; Amended Eff. August 1, 2009; November 1, 1989.

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;

10A NCAC 27G .0601 SCOPE

(a) This Section governs Local Management Entity (LME) monitoring of the provision of public services in the LME's catchment area.

(b) The LME shall monitor the provision of public services in the LME's catchment area.

(c) The LME shall develop and implement written policies governing monitoring of the provision of public services that include:

- (1) receiving, reviewing and responding to level II and level III incident reports as set forth in Rules .0603, .0604, and .0605 of this Section;
- (2) receiving and responding to complaints concerning the provision of public services, as set forth in Rule .0606 of this Section;
- (3) conducting local monitoring of Category A and B providers of public services as set forth in Rule .0608 of this Section; and
- (4) analyzing and reporting trends in the information identified in Subparagraphs (c)(1) through (c)(3) of this Rule, as set forth in Rule .0608 of this Section.

(d) An LME or provider of public services shall exchange information, including confidential information, when necessary to coordinate and carry out the monitoring functions as set forth in this Section. Sharing of information shall conform to 42 CFR, Part 2 for persons receiving Substance Abuse Services. The exchange of information shall apply as follows:

- (1) an LME to another LME;
- (2) an LME to a provider of public services;
- (3) a provider of public services to an LME;
- (4) a provider of public services to another provider of public services;
- (5) a provider of public services to the Department;
- (6) an LME to the Department;
- (7) the Department to an LME; and
- (8) the Department to a provider of public services.

History Note: Authority G.S. 122C-112.1; 143B-139.1; Temporary Adoption Eff. July 1, 2003; Eff. July 1, 2004; Amended Eff. August 1, 2009.

10A NCAC 27G .0602 DEFINITIONS

In addition to the terms defined in G.S. 122C-3 and Rules .0103 and .0104 of this Subchapter, the following terms shall apply to the rules in this Section:

- (1) "Complaint investigation" means the process of determining if an allegation made against a provider concerning the provision of public services is substantiated.
- (2) "ICF/MR" means a facility certified for Medicaid as an Intermediate Care Facility for the Mentally Retarded.
- (3) "Level I incident" means the same as defined in 10A NCAC 27G .0103(b)(32) and does not

meet the definition of a level II incident or level III incident.

(4) "Level II incident" means the same as defined in 10A NCAC 27G .0103(b)(32), including a client death due to natural causes or terminal illness, or results in a threat to a client's health or safety, or a threat to the health or safety of others due to client behavior and does not meet the definition of a level III incident.

(5) "Level III incident" means the same as defined in 10A NCAC 27G .0103(b)(32) and results in:

- (a) a death, sexual assault, or permanent physical or psychological impairment to a client;
- (b) a substantial risk of death, or permanent physical or psychological impairment to a client;
- (c) a death, sexual assault, permanent physical or psychological impairment caused by a client;
- (d) a substantial risk of death or permanent physical or psychological impairment caused by a client; or
- (e) a threat caused by a client to a person's safety.

(6) "Local Monitoring" means LME monitoring of the provision of public services in its catchment area that are provided by Category A and B providers.

(7) "Monitor" or "Monitoring" means the interaction between the LME and a provider of public services regarding the functions set forth in Rule .0601(c) of this Section.

(8) "Provider category" means the type of facility in which a client receives services or resides. The provider category determines the extent of monitoring that a provider receives and is determined as follows:

- (a) Category A - facilities licensed pursuant to G.S. 122C, Article 2, except for hospitals. These include 24-hour residential facilities, day treatment, PRTFs and outpatient services;
- (b) Category B - G.S. 122C, Article 2, community based providers not requiring State licensure;
- (c) Category C - hospitals, state-operated facilities, nursing homes, adult care homes, family care homes, foster care homes or child care facilities; and
- (d) Category D - individuals providing only outpatient or day services and who are licensed or certified to practice in the State of North Carolina.

History Note: Authority G.S. 122C-112.1; 143B-139.1;

*Temporary Adoption Eff. July 1, 2003;
Eff. July 1, 2004;
Amended Eff. August 1, 2009.*

**10A NCAC 27G .0603 INCIDENT RESPONSE
REQUIREMENTS FOR CATEGORY A AND B
PROVIDERS**

(a) Category A and B providers shall develop and implement written policies governing their response to level I, II or III incidents. The policies shall require the provider to respond by:

- (1) attending to the health and safety needs of individuals involved in the incident;
- (2) determining the cause of the incident;
- (3) developing and implementing corrective measures according to provider specified timeframes not to exceed 45 days;
- (4) developing and implementing measures to prevent similar incidents according to provider specified timeframes not to exceed 45 days;
- (5) assigning person(s) to be responsible for implementation of the corrections and preventive measures;
- (6) adhering to confidentiality requirements set forth in G.S. 75, Article 2A, 10A NCAC 26B, 42 CFR Parts 2 and 3 and 45 CFR Parts 160 and 164; and
- (7) maintaining documentation regarding Subparagraphs (a)(1) through (a)(6) of this Rule.

(b) In addition to the requirements set forth in Paragraph (a) of this Rule, ICF/MR providers shall address incidents as required by the federal regulations in 42 CFR Part 483 Subpart I.

(c) In addition to the requirements set forth in Paragraph (a) of this Rule, Category A and B providers, excluding ICF/MR providers, shall develop and implement written policies governing their response to a level III incident that occurs while the provider is delivering a billable service or while the client is on the provider's premises. The policies shall require the provider to respond by:

- (1) immediately securing the client record by:
 - (A) obtaining the client record;
 - (B) making a photocopy;
 - (C) certifying the copy's completeness; and
 - (D) transferring the copy to an internal review team;
- (2) convening a meeting of an internal review team within 24 hours of the incident. The internal review team shall consist of individuals who were not involved in the incident and who were not responsible for the client's direct care or with direct professional oversight of the client's services at the time of the incident. The internal review team shall complete all of the activities as follows:
 - (A) review the copy of the client record to determine the facts and causes of the incident and make recommendations

for minimizing the occurrence of future incidents;

- (B) gather other information needed;
 - (C) issue written preliminary findings of fact within five working days of the incident. The preliminary findings of fact shall be sent to the LME in whose catchment area the provider is located and to the LME where the client resides, if different; and
 - (D) issue a final written report signed by the owner within three months of the incident. The final report shall be sent to the LME in whose catchment area the provider is located and to the LME where the client resides, if different. The final written report shall address the issues identified by the internal review team, shall include all public documents pertinent to the incident, and shall make recommendations for minimizing the occurrence of future incidents. If all documents needed for the report are not available within three months of the incident, the LME may give the provider an extension of up to three months to submit the final report; and
- (3) immediately notifying the following:
- (A) the LME responsible for the catchment area where the services are provided pursuant to Rule .0604;
 - (B) the LME where the client resides, if different;
 - (C) the provider agency with responsibility for maintaining and updating the client's treatment plan, if different from the reporting provider;
 - (D) the Department;
 - (E) the client's legal guardian, as applicable; and
 - (F) any other authorities required by law.

*History Note: Authority G.S. 122C-112.1; 143B-139.1;
Temporary Adoption Eff. July 1, 2003;
Eff. July 1, 2004;
Amended Eff. August 1, 2009.*

**10A NCAC 27G .0604 INCIDENT REPORTING
REQUIREMENTS FOR CATEGORY A AND B
PROVIDERS**

(a) Category A and B providers shall report all level II incidents, except deaths, that occur during the provision of billable services or while the consumer is on the providers premises or level III incidents and level II deaths involving the clients to whom the provider rendered any service within 90 days prior to the incident to the LME responsible for the catchment area where services are provided within 72 hours of becoming aware of the incident. The report shall be submitted

on a form provided by the Secretary. The report may be submitted via mail, in person, facsimile or encrypted electronic means. The report shall include the following information:

- (1) reporting provider contact and identification information;
- (2) client identification information;
- (3) type of incident;
- (4) description of incident;
- (5) status of the effort to determine the cause of the incident; and
- (6) other individuals or authorities notified or responding.

(b) Category A and B providers shall explain any missing or incomplete information. The provider shall submit an updated report to all required report recipients by the end of the next business day whenever:

- (1) the provider has reason to believe that information provided in the report may be erroneous, misleading or otherwise unreliable; or
- (2) the provider obtains information required on the incident form that was previously unavailable.

(c) Category A and B providers shall submit, upon request by the LME, other information obtained regarding the incident, including:

- (1) hospital records including confidential information;
- (2) reports by other authorities; and
- (3) the provider's response to the incident.

(d) Category A and B providers shall send a copy of all level III incident reports to the Division of Mental Health, Developmental Disabilities and Substance Abuse Services within 72 hours of becoming aware of the incident. Category A providers shall send a copy of all level III incidents involving a client death to the Division of Health Service Regulation within 72 hours of becoming aware of the incident. In cases of client death within seven days of use of seclusion or restraint, the provider shall report the death immediately, as required by 10A NCAC 26C .0300 and 10A NCAC 27E .0104(e)(18).

(e) Category A and B providers shall send a report quarterly to the LME responsible for the catchment area where services are provided. The report shall be submitted on a form provided by the Secretary via electronic means and shall include summary information as follows:

- (1) medication errors that do not meet the definition of a level II or level III incident;
- (2) restrictive interventions that do not meet the definition of a level II or level III incident;
- (3) searches of a client or his living area;
- (4) seizures of client property or property in the possession of a client;
- (5) the total number of level II and level III incidents that occurred; and
- (6) a statement indicating that there have been no reportable incidents whenever no incidents have occurred during the quarter that meet any of the criteria as set forth in Paragraphs (a) and

(d) of this Rule and Subparagraphs (1) through (4) of this Paragraph.

History Note: Authority G.S. 122C-112.1; 143B-139.1; Temporary Adoption Eff. July 1, 2003; Eff. July 1, 2004; Amended Eff. August 1, 2009.

10A NCAC 27G .0605 LOCAL MANAGEMENT ENTITY MANAGEMENT OF INCIDENTS

Upon learning of a level III incident that occurs while a client is in the care of a provider or on a provider's premises, the LME shall respond by:

- (1) determining that necessary actions have been taken to protect the client's health and safety;
- (2) determining the client records are secured as set forth in Rule .0603 of this Section;
- (3) determining that a meeting of an internal review team is convened within 24 hours as set forth in Rule .0603 of this Section;
- (4) ensuring the client's legal guardian, as applicable, and other authorities are notified as set forth in Rule .0603 of this Section;
- (5) reviewing the internal review team's preliminary findings and final report;
- (6) considering any internal review team's request for an extension of up to three months to file the final report, if necessary to gather all relevant documents; and
- (7) conducting local monitoring of the provider according to the requirements as set forth in Rule .0608 of this Section.

History Note: Authority G.S. 122C-112.1; 143B-139.1; Temporary Adoption Eff. July 1, 2003; Eff. July 1, 2004; Amended Eff. August 1, 2009.

10A NCAC 27G .0606 REFERRAL OF COMPLAINTS TO LOCAL MANAGEMENT ENTITIES PERTAINING TO CATEGORY A OR CATEGORY B PROVIDERS

(a) The Local Management Entity shall respond to complaints received concerning the provision of public services or client rights pertaining to Category A and B providers within its catchment area.

(b) When the Local Management Entity is a subject of the complaint, the LME shall refer the complaint concerning a Category A provider to the Division of Health Service Regulation, or a Category B provider to the Division of Mental Health, Developmental Disabilities and Substance Abuse Services.

(c) When the LME receives a complaint concerning a Category A provider, and the complaint is related to a North Carolina rule, the LME shall forward the complaint directly to the Division of Health Service Regulation.

(d) When the LME receives a complaint concerning a community-based ICF/MR, the LME shall forward the complaint directly to the Division of Health Service Regulation.

The Division of Health Service Regulation is responsible for the complaint investigation.

(e) When a complaint investigation involving a Category B provider identifies an issue which if substantiated by the Division of Mental Health, Developmental Disabilities and Substance Abuse Services could result in a revocation or suspension of the provider's funding pursuant to 10A NCAC 26C .0501 through .0504, the LME shall document the issue or issues creating the concern and notify the Division of Mental Health, Developmental Disabilities and Substance Abuse Services of the issue within 24 hours. The Division of Mental Health, Developmental Disabilities and Substance Abuse Services shall consult with the LME, and shall then determine which agency will lead the investigation and which agencies need to be involved. Separate complaint investigations shall not be performed.

(f) When a complaint investigation results in the Local Management Entity initiating action to withdraw endorsement of a provider endorsed by the Local Management Entity, the LME shall follow the requirements identified in 10A NCAC 26C .0709.

(g) When facilities employ contract clinical staff to perform clinical functions as a component of the service provided by the provider, the Local Management Entity may investigate a complaint concerning the contracted clinician only if the complaint involves an individual being served in the context of the publicly funded service.

History Note: Authority G.S. 122C-112.1; 143B-139.1; Temporary Adoption Eff. July 1, 2003; Eff. July 1, 2004; Amended Eff. August 1, 2009.

10A NCAC 27G .0607 COMPLAINTS PERTAINING TO CATEGORY A OR CATEGORY B PROVIDERS EXCLUDING ICF/MR FACILITIES

History Note: Authority G.S. 122C-112.1; 143B-139.1; Temporary Adoption Eff. July 1, 2003; Eff. July 1, 2004; Repealed Eff. August 1, 2009.

10A NCAC 27G .0608 LOCAL MONITORING

(a) The Local Management Entity shall develop and implement written policies governing local monitoring of Category A and B providers. The written policies shall address:

- (1) the frequency and extent of local monitoring based on the following:
 - (A) number and severity of level II or level III incidents reported by the provider;
 - (B) the provider's response to the incidents;
 - (C) the provider's compliance with the reporting requirements as set forth in Rule .0604 of this Section;
 - (D) the number and types of complaints received concerning a provider;

- (E) the provider's response to the complaints;
- (F) the conclusions reached from investigation of the complaints;
- (G) the results of reviews conducted by the Division of Health Service Regulation, the Division of Mental Health, Developmental Disabilities and Substance Abuse Services or the Division of Social Services;
- (H) compliance with the requirements of the provision of public services;
- (I) the provider's quality improvement activities as required pursuant to 10A NCAC 27G .0201(7), and trends in improvement;
- (J) compliance with the contract or Memorandum of Agreement with the Local Management Entity;
- (K) the addition of a new service; and
- (L) accreditation by an accreditation agency approved by the Secretary such as the Council on Accreditation (COA), the Council on Quality and Leadership (CQL), the Council on Accreditation of Rehabilitation Facilities (CARF), or The Joint Commission;

- (2) The quality of the mental health, developmental disabilities and substance abuse services of all providers;
- (3) For Category A service providers, the LME shall defer to the Division of Health Service Regulation in the monitoring of any component of services provided which is an element of rule that is monitored by the Division of Health Service Regulation. For Category A providers, the LME shall monitor all components of services provided which are not found in Rule; and
- (4) If an investigation discloses issues that could affect either the provider's licensure if a Category A provider, or the provider's suspension according to 10A NCAC 26C .0501 through .0504, the Local Management Entity shall refer the provider to either the Division of Health Service Regulation or the Division of Mental Health, Developmental Disabilities and Substance Abuse Services pursuant to Rule .0606 of this Section.

(b) When local monitoring occurs, the Local Management Entity shall communicate the results to the provider within 15 calendar days of completion. The communication of the results shall constitute a local monitoring report that includes:

- (1) identification of each service monitored;
- (2) identification of any issues requiring correction; and
- (3) the timelines for implementing the corrections which shall not exceed 60 days from the date

the provider receives the local monitoring report.

(c) A Local Management Entity that conducts the local monitoring of a provider serving another Local Management Entity's client shall provide a copy of the local monitoring report to the client's home Local Management Entity within 15 calendar days of completion.

History Note: Authority G.S. 122C-112.1; 143B-139.1; Temporary Adoption Eff. July 1, 2003; Eff. July 1, 2004; Amended Eff. August 1, 2009.

10A NCAC 27G .0609 LOCAL MANAGEMENT ENTITY REPORTING REQUIREMENTS

(a) As part of its quality improvement process as set forth in Rule .0201(a)(7) of this Subchapter, the LME shall review, not less than quarterly, patterns and trends in:

- (1) level I, level II and level III incidents;
(2) complaints concerning the provision of public services; and
(3) local monitoring results gathered pursuant to requirements established in 10A NCAC 27G .0608.

(b) The LME shall provide reports based on the review specified in Paragraph (a) of this Rule. The reports shall be submitted via electronic means to the Division of Mental Health, Developmental Disabilities and Substance Abuse Services quarterly on forms provided by the Secretary. Copies of the reports shall be provided to the LME's area board, local Consumer and Family Advisory Committee, established by G.S. 122C-170, and the local Client Rights Committee, established by Rule .0504 of this Subchapter.

(c) The reports shall include the following:

- (1) summary numbers of the types of complaints, incidents and results of local monitoring;
(2) trends identified through analyses of complaints, incidents and local monitoring; and
(3) use of the analyses for improvement of the service system and planning of future monitoring activities.

History Note: Authority G.S. 122C-112.1; 143B-139.1; Eff. July 1, 2004; Amended Eff. August 1, 2009.

10A NCAC 27G .0610 REQUIREMENTS CONCERNING THE NEED FOR PROTECTIVE SERVICES

(a) If the circumstances identified surrounding an incident, complaint or local monitoring give reasonable cause to believe that a disabled adult receiving services from a Category A or Category B provider may be abused, neglected or exploited and in need of protective services, the Local Management Entity shall ensure the procedures outlined in G.S. 108A, Article 6, are initiated.

(b) If the circumstances surrounding an incident, complaint or local monitoring reveal that a child or adolescent may be abused,

neglected or exploited and in need of protective services, the Local Management Entity shall ensure the procedures outlined in G.S. 7B, Article 3, are initiated.

History Note: Authority G.S. 122C-112.1; 143B-139.1; Eff. July 1, 2004; Amended Eff. August 1, 2009.

10A NCAC 43D .0207 LOCAL WIC AGENCY AGREEMENT AND BUDGET

(a) The state agency shall enter into an agreement and negotiate a budget with each local WIC agency in accordance with 7 C.F.R. 246.6.

(b) The availability of budgeted support cost funds for each local WIC agency is contingent upon the availability of WIC program support cost funds.

(c) Since local support cost funds are allocated according to the assigned number of participants to be served, in the event a local WIC agency is unable to serve the assigned number of participants, the state agency shall reduce the amount of support cost funds provided to the local WIC agency by a portion reflective of the level of underperformance.

(d) The state agency shall notify the local WIC agency in writing of any reduction of support cost funds available to the local WIC agency.

(e) When state food dollars are overexpended during a federal fiscal year, local WIC Programs that have maintained an active case load in excess of their assigned number of participants shall reimburse to the state their proportionate share of the overexpenditure.

History Note: Authority G.S. 130A-361; Eff. April 1, 1982; Amended Eff. October 1, 2009; April 1, 1984.

10A NCAC 43D .0408 WAITING LIST

(a) If a local WIC agency is serving its maximum caseload or spending its maximum food money and additional participants cannot be issued food instruments, a waiting list must be established in accordance with 7 C.F.R. 246.7.

(b) Local WIC agencies maintaining a waiting list shall continue to provide WIC program benefits to all individuals enrolled in the program until the expiration of their certification period.

(c) Local WIC agencies shall enroll individuals in a manner which ensures that applicants in a higher priority group are first given an opportunity to receive food instruments in accordance with 7 C.F.R. 246.7(e)(4) which is incorporated by reference with all subsequent amendments and editions.

History Note: Authority G.S. 130A-361; Eff. July 1, 1981; Amended Eff. October 1, 2009; November 1, 1990; July 1, 1989.

10A NCAC 45A .0202 DETERMINATION OF FINANCIAL ELIGIBILITY

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

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

(c) A person is financially eligible for the HIV Medications Program if the gross family income is at or below 300 percent of the federal poverty level in effect on July 1 of each fiscal year, with the following exceptions:

- (1) If a waiting list develops, priority for enrollment into the Program shall be given to those whose net family income is at or below 125 percent of the federal poverty level, and second priority to those individuals with income above 125 percent and at or below 250 percent of federal poverty guidelines; and
- (2) At any time that the Program's financial eligibility level is changed, all clients enrolled in the Program during the most recent year or at the time the eligibility level is changed shall be eligible to continue to be enrolled in and served by the Program. This shall be true even if the clients' financial status at that time places them above the newly-established level. The eligibility of these clients shall remain in force until:
 - (A) they no longer qualify for the Program other than for financial reasons; or
 - (B) they no longer require the services of the Program; or
 - (C) their income increases such that they have an income that exceeds the level under which they originally qualified for and enrolled into the Program; or
 - (D) they fail to comply with the rules of the Program.

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

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

- Family Size 1: \$6,400;
- Family Size 2: \$8,000;
- Family Size 3: \$9,600;
- Family Size 4: \$11,000;
- Family Size 5: \$12,000;
- Family Size 6 and over: add \$800 per family member.

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

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

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

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

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

- (1) Migrant Health Program;
- (2) School Health Fund financial eligibility determinations performed by a local health department which has chosen to use the financial eligibility standards of the Department of Public Instruction's free lunch program;
- (3) Prenatal outpatient services sponsored through local health department delivery funds, 10A NCAC 43C .0200; or through Perinatal Program high risk maternity clinic reimbursement funds, 10A NCAC 43C .0300; and
- (4) Diagnostic assessments for infants up to 12 months of age with sickle cell syndrome.

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

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

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

(m) If the most current financial eligibility form on file with the Department shows that the patient was financially eligible on the date an Authorization Request for payment for drugs was received, the Authorization Request shall be approved so long as the Authorization Request is received prior to the expiration of

financial eligibility and the authorized service does not extend more than 30 days after the expiration of financial eligibility.

History Note: Authority G.S. 130A-4.2; 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-205;
Eff. July 1, 1981;
Amended Eff. July 1, 1986; April 1, 1984; July 1, 1983; October 1, 1982;
Transferred and Recodified from 10 NCAC 4C .0202 Eff. April 4, 1990;
Temporary Amendment Eff. August 9, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. January 1, 1996; July 1, 1995; April 1, 1995; October 1, 1994;
Temporary Amendment Eff. July 1, 1997; April 1, 1997; March 1, 1997;
Amended Eff. August 1, 1998;
Temporary Amendment Eff. November 1, 2006;
Amended Eff. October 1, 2007;
Temporary Amendment Eff. October 1, 2008;
Amended Eff. August 1, 2009.

12 NCAC 06A .0604 VALUABLES

History Note: Authority G.S. 17D-1; 17D-2; 17D-4;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Repealed Eff. August 1, 2009.

12 NCAC 06A .0703 USE BY PUBLIC

History Note: Authority G.S. 17D-1; 17D-2; 17D-3; 17D-4;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Repealed Eff. August 1, 2009.

12 NCAC 06A .0803 APPEAL UPON UNSATISFACTORY COMPLETION OF COURSE

History Note: Authority G.S. 17D-1; 17D-2;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Amended Eff. December 1, 1984;
Repealed Eff. August 1, 2009.

TITLE 12 – DEPARTMENT OF JUSTICE

12 NCAC 06A .0101 NAME AND LOCATION

The North Carolina Justice Academy is located in Salemburg, North Carolina and Edneyville, North Carolina.

History Note: Authority G.S. 17D-1; 17D-2;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Amended Eff. August 1, 2009; December 1, 1984.

12 NCAC 06A .0102 MAILING ADDRESS

The mailing address of the Justice Academy is: The North Carolina Justice Academy, P.O. Drawer 99, Salemburg, North Carolina 28385 and PO Box 600, Edneyville, North Carolina 28727.

History Note: Authority G.S. 17D-1; 17D-2;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Amended Eff. August 1, 2009.

12 NCAC 06A .0603 FIREARMS

All students shall secure firearms and ammunition in a manner such that they are inaccessible to non-certified law enforcement officers. Students shall not keep firearms and ammunition in dorm rooms.

History Note: Authority G.S. 17D-1; 17D-2;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Amended Eff. August 1, 2009.

TITLE 17 – DEPARTMENT OF REVENUE

17 NCAC 07B .1603 PARENTS AND TEACHERS ASSOCIATIONS

The National Parent Teacher Association and its local units (parent teacher associations) are entitled to a refund of sales and use taxes paid in this state on their purchases of taxable tangible personal property for use in carrying on their work.

History Note: Authority G.S. 105-164.14; 105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 2009.

17 NCAC 07B .2102 SAWDUST USED AS FUEL

Sales of sawdust to manufacturing plants for use as a fuel in connection with the manufacturing operation are exempt from sales and use tax.

History Note: Authority G.S. 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 2009.

17 NCAC 07B .2104 LP GAS SOLD TO FARMERS

Sales of liquefied petroleum gas to a poultry farmer for use in chicken brooders are exempt from sales and use tax.

History Note: Authority G.S. 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 2009.

17 NCAC 07B .2212 SEAFOODS

A person who purchases fish or other seafood and sells them at retail is liable for collecting the two percent local sales or use tax on the sales unless the sales are considered prepared food as

defined in G.S. 105-164.3(28). Prepared food is subject to the applicable statutory state and local sales and use tax. Sales of fish and seafood are exempt when sold in their original or unmanufactured state by a fisherman in his capacity as a fisherman.

History Note: Authority G.S. 105-164.4; 105-164.13; 105-262; 105-467; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;
Eff. February 1, 1976;
Amended Eff. August 1, 2009; May 1, 1999; August 1, 1998; October 1, 1993; October 1, 1991.

17 NCAC 07B .2607 SUBCONTRACTORS

Subcontractors are liable for payment of the applicable statutory state and local sales or use tax on the taxable tangible personal property which they purchase for use in fulfilling their subcontracts unless such property is exempt from sales and use tax.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;
Eff. February 1, 1976;
Amended Eff. August 1, 2009; October 1, 1993; October 1, 1991; July 5, 1980.

17 NCAC 07B .3105 SALES OF DEVELOPED FILM TO TELEVISION STATIONS

The sale of developed film to commercial television stations which operate under the regulation and supervision of the Federal Communications Commission for use by them in broadcasting and telecasting programs is exempt from sales and use tax.

History Note: Authority G.S. 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 2009; October 1, 1993.

17 NCAC 07B .3106 CABLE SERVICE PROVIDERS

(a) Sales of broadcasting equipment and parts and accessories attached to the equipment to a cable service provider are exempt from sales and use tax. Examples include towers and antenna. The term "cable service provider," as used in this Rule, means a cable television company that receives consideration from its subscribers and uses broadcasting equipment and parts and accessories and a tower to receive and prepare signals for transmission over their cable systems and also is regulated and supervised by the Federal Communications Commission.

(b) The sale of developed movie film to cable service providers which operate under the regulation and supervision of the Federal Communications Commission for use by them in broadcasting and telecasting programs is exempt from sales and use tax.

(c) Antenna cable, transmission cable, trunk, feeder and drop cable, and tangible personal property purchased by cable service providers other than towers, antennas and purchases of broadcasting equipment and parts and accessories thereto are subject to the applicable statutory state and local sales or use tax.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;
Eff. March 1, 1984;
Amended Eff. August 1, 2009; April 1, 1997; October 1, 1993; October 1, 1991; August 1, 1986; December 1, 1984.

17 NCAC 07B .3401 MEMORIAL STONE SALES

Sales of memorial stones, monuments and bronze grave markers to users or consumers are subject to the applicable statutory state and local sales or use tax. Where the seller of a memorial stone, monument or bronze grave marker agrees to install such property upon a foundation, a segregation must be made of materials used and installation charges involved, on an invoice given to the customer at the time of the sale. The seller may deduct the installation labor costs or services from the gross proceeds of the sale only when a segregation of the billing is made to the customer; otherwise, the total charge is taxable.

History Note: Authority G.S. 105-164.3 105-164.4; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;
Eff. February 1, 1976;
Amended Eff. August 1, 2009; December 1, 1994; October 1, 1993; June 1, 1992; October 1, 1991.

17 NCAC 07B .3402 MONUMENT MANUFACTURERS: TOOLS AND SUPPLIES

Sales to monument manufacturers of stencils, abrasives and cutting tools and equipment used by such manufacturers in the cutting, shaping, and polishing process and the solvents used to remove the stencils from the monuments are exempt from sales and use tax. Monument dealers who do not cut, shape, polish and otherwise process monuments are not classified as manufacturers and sales of stencils and other supplies to monument dealers for use in lettering or polishing monuments which they sell are subject to the applicable statutory state and local sales or use tax.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;
Eff. February 1, 1976;
Amended Eff. August 1, 2009; October 1, 1993; October 1, 1991.

17 NCAC 07B .3501 MACHINISTS: FOUNDRYMEN: PATTERN MAKERS

(a) Sales to users or consumers of dies, castings, patterns, tools, machinery and any other tangible personal property made by machinists, foundrymen or pattern makers, and parts and other tangible personal property fabricated and sold for use or consumption on or with such items of tangible personal property, are subject to the applicable statutory state and local sales or use tax unless exempt from the tax under the provisions of Paragraph (b) of this Rule.

(b) The following sales of any such property are exempt from tax:

- (1) For use or consumption by the holder of a standard commercial fishing license issued under G.S. 113-168.2 for principal use in commercial fishing operations; the holder of a shellfish license issued under G.S. 113-169.2 for principal use in commercial shellfishing operations; and the operator of a for-hire boat, as defined in G.S. 113-174, for principal use in the commercial use of the boat.
- (2) For use or consumption by or on ocean-going vessels plying the high seas in interstate or foreign commerce in transporting freight or passengers for hire exclusively.

(c) The tax due shall be computed at the applicable rate on the full selling price of such property, including charges for any services that go into the fabrication, manufacture or delivery thereof.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262; 105-264; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46; Eff. February 1, 1976; Amended Eff. August 1, 2009; October 1, 1993; June 1, 1992; October 1, 1991; January 1, 1982.

17 NCAC 07B .3504 MOLDS: DIES: RETAINED BY SELLER

Manufacturers making sales of molds, patterns or dies to users or consumers in this state shall register with the Department of Revenue for the purpose of collecting and remitting the tax due on such sales. If manufacturers make retail sales of molds, patterns or dies to manufacturer-customers within and without this state, with the right of possession and title thereto passing to such customers, the manufacturer-customers are exempt from sales and use tax when the manufacturers selling the molds, patterns or dies retain them in their possession within this state for use in manufacturing tangible personal property for sale to such customers. Out-of-state manufacturers making retail sales of molds, patterns or dies to customers within this state are not required to collect and remit North Carolina sales or use taxes on such sales when the out-of-state manufacturers retain the molds, patterns or dies in their possession for their use outside this state in manufacturing tangible personal property for sale to such customers.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46; Eff. February 1, 1976; Amended Eff. August 1, 2009; October 1, 1993.

17 NCAC 07B .3506 MOLDS: DIES: RECORD KEEPING

Manufacturers making retail sales of molds, patterns or dies, with the right of possession and title thereto passing to their customers, must separately state the charges therefore from any charges for other tangible personal property sold to such customers in their books and records and on the sales invoices given to the customers at the time of the sale.

History Note: Authority G.S. 105-164.22; 105-262; Eff. February 1, 1976; Amended Eff. August 1, 2009.

17 NCAC 07B .3601 FUNERAL EXPENSES

(a) The gross receipts from services rendered by funeral directors, morticians, or undertakers are not subject to sales and use tax. Other charges for services rendered in connection with funerals that are not subject to sales and use tax include charges for burial permit fees, stone deposits to guarantee the erection of a stone, ambulance service, cemetery lots, grave opening fees, death certificates, and those services performed by beauticians and barbers. Sales of taxable tangible personal property are subject to the applicable statutory state and local sales and use tax. Examples of taxable tangible personal property are coffins, caskets, vaults, memorial stones, monuments, grave markers, and similar property. The charge for installation of taxable tangible personal property, such as the installation of a memorial stone or monument, is exempt from sales and use tax if the charge is separately stated on the purchaser's invoice and in the seller's records. The charges for taxable tangible personal property must be separately stated from the charges for services rendered in order for the service to be exempt.

(b) Sales to funeral directors, morticians and undertakers of graveside equipment, embalming fluid, cosmetics, disinfectants, chairs, flower racks, casket trucks and other supplies or equipment for use in conducting their businesses are subject to the applicable statutory state and local sales or use tax.

(c) Charges for cremation are not subject to sales and use tax. Sales of urns and similar tangible personal property are subject to the applicable statutory state and local sales or use tax.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46; Eff. February 1, 1976; Amended Eff. August 1, 2009; October 1, 1993; June 1, 1992; October 1, 1991; February 1, 1987.

17 NCAC 07B .3603 DEATH BENEFIT PAYMENTS

History Note: Authority G.S. 105-164.13; 105-262; Eff. February 1, 1976; Amended Eff. July 5, 1980; Repealed Eff. August 1, 2009.

17 NCAC 07B .3702 SALES OF LUBRICANTS

Sales of motor oils, transmission or differential oils or greases, or other similar oils and greases by lubricating stations, service stations, garage operators, and similar businesses to users or consumers are subject to the applicable statutory state and local sales or use tax, unless an exemption applies. The sale of a lubricant to a manufacturer for use in lubricating production machinery is exempt from sales and use tax. A business that sells taxable oil or grease must collect and remit the applicable tax to the Department.

History Note: Authority G.S. 105-164.4; 105-164.13; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;
Eff. February 1, 1976;
Amended Eff. August 1, 2009; April 1, 1999; October 1, 1993; October 1, 1991.

17 NCAC 07B .3801 PREMIUMS AND GIFTS

Sales to a retailer of tangible personal property for use by the retailer as premiums or gifts are subject to the applicable statutory state and local sales or use tax and the purchaser shall remit the tax on the purchases to his suppliers. If the suppliers are located outside this state and do not collect the North Carolina sales or use tax on the purchases, the purchaser shall remit such tax directly to the Department. If the property purchased is of the character customarily sold by the retailer, he may purchase the same without payment of the tax if he furnishes his supplier with a Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form E-595E. In this case, the retailer must remit to the Department the tax on all taxable articles withdrawn from stock and used as premiums or gifts. The provisions of this Rule do not apply to any purchases of property to be used in redeeming trading stamps or other media.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;
Eff. February 1, 1976;
Amended Eff. August 1, 2009; October 1, 1993; October 1, 1991.

17 NCAC 07B .3803 REDEMPTION OF TRADING STAMPS

(a) Trading stamp companies which redeem trading stamps are deemed to be engaged in the business of selling tangible personal property at retail for a consideration. The companies must register with the Department and collect and remit the applicable statutory state and local sales or use tax due on all the sales. The tax shall be computed on the redemption value of the stamps, stamp book, or other media which the trading stamp company accepts for the premium.

(b) A trading stamp company or other vendor which sells goods and trading stamps to a retailer who will himself redeem the stamps shall secure a Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form E-595E, from the retailer since, in such instances, the trading stamp company or other vendor is deemed to be selling tangible personal property for the purpose of resale. The retailer is liable for the applicable statutory state and local sales tax on the redemption value of the stamps, stamp book or other media which he accepts for any premium.

(c) If a trading stamp company or other merchant has questions relative to any transaction or operation involving the use of trading stamps, premiums or gifts, the trading stamp company or other merchant may submit all pertinent facts relating thereto to the Department for a ruling as to its tax status.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;
Eff. February 1, 1976;
Amended Eff. August 1, 2009; October 1, 1993; October 1, 1991.

17 NCAC 07B .4002 FERTILIZER AND SEEDS

(a) Sales of seeds to farmers for agricultural purposes are exempt from sales and use tax. The term "seeds" means seeds in their generally accepted sense and includes flower seed, sets, tubers, roots, tobacco plants, tomato plants, pepper plants, eggplants, potato plants, and other small plants that are raised in beds or hothouses for transplanting. The term "seeds" does not include potted plants, trees, shrubs, cut flowers, and other larger plants.

(b) Sales of the following to farmers are exempt from sales and use tax:

- (1) Commercial fertilizer;
- (2) Lime;
- (3) Land plaster;
- (4) Plastic mulch;
- (5) Plant bed covers;
- (6) Potting soil; and
- (7) Baler twine.

(c) The term "agricultural," as used in this Rule, means cultivating the soil for the production of crops for sale in the regular course of business; the production of animals for sale in the regular course of business; or the holding and management of animals for the production of animal products for sale in the regular course of business. It includes beekeepers, dairy operators, poultry farmers, egg producers, livestock farmers, nurserymen, greenhouse operators, orchardmen and other persons engaged in the commercial production of plants and animals as described in this Rule for sale in the regular course of business. It does not include someone who merely cultivates the soil for the ornamental effects nor does it include home gardening or commercial activities other than the types described in this Rule.

History Note: Authority G.S. 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 2009; June 1, 2006; August 1, 2003; August 1, 1996; April 1, 1986; February 1, 1986.

17 NCAC 07B .4413 CONDITIONAL SALES CONTRACT

A conditional sales contract is an agreement that requires the following:

- (1) The transfer of title under a security agreement or deferred payment plan upon completion of the required payments; or
- (2) The transfer of title upon completion of required payments and payment of an option price that does not exceed one hundred dollars (\$100.00) or one percent of the total required payments.

Any applicable statutory state and local sales and use tax for a conditional sales contract is due upon delivery of the tangible personal property to the purchaser.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Eff. February 1, 1976; Amended Eff. August 1, 2009; October 1, 1993.

17 NCAC 07B .4501 RECEIPTS OF LAUNDRIES: ETC.

(a) The gross receipts derived from the following are subject to the applicable statutory state and local sales or use tax:

- (1) services rendered by pressing clubs, cleaning plants, hat blocking establishments, dry cleaning plants, laundries, including wet or damp wash laundries and businesses known as launderettes and launderalls, and all similar type businesses;
- (2) the rental of clean linen, towels, wearing apparel and similar items;
- (3) soliciting cleaning, pressing, hat blocking and laundry or linen rental business;
- (4) rug cleaning services performed by persons operating rug cleaning plants or performed by any of the businesses named in this Rule when the rug cleaning service is performed at the plant. Receipts from rug cleaning services performed at the customer's location by any of the businesses included in this Rule are not subject to sales and use tax;
- (5) charges for laundering or dry cleaning linen, towels, wearing apparel and similar items owned by lessors which is held for lease or rental.

Retail sales of detergents, bleaches and other taxable items of tangible personal property through vending machines are subject to the applicable statutory state and local sales or use tax. With the exception of tobacco products, the receipts are taxed on 50 percent of the total amount for which the property is sold in the vending machine.

(b) Charges by the businesses named in Paragraph (a) of this Rule for alterations or storage of garments are not a part of the gross receipts subject to tax when the charges are separately stated on their invoices and in their records. When the charges are not separately stated, the total charge is subject to the applicable statutory state and local sales or use tax.

(c) Sales to the businesses named in Paragraph (a) of this Rule, other than lessors, of thread, buttons, zippers, pockets and other similar tangible personal property for use or consumption in making repairs or alternations to garments being laundered, cleaned or pressed are subject to the applicable statutory state and local sales or use tax. Sales to lessors of the items for use or consumption in making repairs or alterations to garments held for lease or rental which are being laundered, cleaned or pressed are exempt from sales or use tax.

(d) When in addition to the services named in Paragraph (a) of this Rule, the businesses make retail sales of tangible personal property for which a separate charge is made, the sales are

subject to the applicable statutory state and local sales tax. Any charge for labor or services rendered in applying or installing the property are not subject to tax provided the charges are segregated from the charge for the tangible personal property sold on the invoice given to the customer at the time of the sale and in the vendor's records; otherwise, the total amount is subject to tax.

(e) Retailers of the services named in Paragraph (a) of this Rule are liable for the applicable statutory state and local sales or use tax on the gross receipts derived from their services; however, the tax does not apply to gross receipts from the services performed for resale by retailers that pay the tax on their receipts from the services.

History Note: Authority G.S. 105-164.4; 105-262; Eff. February 1, 1976; Amended Eff. August 1, 2009; April 1, 1997; October 1, 1993; June 1, 1992; October 1, 1991; August 1, 1988.

17 NCAC 07B .4503 EQUIPMENT AND SUPPLIES FOR LAUNDRIES: ETC.

(a) Sales to laundries, dry cleaning plants and similar businesses of machinery used in the direct performance of the laundering or the pressing and cleaning service and parts and accessories thereto are exempt from sales and use tax. The following items are exempt when sold to the herein-named businesses:

- (1) washing machines, water heaters, water softener tanks, central control collection systems, pressing machines, marking machines, packaging machines, folding machines and similar cleaning machines;
- (2) hydraulic fluids used in laundry and dry cleaning machinery;
- (3) boiler compounds used in boilers furnishing water or steam to the laundering, pressing or cleaning machinery;
- (4) steam hose leading directly from the boiler to the laundering and dry cleaning machinery;
- (5) press pads and covers for laundering and dry cleaning machinery;
- (6) baskets, hampers, casters, or other containers used between the laundering and cleaning processes to transport or contain garments being laundered or cleaned;
- (7) carbon and carbon filters used for reprocessing cleaning compounds;
- (8) lint rolls and refills therefore;
- (9) conveyors used to transport garments along the laundering, cleaning, and pressing line during the process but not conveyors used before the laundering, cleaning, and pressing process begins or after it has been completed;
- (10) boiler room machinery, including valves, fittings and water pumps; and
- (11) transformers located on or adjacent to motors which power machinery used in the direct performance of laundering and cleaning services.

(b) The following items are not classified as laundering, pressing or dry cleaning machinery or parts and accessories thereto and are, therefore, subject to the applicable statutory state and local sales or use tax when sold to the herein-named businesses:

- (1) coin operated musical devices, amusement devices, coin changers, vending machines and repair or replacement parts for such machines;
- (2) baskets, hampers, casters, or containers used for general purposes such as to pick up soiled garments or deliver clean garments;
- (3) smoke stacks, including the steel ladders attached thereto;
- (4) wiring used in the general wiring system and the transformers used in connection therewith;
- (5) sewing machines used in repairing or altering the customers' property and the replacement or repair parts to such machines;
- (6) tailoring supplies such as buttons, threads and zippers for use in repairing or altering garments for which no charge is made to the customer;
- (7) letterheads, monthly reports, envelopes and other office supplies;
- (8) protective clothing for employees such as rubber gloves, aprons, protective shoes, etc. whether paid for by the employer or the employee;
- (9) steam hose or pipe used in the general heating system;
- (10) janitorial supplies;
- (11) office furniture, fixtures and equipment, including cash registers;
- (12) uniforms for employees;
- (13) advertising materials;
- (14) structural or building materials, supplies, fixtures and equipment which shall become a part of or be annexed to any building or structure being erected, altered or repaired;
- (15) equipment used in the storage process to revitalize furs;
- (16) conveyors used before or after the laundering, pressing and cleaning process to transport garments but not those used to move the garments along the laundering, pressing and cleaning line;
- (17) lubricants used in laundering, pressing, or cleaning machines.
- (18) transformers used in connection with general wiring and power supply; and
- (19) water softener chemicals.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;
Eff. February 1, 1976;
Amended Eff. August 1, 2009; October 1, 1993; October 1, 1991; January 1, 1982.

17 NCAC 07B .4508 LAUNDRY BUSINESS: INTERSTATE

When a North Carolina dry cleaning firm performs cleaning services within this state, the place where the garments are delivered is the determining factor in sourcing the sale for sales and use tax purposes. If the solicitor delivers the garments in North Carolina, the applicable statutory state and local sales or use tax is due. If the garments are delivered outside North Carolina, this state's tax is not due notwithstanding whether the service is performed in this State. When a nonresident cleaning plant sends an employee into this state to pick up garments which are cleaned at the plant's location in another state and delivered to the customer in this state, the charge to the North Carolina customer is subject to the applicable statutory state and local sales and use tax. When a nonresident solicitor comes into this state to solicit cleaning business on his own behalf which he will have cleaned by a nonresident cleaning plant, the solicitor is liable for collecting and remitting the tax on the gross receipts derived from soliciting such business in this state.

History Note: Authority G.S. 105-164.4; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;
Eff. February 1, 1976;
Amended Eff. August 1, 2009; October 1, 1993.

17 NCAC 07B .4510 INDEPENDENT CLEANING SOLICITORS

An independent operator that owns his truck and solicits business but engages a laundry, dry cleaning, or hat blocking firm or similar type business to perform the laundering, cleaning, or other service is liable for collecting and remitting the applicable statutory state and local sales or use tax on his gross receipts. If the solicitor is not registered with the Department of Revenue for remitting the tax on his gross receipts, the firm performing the laundering, cleaning or similar type services shall collect and remit the tax on the total charge for the services performed for the independent operator without any deduction of any allowance to the solicitor. The firm performing the service shall secure from the solicitor a Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form E-595E, which shall be accepted as evidence that the solicitor is registered for payment of the tax and as authority for not charging tax on the gross receipts from the service performed for the solicitor.

History Note: Authority G.S. 105-164.4; 105-164.5; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;
Eff. February 1, 1976;
Amended Eff. August 1, 2009; October 1, 1993.

17 NCAC 07B .4514 CLEANING MACHINERY REPAIRS

Sales of welding rods to commercial laundries and dry cleaning operators for use in repairing machinery used directly in the laundering or dry cleaning service are exempt from sales and use tax. Sales of oxygen and acetylene to such operators for use in repairing machinery are subject to the applicable statutory state and local sales or use tax.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46; Eff. February 1, 1976; Amended Eff. August 1, 2009; October 1, 1993.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

21 NCAC 16B .0201 IN GENERAL

- (a) An applicant for licensure as a dentist must be a graduate of and have a DMD or DDS degree from a university or college accredited by the Commission on Dental Accreditation of the American Dental Association. (b) Graduates of foreign colleges may be accepted as applicants for licensure after completing at least two years in a dental school accredited by the Commission on Accreditation of the American Dental Association, graduating with a DMD or DDS degree from that dental school, passing Board approved written and clinical examinations, as set out in these Rules, and graduating with a DMD or DDS degree from that dental school.

History Note: Authority G.S. 90-28; 90-30; 90-48; Eff. September 3, 1976; Readopted Eff. September 26, 1977; Amended Eff. August 1, 2009; March 1, 2006; May 1, 1989; October 1, 1986.

21 NCAC 16F .0103 CORPORATE OR LIMITED LIABILITY COMPANY NAME

Corporation or limited liability company designations shall consist only of the use of the words "Professional Association," "P.A.," "Professional Corporation," or "P.C." for professional corporations and "Professional Limited Liability Company", or "P.L.L.C." for professional limited liability companies. All names shall also contain only the name or surname of one or more of the shareholders or members and may include the word "Associate(s)."

History Note: Authority G.S. 55B-5; 57C-2-01; 57C-2-30; 90-48; Eff. September 3, 1976; Readopted Eff. September 26, 1977; Amended Eff. August 1, 2009; August 1, 2002; April 1, 1994; May 1, 1989.

21 NCAC 16F .0104 CERTIFICATE OF REGISTRATION

(a) Application for a certificate of registration shall be made in writing to the Board, and shall be submitted upon the form provided by the Board for that purpose. The application shall be accompanied by a certified copy of the certificate of incorporation and articles of incorporation of a P.A. or P.C. or a certified copy of the articles of organization of a P.L.L.C.,

together with a check in the amount of fifty dollars (\$50.00) in payment of the registration fee. (b) The initial certificate of registration shall remain effective for one year from the date of issuance thereof, unless suspended or terminated as by law provided, and each subsequent renewal of the certificate shall be effective for a period of one year from the date of issue.

History Note: Authority G.S. 55B-10; 57C-2-01; 90-48; Eff. September 3, 1976; Readopted Eff. September 26, 1977; Amended Eff. August 1, 2009; April 1, 1994; May 1, 1989.

21 NCAC 16Y .0101 ELIGIBILITY REQUIREMENTS

Persons shall be eligible for an intern permit under the provisions of G.S. 90-29.4 if they are:

- (1) not licensed to practice dentistry in North Carolina, but are a graduate of and have a DMD or DDS degree from a dental school or program accredited by the Commission on Dental Accreditation of the American Dental Association; or (2) a graduate of a dental program other than a program accredited by the Commission on Dental Accreditation of the American Dental Association who has been accepted into a graduate, intern, fellowship, or residency program at a North Carolina Dental School or teaching hospital offering programs in dentistry.

History Note: Authority G.S. 90-28; 90-29.4; 90-30; Eff. August 1, 2002; Amended Eff. August 1, 2009.

CHAPTER 30 – BOARD OF MESSAGE AND BODYWORK THERAPY

21 NCAC 30 .0602 DEFINITIONS

The following definitions shall apply to this Section:

- (1) Accreditation; accredited – Status granted to a post-secondary institution of higher learning that has met standards set by an accrediting agency recognized by the Secretary of the United States Department of Education. (2) Additional location. -- A facility not part of, nor adjoining the facility of an approved school, where an approved school intends to offer a program. Each such location is considered a separate school, requiring a new Application for School Approval to be submitted to the Board. (3) Additional program. -- A program that is of a different title, subject matter, or that increases or decreases by more than 10 percent the number of hours of instruction than the program under which the school received its

- initial approval from the Board. An approved school that intends to offer an additional program shall submit an Application for Additional Program Approval.
- (4) College – An institution of higher learning that awards an Associate degree or higher.
 - (5) Instructor. -- A person who meets the qualifications set forth in Rule .0612 who is responsible for delivering course content according to curricula established by the school, and who is responsible for managing the classroom environment.
 - (6) Key administrative staff. -- The school's program director, director of education, and other administrative staff members who direct areas such as operations, admissions, financial aid, placement, or student services.
 - (7) Massage and bodywork therapy school. -- Any educational institution that conducts a program, as defined in this Rule, for a tuition charge. Such institutions may be organized as proprietary schools that are privately owned and operated by a sole proprietor, partnership, corporation, association, or other entity; or may be post-secondary colleges or universities, whether publicly or privately owned.
 - (8) One classroom hour of supervised instruction. -- At least 50 minutes of any one clock hour during which the student participates in a learning activity in the physical presence of a member of the school's instructional staff.
 - (9) One year of professional experience. -- In determining the qualifications of administrative or instructional staff members, at least 500 hours of documented work in the professional job responsibility or subject area in a given year.
 - (10) Program. -- A course of study or curriculum consisting of a specified number hours of instruction consistent with the standards set forth in Rule .0620 that is intended to teach adults the skills and knowledge necessary for the professional practice of massage and bodywork therapy, as defined in G.S. 90-622(3). Each program of a specified number of instructional hours shall be considered a separate program for the purposes of Board approval, and shall require a separate application for approval.
 - (11) Student enrollment. -- The total number of students at an approved school in a designated fiscal year who have begun a program for which they have registered and paid a fee for that fiscal year, and who have completed more than 15 percent of such program.
 - (12) Teaching assistant. -- A person who meets the qualifications set forth in Rule .0612, who is in the classroom to support the role of the

instructor, and who may provide instruction to students only in the presence of and under the direct supervision of the instructor.

History Note: Authority G.S. 90-626(9); 90-631; Temporary Adoption Eff. February 15, 2000; Temporary Adoption Eff. April 1, 2001 replaces the Temporary Adoption Eff. February 15, 2000; Eff. August 1, 2002; Amended Eff. August 1, 2009; October 1, 2007.

TITLE 25 – OFFICE OF STATE PERSONNEL

25 NCAC 01D .0112 TOTAL STATE SERVICE DEFINED

- (a) Total state service is the time of full-time or part-time (half-time or over) employment with a permanent, trainee, probationary or time-limited appointment in a North Carolina state government position or a position in one of the agencies listed under Paragraph (e) of this Rule.
- (b) The agency shall credit time for State government employment that is subject to and exempt from the State Personnel Act.
- (c) The agency shall credit time for the entire pay period if the employee is in pay status or is on authorized military leave or workers' compensation leave for at least one-half of the regularly scheduled workdays and holidays in a pay period.
- (d) If an employee's work schedule is less than 12 months and the employee works all the months scheduled (e.g., a school year), the agency shall credit time for the full year; however, if the employee works less than the scheduled time, the agency shall credit time on a month for month basis for the actual months worked.
- (e) In addition, the agency shall credit time for:
 - (1) Employment with other governmental units which are now North Carolina State agencies (Examples: county highway maintenance forces, War Manpower Commission, judicial system);
 - (2) Employment with the North Carolina county agricultural extension service;
 - (3) Employment with the Community College system and the public school system of North Carolina;
 - (4) Employment with a local mental health, public health, social services or emergency management agency in North Carolina if such employment is subject to the State Personnel Act;
 - (5) Employment with the General Assembly of North Carolina (except for participants in the Legislative Intern Program and pages). All of the time, both permanent and temporary, of the employees and the full legislative terms of the members shall be counted;
 - (6) Authorized military leave from any of the governmental units for which service credit is

granted provided the employee is reinstated within the time limits outlined in the State military leave rules (25 NCAC 01E .0800); and

- (7) Authorized workers' compensation leave from any of the governmental units for which service credit is granted.

History Note: Authority G.S. 126-4(5),(10); Eff. February 1, 1976; Amended Eff. August 1, 1995; July 1, 1983; Temporary Amendment Eff. January 1, 1989 for a Period of 180 Days to Expire June 29, 1989; Amended Eff. July 1, 1989; March 1, 1989; Recodified from 25 NCAC 01D .1204(g) Eff. December 29, 2003; Amended Eff. August 1, 2009.

25 NCAC 01E .1006 COMPENSATORY TIME

Under the state's overtime compensation policy certain employees are designated as administrative, executive or professional. Employees in these categories are exempt from the provision for overtime pay. To grant these employees compensating time is a decision that must be made by the agency head. When compensatory time is granted to administrative, executive or professional employees, the following shall apply:

- (1) Amount. Compensatory time is awarded at a rate not to exceed the individual's straight time equivalent rate;
- (2) Non-cumulative. Compensatory time is not cumulative beyond a 12-month period. For this reason, an employee must be required to take compensatory time as soon as possible after it is credited;
- (3) Non-transferable. Compensatory time is not transferable to any other type of leave or to another agency; and
- (4) Separation. Compensatory time is lost when an employee is separated from state service. The employee's separation date shall not be changed in order to pay for compensatory time.

History Note: Authority G.S. 126-4; Eff. February 1, 1976; Amended Eff. August 1, 2009.

25 NCAC 01H .0631 POSTING AND ANNOUNCEMENT OF VACANCIES

(a) Vacant positions shall be publicized by the agency having the vacancy.

(b) Vacancies which shall be filled from within the agency workforce are to have an application period of not less than five working days and shall be posted in at least the following locations:

- (1) The personnel office of the agency having the vacancy; and

- (2) The particular work unit of the agency having the vacancy.

(c) Vacancies to be filled from within or outside the state government workforce are to be listed with the Office of State Personnel and the Employment Security Commission as required by G.S. 96-29. The vacancies shall have an application period of not less than five working days. For purposes of this Rule, "state government workforce" means those employees who are subject to Articles 1, 2, 5, 6, 7, 8, 13 and 14 of Chapter 126 of the North Carolina General Statutes.

(d) Each vacancy shall be described in an announcement which includes:

- (1) For graded classes: the position number, classification title, salary grade and range, essential functions, knowledge, skills, abilities, minimum training and experience, and any vacancy-specific qualifications as determined by the agency in accordance with 25 NCAC 01H .0635(c) the application period, and the contact information;
- (2) For banded classes: the position number, banded class title, competency level, banded class salary range or recruitment range corresponding to the competencies and duties, salary grade equivalency, essential functions, competencies, minimum training and experience, vacancy-specific qualifications as determined by the agency in accordance with 25 NCAC 01H .0635(c), the application period, and the contact information; and
- (3) For all vacancy listings: a closing date unless the classification has been determined as critical. Factors used in determining critical classifications include agency turnover; number of positions in class; geographic location; scarcity of skills; and safety, health or quality of care for clients. The critical classifications shall be approved by the State Personnel Commission. On those classes determined to be critical, which are considered open and continuous postings, agencies shall determine how long applications shall be considered active.

(e) Posting is not required when an agency determines that it will not openly recruit. This decision shall be based upon a bona fide business need and is the responsibility of the agency head. Examples are:

- (1) Vacancies that are committed to a budget reduction;
- (2) Vacancies used to avoid a reduction in force;
- (3) Vacancies used for disciplinary transfers or demotions;
- (4) Vacancies to be filled by transfer of an employee to avoid the threat of bodily harm;
- (5) Vacancies that are designated exempt policymaking under G.S. 126-5(d);
- (6) Vacancies that must be filled immediately to prevent work stoppage in constant demand

- situations, or to protect the public health, safety, or security;
- (7) Vacancies to be filled by chief deputies and chief administrative assistants to elected or appointed department heads; and vacancies for positions to be filled by confidential assistants and confidential secretaries to elected or appointed department heads, chief deputies, or chief administrative assistants;
 - (8) Vacancies to be filled by an eligible exempt employee who has been removed from an exempt position and is being placed back in a position subject to all provisions of the State Personnel Act;
 - (9) Vacancies to be filled by a legally binding settlement agreement;
 - (10) Vacancies to be filled in accordance with a pre-existing written agency workforce plan; and
 - (11) Vacancies that must be filled immediately because of a widespread outbreak of a serious communicable disease.

- (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).

(f) The Office of State Personnel may withhold approval for an agency to fill a job vacancy as set out in G.S. 126-7.1.

History Note: Authority G.S. 96-29; 126-4(4); 126-5(d); 126-7.1;
Eff. March 1, 2007;
Amended Eff. August 1, 2009; May 1, 2008.

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

History Note: Authority G.S. 7A-751(a); S.L. 2008-107, s. 10.15A.(h1) as rewritten by S.L. 2008-118, s. 3.13;
Temporary Adoption Eff. December 2, 2008;
Eff. August 1, 2009.

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.

History Note: Authority G.S. 7A-751(a); S.L. 2008-107, s. 10.15A.(h1) as rewritten by S.L. 2008-118, s. 3.13;
Temporary Adoption Eff. December 2, 2008;
Eff. August 1, 2009.

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

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;

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.

History Note: Authority G.S. 7A-751(a); S.L. 2008-107, s. 10.15A.(h1) as rewritten by S.L. 2008-118, s. 3.13;
Temporary Adoption Eff. December 2, 2008;
Eff. August 1, 2009.

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 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	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
NC Alcoholic Beverage Control Commission v. Ciro Maya Maya, T/A Carolina Sports Arena	08 ABC 2411	Overby	06/29/09	
N.C. Alcoholic Beverage Control Commission v. Du Cong Phan T/A Good Food Market	09 ABC 0565	May	05/18/09	
North Carolina Alcoholic Beverage Control Commission v. Mayra Leticia Rodriguez, T/A La Perla Del Pacifico	09 ABC 0975	Gray	07/28/09	
<u>CRIME VICTIMS COMPENSATION</u>				
Robert Melvin v. Janice Carmichael, NC Crime Victim Compensation	08 CPS 2634	Elkins	06/01/09	
B-Red Enterprises, Inc., Linda Parrish v. Secretary of Crime Control and Public Safety	08 CPS 3043	Webster	06/23/09	
Allen Bender, AB's Gravel Driveways, LLC v. North Carolina State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 1259	Gray	06/29/09	
Cape Romain Contractors, Inc., Andrew Dupre v. North Carolina Department of Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 1599	Gray	07/02/09	
John Emiliani, Jr., v. N.C. Division of Motor Vehicles	09 CPS 1604	Brooks	06/15/09	
Rowland L. Simmons v. North Carolina State Highway Patrol	09 CPS 2087	Brooks	05/19/09	
George Allen Cook (Case #08-35780), v. N.C. Department of Crime Control and Public Safety, Victim Compensation Services Division	09 CPS 2391	May	07/29/09	
Cynthia K. Shreve v. Victims Compensation Program	09 CPS 2404	May	06/23/09	
Allen Robinson v. NCSHP	09 CPS 2449	Overby	06/17/09	
Jeffrey Andrew Kennedy v. NC State Highway Patrol, Citation and Notice of Assessment	09 CPS 2511	May	07/09/09	
Rowland L. Simmons v. North Carolina State Highway Patrol	09 CPS 2885	May	06/11/09	

A list of Child Support Decisions may be obtained by accessing the OAH Website: <http://www.ncoah.com/hearings/decisions/>

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Patricia L. Tiller v. NC Dept. of Health & Human Ser., Health Care Personnel Registry Sec	07 DHR 0302	Lassiter	07/14/09	
Envisions of Life LLC v. Hearing Office – 05 Division of Medical Assistance	08 DHR 0967	Lassiter	07/01/09	
Choices Group Home Inc., Victor Vega v. N.C. Department of Health	08 DHR 2404	Gray	07/16/09	

CONTESTED CASE DECISIONS

and Human Service Regulation				
Choices Group Home Inc, Victor Vega v. Office of Administrative Hearings, Department of Health and Human Services	08 DHR 2512	Gray	07/16/09	
Abudant Life Child Care Center, Tiffany D. Monroe v. Division of Child Development, June Locklear, Brenda Faircloth	08 DHR 2954	Elkins	06/03/09	
Amy G. Poteat v. Health Care Personnel Registry	08 DHR 3489	May	06/03/09	
Victoria Martin v. Surry County Dept of Health and Human Services AFDC/Work First	09 DHR 1533	May	06/04/09	
Michael Parks Fresh Start Residential Services Inc. v. NC DHHS Division of Health Service Regulation Mental Health Licensure Certification	09 DHR 1474	Overby	06/17/09	
Spring House Residential Facility v. N.C. Dept. of Health and Human Services DHSR MHLIC	09 DHR 1482	May	06/19/09	
Yolanda Portillo v. N.C. Department of Health and Human Services	09 DHR 1558	Webster	07/17/09	
Regina T. Jones v. N.C. Department of Health and Human Services	09 DHR 1859	Webster	06/23/09	
Sharay C. Vinson v. North Carolina Department of Health and Human Services, Division of Health Service Regulation	09 DHR 1884	Brooks	07/10/09	
Jason M. Paris (petitioner, Christine O. Jacobs (representing petitioner) v. N.C. Department of Health and Human Services (DHHS)	09 DHR 2296	May	07/10/09	
Contour Service, Inc., (MHL #090-101) v. Department of Health Services, Division of Health Service Regulation	09 DHR 2350	May	07/21/09	
Helen Webb v. Department of Health and Human Dept. of Child Dept	09 DHR 2589	Webster	07/17/09	
Lanika Ortega v. North Carolina Department of Health and Human Services	09 DHR 2637	Lassiter	07/27/09	
Brenda V. Patterson v. State Department of Social Services	09 DHR 2654	Webster	07/17/09	
Brenda V. Patterson v. State Department of Social Services	09 DHR 2655	Webster	07/17/09	
John Okoroma v. Mecklenburg County Dept. of Social Services	09 DHR 2710	May	07/24/09	
Angela Conner Tawes, Conner's Cape Hatteras Supermarket, Inc v. North Carolina Department of Health and Human Services,	09 DHR 2717	Gray	06/15/09	
Sharon M. Hill v. NC Department of Health and Human Services, Division of Health Services and Regulation	09 DHR 2809	Lassiter	07/27/09	
Division of Public Health, Women's and Children's Health Section	09 DHR 2829	Brooks	07/10/09	
Trinia E. McCorkle v. North Carolina Department of Health and Human Services, Division of Medical Assistance				
Kasina L. Davis v. North Carolina Department of Health and Human Services, Division of Health Service Regulation, Health Care Personnel Registry Section	09 DHR 2832	Gray	07/01/09	
Brenda V. Patterson v. N.C. State Department of Social Services	09 DHR 2836	Webster	07/17/09	
Brenda Patterson v. Division of Child Development	09 DHR 2837	Webster	07/17/09	
Edward A. Patterson v. Division of Child Development	09 DHR 2838	Webster	07/17/09	
Brenda V. Patterson v. Division of Child Development	09 DHR 2839	Webster	07/17/09	
Edward A. Patterson v. Division of Child Development	09 DHR 2841	Webster	07/17/09	
Brenda V. Patterson v. State Department of Social Services	09 DHR 3002	Webster	07/17/09	
Brenda V. Patterson v. State Department of Social Services	09 DHR 3003	Webster	07/17/09	
Brenda V. Patterson v. State Department of Social Services	09 DHR 3004	Webster	07/17/09	
Mary's House, Inc., MHL #041-288, Craig Thomas, Executive Director v. Ms. Emery Milliken, General Counsel, Department of Health and Human Services, Office of Legal Affairs	09 DHR 3008	Mann	07/22/09	
Edward A. Patterson v. Division of Child Development	09 DHR 3113	Webster	07/17/09	
Brenda V. Patterson v. Division of Child Development	09 DHR 3114	Webster	07/17/09	
Edward A. Patterson v. Division of Child Development	09 DHR 3503	Webster	07/17/09	

DEPARTMENT OF ADMINISTRATION

Meherrin Tribe of North Carolina by and through Douglas Patterson v. North Carolina Commission of Indian Affairs	09 DOA 2367	Morrison	06/15/09	
--	-------------	----------	----------	--

DEPARTMENT OF CORRECTION

Rufus Thomas Blackwell, III, v. (N.C. Department of Correction) Department of Payroll & Overpayment Manager	09 DOC 1296	Overby	07/08/09	
Robert Allen Sartori v. K Dufault, C. Bray WCI Mail, Staff Department of Correction	09 DOC 3121	Gray	07/01/09	

DEPARTMENT OF JUSTICE

Jackie Marie Daniels v. N.C. Criminal Justice Education and Training Standards Commission	09 DOJ 0218	Elkins	07/24/09	
Tyrone Scott v. North Carolina Private Protective Services Board	09 DOJ 0658	Gray	05/28/09	
Jaime Patrick Clayborne v. Department of Justice Company Police Program	09 DOJ 1949	Webster	05/27/09	
William Marquis Davis v. North Carolina Private Protective Services Board	09 DOJ 2506	Morrison	06/04/09	
Ross Patton Gilmore v. North Carolina Alarm Licensing Board	09 DOJ 2452	Morrison	06/04/09	
Edward A. Patterson v. Attorney General Office	09 DOJ 2840	Webster	07/17/09	

CONTESTED CASE DECISIONS

DEPARTMENT OF TRANSPORTATION

Alvin J. Smith v. NC Div of Motor Vehicles, Driver Ass't Branch 09 DOT 2616 Brooks 06/09/09

DEPARTMENT OF STATE TREASURER

Donna F. Levi v. Department of State Treasurer 09 DST 0161 Gray 07/17/09

Hilda Harris Member ID: 1725605 v. Department of State Treasurer
Retirement Systems Division 09 DST 1290 Overby 05/27/09**EDUCATION, STATE BOARD OF**Courtney M. Sears, Petitioner v. Department of Public Instruction
Licensure Section 08 EDC 3644 Morrison 06/08/09

Jennifer Satinsky v. North Carolina State Board of Education 08 EDC 3650 Morrison 06/05/09

Lindsey Forde-Smith v. North Carolina State Board of Education 09 EDC 1848 Gray 07/09/09

DEPT. OF ENVIRONMENT AND NATURAL RESOURCESOld Mill Forestry, LLC v. N.C. Department of Environment and Natural
Resources, Division of Water Quality 08 EHR 1806 Lassiter 05/08/09Cherokee County Health Department James Pann(managing member,
Creek Ridge Holdings, LLC) v. N.C. Department of Environment
and Natural Resources 08 EHR 2986 Gray 05/27/09John C Campbell Folk School, John M Clarke, Bldgs & Ground Mgr v.
NCDENR Public Water Supply Section 09 EHR 1852 Overby 06/03/09**DEPARTMENT OF INSURANCE**

Barbara A Evans v. State Health Plan 09 INS 3067 Lassiter 07/27/09

MISCELLANEOUS

Rodney Dale v. Judge Angela Hoyle 09 MIS 2704 May 06/09/09

OFFICE OF STATE PERSONNEL

Julie Norris Watson v. NC DPI 08 OSP 0541 Brooks 05/22/09

Jody Lynn Hinson v. N.C. Department of Crime Control and Public
Safety, N.C. Highway Patrol 08 OSP 2409 Overby 06/03/09

Timothy Strong v. Central Regional Hospital, NC DHHS 09 OSP 2401 Elkins 05/27/09

Benjamin Hicks v. Central Regional Hospital, NC DHHS 09 OSP 2399 Elkins 05/27/09

Thomas E. Freeman, Jr. v. NC DHHS/Central Regional Hospital
And Whitaker School 09 OSP 2826 Webster 07/17/09

Cecil L. Glaze v. UNC Charlotte 09 OSP 2884 Mann 07/29/09

Vickye Williams Herring, NC Employment Security Commission 09 OSP 3501 Elkins 07/30/09

Hope C. Freeman v. Bladen County Department of, Social Services 09 OSP 3504 Elkins 07/24/09

OFFICE OF SECRETARY OF STATE

Robert Lee Evans v. NC Office of Administrative Hearings 09 SOS 2300 Lassiter 06/03/09

Asali J. Howard v. North Carolina Department of The Secretary
Of State 09 SOS 2707 May 07/16/09**UNC HOSPITALS**

Carlos A Perez-Sanchez v. UNC Hospitals 09 UNC 1294 Overby 06/03/09

Bobbie Perlow v. UNC Hospitals 09 UNC 1606 Brooks 07/15/09

Nicole Bryant v. UNC Hospitals 09 UNC 2022 Lassiter 06/16/09

Cynthia K. Yellock v. UNC Hospitals 09 UNC 2298 Mann 07/21/09

Jennifer Jacobs v. UNC Hospitals 09 UNC 2409 Mann 07/21/09

Ryan Rockey v. UNC Hospitals 09 UNC 2587 May 07/15/09

Mary Ann Strickland v. UNC Hospitals 09 UNC 2712 Overby 06/04/09

John C. Presley v. UNC Hospitals 09 UNC 4020 Gray 07/21/09