

# ***NORTH CAROLINA REGISTER***

**VOLUME 24 • ISSUE 08 • Pages 488 - 592**

**October 15, 2009**

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**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2009 – December 2009

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 <sup>th</sup> 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.



**EXECUTIVE ORDER NO. 23**  
**GOVERNOR'S SCIENTIFIC ADVISORY PANEL ON OFFSHORE ENERGY**

**WHEREAS**, North Carolina's coast has many potential energy production opportunities, including oil, natural gas, wind, and other renewable sources of energy; and

**WHEREAS**, the United States Department of Interior through its Minerals Management Service is proposing three oil and natural gas lease sales off the East Coast during the period 2010 to 2015; and

**WHEREAS**, a recent study by the University of North Carolina at Chapel Hill finds significant potential for wind energy in the sounds and ocean waters off the North Carolina coast; and

**WHEREAS**, the technologies employed in extracting oil and natural gas and in harnessing wind and other offshore energy resources are continuously evolving; and

**WHEREAS**, the level of scientific knowledge about the potential benefits and risks of all types of offshore energy has also made significant advances; and

**WHEREAS**, wise stewardship of North Carolina's coastal resources is vital, not only to the local economy, environment, and public health and safety, but also to that of the entire state; and

**WHEREAS**, any policies and positions regarding the use of North Carolina's offshore oil, natural gas, wind, and other renewable energy resources must be based on sound science and a thorough evaluation of all available and relevant information.

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

**Section 1.     Establishment**

The Governor's Scientific Advisory Panel on Offshore Energy ("Scientific Advisory Panel") is hereby established. The Scientific Advisory Panel shall consist of at least seven members, but

no more than 15 members, including ex-officio members. The Governor shall appoint a Chair of the Scientific Advisory Panel.

**Section 2. Term of Membership and Vacancies**

All members shall be appointed for a term of two (2) years and shall serve at the pleasure of the Governor. A vacancy occurring during a term of appointment shall be filled by the Governor for the balance of the unexpired term.

**Section 3. Meetings**

The Scientific Advisory Panel shall meet quarterly or at the call of the Governor.

- a. A majority of the members of the Scientific Advisory Panel shall constitute a quorum for the transaction of business.
- b. No per diem allowance shall be paid to members of the Scientific Advisory Panel. Members of the Scientific Advisory Panel may receive necessary travel and subsistence expenses in accordance with State law and the policies and regulations of the Office of State Budget and Management.

**Section 4. Duties**

The Scientific Advisory Panel shall have the following duties:

- a. Perform a comprehensive evaluation of the potential of all offshore energy resources available to North Carolina, including oil, natural gas, wind, and other renewable resources.
- b. Report on the current state of all relevant technologies for utilizing these resources, as well as on their feasibility for use in North Carolina.
- c. Identify any benefits and areas of concern related to use of these energy resources, including those related to the economy, emergency management and public safety, the environment, existence of necessary infrastructure for resource extraction and power generation, and the availability of federal revenue sharing.
- d. Inventory current laws, rules, and processes that affect the utilization of offshore energy resources including, but not limited to, federal leasing programs, state and federal permitting programs, and local zoning and ordinances.
- e. Review relevant laws, regulations, policies, practices, and developments in other states, including those related to federal revenue sharing; permitting and siting of offshore energy facilities; and protection of the environment, public health, and public safety.

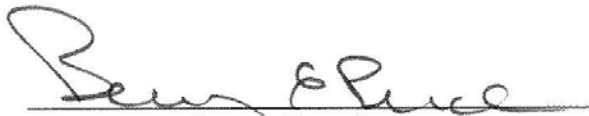
- f. Evaluate federal proposals for use of North Carolina's offshore energy resources, including any proposals from the United States Minerals Management Service for offshore oil and gas lease sales.
- g. Make policy recommendations to ensure that North Carolina has a comprehensive plan for using its offshore resources wisely and to the benefit of its citizens.

**Section 5. Duration**


This Executive Order shall be effective immediately. It shall remain in effect until September 18, 2011, pursuant to N.C. Gen. Stat. § 147-16.2, or until rescinded.

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



  
Beverly Eaves Perdue  
Governor

**ATTEST:**

  
Elaine F. Marshall  
Secretary of State

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

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

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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Agriculture and Consumer Services intends to amend the rule cited as 02 NCAC 09L .1111.*

**Proposed Effective Date:** February 1, 2010

**Instructions on How to Demand a Public Hearing:** (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than October 30, 2009, to James W. Burnette, Jr., Secretary, NC Pesticide Board, 1090 Mail Service Center, Raleigh, NC 27699-1090.

**Reason for Proposed Action:** The proposed rule change would increase the fee for private pesticide applicator certification or recertification from \$6.00 to \$10.00. The fee increase is necessary to offset the costs of the certification program.

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

**Comments may be submitted to:** James W. Burnette, Jr., Secretary, NC Pesticide Board, 1090 Mail Service Center, Raleigh, NC 27699-1090; phone (919) 733-3556; fax (919) 733-9796; email james.burnette@ncagr.gov

**Comment period ends:** December 14, 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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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
- ☐ Substantial Economic Impact (≥\$3,000,000)
- ☒ None

**CHAPTER 09 - FOOD AND DRUG PROTECTION  
DIVISION**

**SUBCHAPTER 09L - PESTICIDE SECTION**

**SECTION .1100 - PRIVATE PESTICIDE APPLICATOR  
CERTIFICATION**

**02 NCAC 09L .1111 CERTIFICATION  
/RECERTIFICATION FEE**

A nonrefundable fee of ~~six dollars (\$6.00)~~ ten dollars (\$10.00) shall be required for private pesticide applicator certification or recertification.

Authority G.S. 143-440(b).

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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Child Care Commission intends to adopt the rules cited as 10A NCAC 09 .0501, .1703, amend the rules cited as 10A NCAC 09 .0102, .0302, .0304, .0508-.0511, .0604, .0606, .0701-.0702, .0802, .0901, .1403, .1702, .1718, .1721, .1724, .2201, .2501-.2506, .2508, .2510, .2801-.2802 and repeal the rules cited as 10A NCAC 09 .1505, .2803, .2810-.2816.*

**Proposed Effective Date:** April 1, 2010

**Public Hearing:**

**Date:** November 5, 2009

**Time:** 2:30 p.m.

**Location:** NC Division of Child Development, 319 Chapanoke Road, Suite 120, Raleigh, NC 27603

**Reason for Proposed Action:** The NC Child Care Commission is proposing rule changes in the areas of children's health and nutrition, enriching outdoor activities and quality school-age care, based on research reviewed on outdoor learning environments, quality activities for school-



age care, and preventing obesity in young children. Other changes are reformatting or a change in placement of existing rules that are already being followed and enforced.

The Commission will repeal rules in Section .2800 that pertain to the three component Star Rated License System. In the 2005 Legislative Session a bill was passed to make improvements to NC's Star Rated License System. In the past, Star Ratings of 2 to 5 Stars were determined based on a program's compliance history, education standards, and programs standards. Under the new system and in accordance to G.S. 110-90(4) a minimum compliance history is now required and the Star Ratings are based on education and program standards. All programs have now transitioned to the two component system and the two component rules are currently being followed, therefore, rules referencing the three component system are no longer needed and will be repealed.

**Procedure by which a person can object to the agency on a proposed rule:** Anyone wishing to comment on these proposed rules or to request copies of the rules should contact Dedra Alston, Rule-making Coordinator, NC Division of Child Development, 2201 Mail Service Center, Raleigh, NC 27699-2201, at 919-890-7060 or [Dedra.Alston@dhhs.nc.gov](mailto:Dedra.Alston@dhhs.nc.gov). Written comments will be accepted through December 14, 2009. Oral comments may be made during the public hearing. The Commission Chairperson may impose time limits for oral remarks.

**Comments may be submitted to:** Dedra Alston, 2201 Mail Service Center, Raleigh, NC 27699-2201, phone (919)890-7060, fax (919)662-4568, email [dedra.alston@dhhs.nc.gov](mailto:dedra.alston@dhhs.nc.gov)

**Comment period ends:** December 14, 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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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  
☐ Substantial Economic Impact (≥\$3,000,000)  
☒ None

**CHAPTER 09 - CHILD CARE RULES**

**SECTION .0100 - DEFINITIONS**

**10A NCAC 09 .0102 DEFINITIONS**

The terms and phrases used in this Chapter are defined as follows except when the content of the rule requires a different meaning. The definitions prescribed in G.S. 110-86 also apply to these Rules.

- (1) "Agency" as used in Section .2200 of this Chapter, means Division of Child Development, Department of Health and Human Services located at 319 Chapanoke Road, Suite 120, Raleigh, North Carolina 27603.
- (2) "Appellant" means the person or persons who request a contested case hearing.
- (3) "Basic School-Age Care Training" (BSAC Training) means the specialized training on the elements of quality afterschool care for school-age children, developed for and approved by the Division of Child Development. Equivalent training may be approved if the Division determines that the content of the training offered is substantially equivalent to the BSAC training. ~~seven clock hours of training developed by the North Carolina State University Department of 4-H Youth Development for the Division of Child Development on the elements of quality school-age care.~~
- (4) "Child Care Program" means a single center or home, or a group of centers or homes or both, which are operated by one owner or supervised by a common entity.
- (5) "Child care provider" as defined by G.S. 110-90.2 (a) (2) a. and used in Section .2700 of this Chapter, includes the following employees who have contact with the children in a child care program: facility directors, administrative staff, teachers, teachers' aides, cooks, maintenance personnel, and drivers.
- (6) "Child Development Associate Credential" means the national early childhood credential administered by the Council for Early Childhood Professional Recognition.
- (7) "Developmentally appropriate" means suitable to the chronological age range and developmental characteristics of a specific group of children.
- (8) "Division" means the Division of Child Development within the Department of Health and Human Services.
- (9) "Drop-in care" means a child care arrangement where children attend on an intermittent, unscheduled basis.
- (10) "Early Childhood Environment Rating Scale - Revised edition" (Harms, Clifford, and Cryer, and Clifford, 1998, 2005, published

- by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are two and a half years old through five years old, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in June 2009 ~~August 2006~~ is ~~sixteen~~ nineteen dollars and ninety-five cents ~~(\$16.95)~~ (\$19.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection during regular business hours.
- (11) "Family Child Care Environment Rating Scale – Revised edition" "Family Day Care Rating" (Harms, Harms, Cryer and Clifford, 1989, 2007, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by children in family child care homes to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in ~~August 2006~~ June 2009 is ~~fifteen~~ nineteen dollars and ninety-five cents ~~(\$15.95)~~ (\$19.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection during regular business hours.
- (12) "First aid kit" is a collection of first aid supplies (such as bandages, tweezers, disposable nonporous gloves, micro shield or face mask, liquid soap, cold pack) for treatment of minor injuries or stabilization of major injuries.
- (12)(13) "Group" means the children assigned to a specific caregiver or caregivers, to meet the staff/child ratios set forth in G.S. 110-91(7) and this Chapter, using space which is identifiable for each group.
- (14) "Health care professional" is defined as:
- (a) a physician licensed in North Carolina;
  - (b) a nurse practitioner approved to practice in North Carolina;
  - (c) a registered nurse who holds an unencumbered license to practice in North Carolina;
  - (d) a nurse with a Bachelor of Science degree or higher in nursing who holds an unencumbered license to practice in North Carolina; or
  - (e) a certified physician assistant.
- (13)(15) "Household member" means a person who resides in a family home as evidenced by factors including, maintaining clothing and personal effects at the household address, receiving mail at the household address, using identification with the household address, or eating and sleeping at the household address on a regular basis.
- (14)(16) "Infant/Toddler Environment Rating Scale - Revised edition" (Harms, Cryer, and Clifford, 1990, 2003, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are younger than thirty months old, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in ~~August 2006~~ June 2009 is ~~sixteen~~ nineteen dollars and ninety-five cents ~~(\$16.95)~~ (\$19.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection during regular business hours.
- (15)(17) "ITS-SIDS Training" means the Infant/Toddler Safe Sleep and SIDS Risk Reduction Training developed for and approved by the NC Healthy Start Foundation for the Division of Child Development for caregivers of children ages 12 months and younger.
- (16)(18) "Licensee" means the person or entity that is granted permission by the State of North Carolina to operate a child care facility. The owner of said facility shall be the licensee.
- (17)(19) "North Carolina Early Childhood Credential" means the state early childhood credential that is based on completion of coursework and standards found in the North Carolina Early Childhood Instructor Manual (published by the NC Community College System Office). These standards are incorporated by reference and include subsequent amendments. A copy of the North Carolina Early Childhood Credential requirements is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection or copying at no charge during regular business hours.

- (18) ~~"Operator" means the person or entity held legally responsible for the child care business. The terms "operator", "sponsor", or "licensee" may be used interchangeably.~~
- (19)(20) "Owner" means any person with a five percent or greater equity interest in a child care ~~facility. facility, however, stockholders of corporations who own child care facilities are not subject to mandatory criminal history checks pursuant to G.S. 110-90.2 and G.S. 110-91(8) unless they are involved in day-to-day operations of the child care facility.~~
- (20)(21) "Parent" means a child's parent, legal guardian, or full-time custodian.
- (21)(22) "Part-time care" means a child care arrangement where children attend on a regular schedule but less than a full-time basis.
- (22)(23) "Passageway" means a hall or corridor.
- (23)(24) "Person" means any individual, trust, estate, partnership, corporation, joint stock company, consortium, or any other group, entity, organization, or association.
- (24)(25) "Preschooler" or ~~"preschool-aged"~~ "preschool-age child" means any child who does not fit the definition of ~~school-aged~~ school-age child in this Rule.
- (25)(26) "School-Age Care Environment Rating Scale" (Harms, Jacobs, and White, 1996, published by Teachers College Press) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of the children in the group are older than five years, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in ~~August 2006~~ June 2009 is ~~fifteen~~ nineteen dollars and ninety-five cents (~~\$15.95~~). (\$19.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection during regular business hours.
- (26)(27) ~~"School-aged"~~ "School-age child" means any child who is attending or who has attended, a public or private grade school or kindergarten and meets age requirements as specified in G.S. 115C-364.
- (27)(28) "Seasonal Program" means a recreational program as set forth in G.S. 110-86(2)(b).
- (28)(29) "Section" means Division of Child Development.
- (29)(30) "Substitute" means any person who temporarily assumes the duties of a staff

person for a time period not to exceed two consecutive months.

~~(30)(31)~~ "Temporary care" means any child care arrangement which provides either drop-in care or care on a seasonal or other part-time basis and is required to be regulated pursuant to G.S. 110-86.

(32) "Track-Out Program" means any child care provided to school-age children when they are out of school on a year-round school calendar.

~~(31)(33)~~ "Volunteer" means a person who works in a child care facility and is not monetarily compensated by the facility.

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

## SECTION .0300 - PROCEDURES FOR OBTAINING A LICENSE

### 10A NCAC 09 .0302 APPLICATION FOR A LICENSE FOR A CHILD CARE CENTER

(a) The individual who will be legally responsible for the operation of the center, which includes assuring compliance with the licensing law and standards, shall apply for a license using the form provided by the Division. If the operator will be a group, organization, or other entity, an officer of the entity who is legally empowered to bind the operator shall complete and sign the application.

(b) The applicant shall arrange for inspections of the center by the local health, building and fire inspectors. The applicant shall provide an approved inspection report signed by the appropriate inspector to the Division representative.

(1) A provisional classification may be accepted in accordance with Rule .0401(1) of this ~~Subchapter.~~ Chapter.

(2) When a center does not conform with a specific building, fire, or sanitation standard, the appropriate inspector may submit a written explanation of how equivalent, alternative protection is provided. The Division may accept the inspector's documentation in lieu of compliance with the specific standard. Nothing in this Regulation is to preclude or interfere with issuance of a provisional license pursuant to Section .0400 of this ~~Subchapter.~~ Chapter.

(c) The applicant, or the person responsible for the day-to-day operation of the center, shall be able to describe the plans for the daily program, including room arrangement, staffing patterns, equipment, and supplies, in sufficient detail to show that the center shall comply with applicable requirements for activities, equipment, and staff/child ratios for the capacity of the center and type of license requested. The applicant shall make the following written information available to the Division for review to verify compliance with provisions of this ~~Subchapter~~ Chapter and the licensing law:

- (1) daily schedules;
- (2) activity plans;

- (3) emergency care plan;
- (4) discipline policy;
- (5) incident reports;
- (6) incident logs; and
- (7) a copy of the certified criminal history check for the applicant, or the applicant's designee as defined in Rule .2701(g) of this ~~Subchapter~~, Chapter, from the Clerk of Superior Court's office in the county or counties where the individual has resided during the previous 12 months.

(d) The applicant shall, at a minimum, demonstrate to the Division representative that measures shall be implemented to have the following information in the center's files and readily available to the representative for review:

- (1) Staff records which include an application for employment and date of birth; documentation of previous education, training, and experience; medical and health records; documentation of participation in training and staff development activities; and required criminal records check documentation;
- (2) Children's records which include an application for enrollment; medical and immunization records; and permission to seek emergency medical care;
- (3) Daily attendance records;
- (4) Daily records of arrival and departure times at the center for each child;
- ~~(4)~~(5) Records of monthly fire drills giving the date each drill is held, the time of day, the length of time taken to evacuate the building, and the signature of the person who conducted the drill;
- ~~(5)~~(6) Records of monthly playground inspections documented on a checklist provided by the Division; and
- ~~(6)~~(7) Records of medication administered.

(e) The Division representative shall measure all rooms to be used for child care and shall assure that an accurate sketch of the center's floor plan is part of the application packet. The Division representative shall enter the dimensions of each room to be used for child care, including ceiling height, and shall show the location of the bathrooms, doors, and required exits on the floor plan.

(f) The Division representative shall make one or more inspections of the center and premises to assess compliance with all applicable requirements.

- (1) If all applicable requirements of G.S. 110 and this Section are met, the Division shall issue the license.
- (2) If all applicable requirements of G.S. 110 and this Section are not met, the representative may recommend issuance of a provisional license in accordance with Section .0400 of this ~~Subchapter~~ Chapter or the representative may recommend denial of the application. Final disposition of the

recommendation to deny is the decision of the Secretary.

- (3) The license shall be displayed in an area that parents are able to view daily.

(g) When a person applies for a child care center license, the Secretary may deny the application for the license under the following circumstances:

- (1) if any child care facility license previously held by that person has been denied, revoked or summarily suspended by the Division;
- (2) if the Division has initiated denial, revocation or summary suspension proceedings against any child care facility license previously held by that person and the person voluntarily relinquished the license;
- (3) during the pendency of an appeal of a denial, revocation or summary suspension of any child care facility license previously held by that person;
- (4) if the Division determines that the applicant has a relationship with an operator or former operator who previously held a license under an administrative action described in Subparagraph (g)(1), (2), or (3) of this Rule. As used in this Rule, an applicant has a relationship with a former operator if the former operator would be involved with the applicant's child care facility in one or more of the following ways:
  - (A) would participate in the administration or operation of the facility;
  - (B) has a financial interest in the operation of the facility;
  - (C) provides care to children at the facility;
  - (D) resides in the facility; or
  - (E) would be on the facility's board of directors, be a partner of the corporation, or otherwise have responsibility for the administration of the business;
- (5) based on the person's previous non-compliance as an operator with the requirements of G.S. 110 and this ~~Subchapter~~, Chapter; or
- (6) if abuse or neglect has been substantiated against the person.

*Authority G.S. 110-85; 110-88(2); 110-88(5); 110-91; 110-92; 110-93; 110-99; 143B-168.3.*

#### **10A NCAC 09 .0304 ON-GOING REQUIREMENTS FOR A PERMIT**

(a) Each operator shall schedule a fire inspection within 12 months of the center's previous fire inspection. The operator is responsible for notifying the local fire inspector when it is time for the center's annual fire inspection. The operator shall

submit the original of the completed annual fire inspection report to the Division's representative within one week of the inspection visit on the form provided by the Division.

(b) Each center shall be inspected at least annually by an Environmental Health Specialist for compliance with applicable sanitation requirements adopted by the Commission for Public Health as described in 15A NCAC 18A .2800.

(c) A new building inspection shall not be required unless the operator plans to begin using space not previously approved for child care, has made renovations to the building, has added new construction, or wants to remove any restriction related to building codes currently on the permit.

(d) When the Division's representative documents noncompliance during a visit, the representative may:

- (1) Advise the operator to submit written verification that the noncompliance has been corrected;
- (2) Return to the center for an unannounced visit at a later date to determine if compliance has been achieved; or
- (3) Recommend issuance of a provisional license in accordance with Section .0400 of this Chapter or recommend the revocation of the permit or administrative actions in accordance with Section .2200 of this Chapter.

(e) The Division shall assess the compliance history of a center by evaluating the violations of requirements that have occurred. Demerits shall be assigned for each occurrence of violations of these requirements: supervision of children (6 points), staff/child ratio (6 points), staff qualifications and training (2-5 points), health and safety practices (3-6 points), discipline (6 points), developmentally appropriate activities (2-4 points), adequate space (6 points), nutrition and feeding practices (1-3 points), program records (1-3 points), and transportation (1-3 points), if applicable. The point value of each demerit shall be based on the potential detriment to the health and safety of children. A compliance history percentage shall be calculated each year by subtracting the total number of demerits from the total demerits possible and converting to a percentage. The yearly compliance history percentage shall be averaged over the specified time period as in accordance with G.S. 110-90(4) for the compliance history percentage referenced in this Rule. A copy of the Division compliance history score sheet used to calculate the compliance history percentage is available for review at the address given in Rule .0102 of this Section.

(f) Each center shall maintain accurate records and documents as described in Rule .0302(c) and (d) of this Section, and these records and documents shall be made available to the Division for review to verify compliance with provisions of this Chapter and the General Statute.

*Authority G.S. 110-85; 110-88(5); 110-93; 143B-168.3; 150B-3.*

#### **SECTION .0500 - AGE AND DEVELOPMENTALLY APPROPRIATE ENVIRONMENTS FOR CENTERS**

#### **10A NCAC 09 .0501 STAFF/CHILD INTERACTIONS**

Staff will relate to children in positive ways by helping them feel welcome and comfortable, treating them with respect, listening to what they say, responding to them with acceptance and appreciation and participating in many activities with the children. Staff shall:

- (1) Make eye contact whenever possible when speaking to children.
- (2) Engage children in conversation to share experiences, ideas and opinions.
- (3) Help children develop problem-solving skills.
- (4) Facilitate learning by providing positive reinforcement, encouraging efforts and recognizing accomplishments.

*Authority G.S. 110-85; 110-91(8), (11); 143B-168.3.*

#### **10A NCAC 09 .0508 ACTIVITY SCHEDULES AND PLANS FOR CENTERS**

(a) All centers shall have a schedule for each group of children posted for easy reference by parents and by caregivers.

- (1) When children two years old or older are in care, the schedule shall:
  - ~~(1)(A)~~ The schedule shall show Show blocks of time usually assigned to types of activities and shall include periods of time for both active play and quiet play or rest.
  - ~~(2)(B)~~ Blocks Show blocks of time shall show activities that are scheduled for activities for indoor and outdoor areas.
  - ~~(3)(C)~~ The activities and allotted times reflected in the schedule shall be Reflect times and activities that are developmentally appropriate for the children in care.
  - ~~(4)~~ When children two years old or older are in care, the schedule shall also reflect daily opportunities for both free choice and teacher-directed activities:
- (D) Reflect daily opportunities indoors and outdoors for:
  - (i) Free-choice activities;
  - (ii) Teacher-directed activities; and
  - (iii) A minimum total of one hour of outdoor time throughout the day, if weather conditions permit. Centers that operate for four hours per day or less shall provide a minimum total of 30 minutes of

- outdoor time daily, if weather conditions permit.
- (2) When children under two years old are in care, the schedule shall include regular daily events such as arrival and departure, free choice times, outside time and teacher-directed activities. Interspersed among the daily events shall be individualized caregiving routines such as eating, napping and toileting. There shall be a minimum of 30 minutes of outdoor time throughout the day either as part of a small group, whole group, or individual activity, if weather conditions permit.

(b) All centers shall develop a written plan of developmentally appropriate activities designed to stimulate social, emotional, intellectual and physical development for each group of children in care.

- (1) The activity plan shall always be current and accessible for easy reference by parents and caregivers.
- (2) The activity plan shall include at least one daily activity for each developmental goal specified in Paragraph (b) of this Rule. Activities which allow children to choose to participate with the whole group, part of the group, or independently shall be identified. The plan shall reflect that the children have at least four different activities ~~in which they may choose to participate on a daily basis.~~ daily, at least one of which is outdoors, if weather conditions permit.
- (3) The activity plan shall also include a daily gross motor activity which may occur indoors or outdoors.

(c) The schedule and activity plan may be combined as one document that shall always be current and posted for easy reference by parents and caregivers.

*Authority G.S. 110-85; 110-91(2),(12); 143B-168.3.*

#### **10A NCAC 09 .0509 ACTIVITIES: GENERAL REQUIREMENTS FOR CENTERS**

The learning environment consists of the indoor and outdoor area which encourages child initiated and teacher supported activities as follows:

- ~~(a)~~(1) Each center shall have developmentally appropriate equipment and materials accessible on a daily basis.
- ~~(b)~~(2) The materials and equipment indoors and outdoors shall be sufficient to provide a variety of play experiences which promote the children's social, emotional, intellectual and physical development.
- ~~(c)~~(3) Teacher-made and home-made equipment and materials may be used if they are safe and functional. Materials and equipment that are accessible to children shall not be coated or treated with, nor shall they

contain, toxic materials such as creosote, pentachlorophenol, tributyl tin oxide, dislodgeable arsenic and any finishes which contain pesticides.

- ~~(d)~~(4) Developmentally appropriate equipment and materials shall be provided for a variety of outdoor activities which allow for vigorous play and large muscle development. Each child shall have the opportunity for outdoor play each day that weather conditions permit. The center shall provide space and time for vigorous indoor activities when children cannot play outdoors.

*Authority G.S. 110-85; 110-91(2),(12); 143B-168.3.*

#### **10A NCAC 09 .0510 ACTIVITY AREAS: PRESCHOOL CHILDREN TWO YEARS AND OLDER**

(a) Each center shall have equipment and materials available in activity areas on a daily basis. Centers with a licensed capacity of ~~three~~ 3 to 12 children located in a residence are not required to have activity areas, but must have equipment and materials available daily both indoors and outdoors for the children in care.

(b) An activity area is an identifiable space which is accessible to the children and where related equipment and materials are kept in an orderly fashion.

(c) Each activity area shall contain enough materials to allow three related activities to occur at the same time. The materials and equipment shall be in sufficient quantity to allow at least three children to use the area regardless of whether the children choose the same or different activities.

(d) Each center shall make at least four of the activity areas listed in G.S. 110-91(12) available daily to preschool children two years or older as follows:

- (1) Centers with a licensed capacity of 30 or more children shall have at least four activity areas available in the space occupied by each group of children.
- (2) Centers with a licensed capacity of less than 30 children shall have at least four activity areas available daily. Separate groups of children may share use of the same activity areas.
- (3) Centers with a licensed capacity of ~~three~~ 3 to 12 children located in a residence shall have at least four types of activities available daily.

(e) In addition to the activity areas which are available each day, each center shall have materials and equipment in sufficient quantity, as described in Paragraph (c) of this Rule, to ensure that activities are made available at least once per month in each of the five activity areas listed G.S. 110-91(12).

(f) Each center shall provide materials and opportunities for music and rhythm ~~activities~~, science and nature ~~activities~~, and sand and water play for each group of children at least weekly, once per month, indoors or outdoors.

(g) When screen time, including, but not limited to, television, videos, video games, and computer usage, is provided, it shall be:

- (1) Offered only as a free-choice activity.
- (2) Limited to no more than a total of two and a half hours per week, per child, and
- (3) Used to meet a developmental goal.

Usage time periods may be extended for specific special events, projects, or occasions such as a current event, holiday, or birthday celebration.

*Authority G.S. 110-85; 110-91(6),(12); 143B-168.3.*

#### **10A NCAC 09 .0511 ACTIVITIES FOR CHILDREN UNDER TWO YEARS OF AGE**

(a) Each center shall have developmentally appropriate toys and activities for each child to promote the child's physical, emotional, intellectual and social well-being including appropriate books, blocks, dolls, pretend play materials, musical toys, sensory toys, and fine motor toys.

- (1) The materials shall be kept in an identifiable space where related equipment and materials are kept in identifiable groupings and must be made available to the children for a substantial portion of each day.
- (2) The materials shall be offered in sufficient quantity to allow all children to use them at some point during the day and to allow for a range of choices with duplicates of the most popular toys.
- (3) Caregivers shall make provisions for the promotion of physical development for a substantial portion of the day which shall include varied, developmentally appropriate physical activities. A safe clean, uncluttered area that allows freedom of movement shall be available for infants to crawl or creep and for toddlers to move around, both indoors and outdoors.
- (4) Hands-on experiences, including both familiar and new activities, shall be provided to enable the infant or toddler to learn about himself and the ~~world.~~ world both indoors and outdoors.

(b) The center shall provide time and space for sleeping, eating, toileting, diaper changing, and playing according to each child's individual need.

(c) The caregivers shall interact in a positive manner with each child every day, including the following ways:

- (1) Caregivers shall respond promptly to an infant or toddler's physical and emotional needs, especially when indicated by crying through actions such as but not limited to the following: feeding, diapering, holding, positive touching, smiling, talking and eye contact.
- (2) The caregiver shall recognize the special difficulties of infant and toddler separations and assist families, infants, and toddlers to

make the transition from home to center as gently as possible, such as a phased-in orientation process to allow infants and toddlers to experience limited amounts of time at the center before becoming fully integrated.

- (3) A caregiver or team of caregivers shall be assigned to each infant or toddler as the primary caregiver(s) who shall be responsible for care the majority of the time.
- (4) The caregiver shall make provision for constructive guidance and the setting of limits that the child can understand which foster the infant's or toddler's ability to be self-disciplined, as appropriate to the child's age and development.
- (5) In drop-in centers, effort shall be made to place an infant or toddler, who uses the center frequently, with the same caregiver.

~~(d) Each child shall have the opportunity to be outdoors daily when weather conditions permit.~~

~~(e)(d)~~ While awake, each child under the age of 12 months shall be given the opportunity each day to play while positioned on his or her stomach.

(e) Screen time, including, but not limited to television, videos, video games, and computer usage, shall be prohibited.

*Authority G.S. 110-85; 110-91(2),(12); 143B-168.3.*

#### **SECTION .0600 - SAFETY REQUIREMENTS FOR CHILD CARE CENTERS**

##### **10A NCAC 09 .0604 GENERAL SAFETY REQUIREMENTS**

(a) Potentially hazardous items, such as ~~firearms and ammunition, archery equipment,~~ hand and power tools, nails, chemicals, lawn mowers, gasoline or kerosene, ~~archery equipment,~~ propane stoves, whether or not intended for use by children, shall be stored in locked areas or with other appropriate safeguards, or shall be removed from the premises.

(b) Firearms and ammunition are prohibited in a licensed child care program unless carried by a law enforcement officer.

~~(b)(c)~~ Electrical outlets not in use which are located in space used by the children shall be covered with safety plugs unless located behind furniture or equipment that cannot be moved by a child.

~~(e)(d)~~ Electric fans shall be mounted out of the reach of children or shall be fitted with a mesh guard to prevent access by children.

~~(d)(e)~~ All electrical appliances shall be used only in accordance with the manufacturer's instructions.

~~(e)(f)~~ Electrical cords shall not be accessible to infants and toddlers. Extension cords, except as approved by the local fire inspector, shall not be used. Frayed or cracked electrical cords shall be replaced.

~~(f)~~(g) All materials used for starting fires, such as matches and lighters, shall be kept in locked storage or shall be stored out of the reach of children.

~~(g)~~(h) Smoking is not permitted in space used by children when children are present. All smoking materials shall be kept in locked storage or out of the reach of children.

~~(h)~~(i) Fuel burning heaters, fireplaces and floor furnaces shall be provided with a protective screen attached securely to substantial supports to prevent access by children and to prevent objects from being thrown into them.

~~(i)~~(j) Plants that are toxic shall not be in indoor or outdoor space that is used by or is accessible to children.

~~(j)~~(k) Air conditioning units shall be located so that they are not accessible to children or shall be fitted with a mesh guard to prevent objects from being thrown into them.

~~(k)~~(l) Gas tanks shall be located so they are not accessible to the children or shall be in a protective enclosure or surrounded by a protective guard.

~~(l)~~(m) Cribs and playpens shall be placed so that the children occupying them shall not have access to cords or ropes, such as venetian blind cords.

~~(m)~~(n) Once a day, prior to initial use, the ~~The~~ indoor and outdoor premises shall be checked ~~daily~~ for debris, vandalism, and broken equipment. Debris shall be removed and disposed.

~~(n)~~(o) Plastic bags, toys, and toy parts small enough to be swallowed, and materials that can be easily torn apart such as foam rubber and styrofoam, shall not be accessible to children under three years of age, except that styrofoam plates and larger pieces of foam rubber may be used for supervised art activities and styrofoam plates may be used for food service. Latex and rubber balloons shall not be accessible to children under five years of age.

~~(o)~~(p) When non-ambulatory children are in care, a crib or other device shall be available for evacuation in case of fire or other emergency. The crib or other device shall be fitted with wheels in order to be easily moveable, have a reinforced bottom, and shall be able to fit through the designated fire exit. For centers that do not meet institutional building code, and the exit is more than eight inches above grade, the center shall develop a plan to ensure a safe and timely evacuation of the crib or other device. This plan shall be demonstrated to a Division representative for review and approval. During the monthly fire drills required by Rule 10A NCAC 09 .0302(d)(4), the evacuation crib or other device shall be used in the manner described in the evacuation plan.

(q) A first aid kit must always be available on site.

*Authority G.S. 110-85; 110-91(3),(6); 143B-168.3.*

#### **10A NCAC 09 .0606 SAFE SLEEP POLICY**

(a) Each center licensed to care for infants aged 12 months or younger shall develop and adopt a written safe sleep policy that:

- (1) specifies that caregivers shall place infants aged 12 months or younger on their backs for sleeping, unless:
  - (A) for an infant aged six months or less, the center receives a written waiver of this requirement from a

health care professional, provider,  
~~as defined in G.S. 58-50-61(a)(8);~~  
or

(B) for an infant older than six months, the center receives a written waiver of this requirement from a health care professional, provider,  
~~as defined in G.S. 58-50-61(a)(8);~~ or a parent, or a legal guardian;

- (2) specifies whether pillows, blankets, toys, or other objects may be placed with a sleeping infant aged 12 months or younger, and if so, specifies the number and types of allowable objects;
- (3) specifies that nothing shall be placed over the head or face of an infant aged 12 months or younger when the infant is laid down to sleep;
- (4) specifies that the temperature in the room where infants aged 12 months or younger are sleeping does not exceed 75° F;
- (5) specifies the means by which caregivers shall visually check on sleeping infants aged 12 months or younger;
- (6) specifies the frequency with which caregivers shall visually check on sleeping infants aged 12 months or younger;
- (7) specifies how caregivers shall document compliance with visually checking on sleeping infants aged 12 months or younger with such documents to be maintained for a minimum of one month;
- (8) specifies any other steps the center shall take to provide a safe sleep environment for infants aged 12 months or younger.

(b) The center shall post a copy of its safe sleep policy or a poster about infant safe sleep practices in a prominent place in the infant room.

(c) A copy of the center's safe sleep policy shall be given and explained to the parents of an infant aged 12 months or younger on or before the first day the infant attends the center. The parent shall sign a statement acknowledging the receipt and explanation of the policy. The acknowledgement shall contain:

- (1) the infant's name;
- (2) the date the infant first attended the center;
- (3) the date the center's safe sleep policy was given and explained to the parent; and
- (4) the date the parent signed the acknowledgement.

The center shall retain the acknowledgement in the child's record as long as the child is enrolled at the center.

(d) If a center amends its safe sleep policy, it shall give written notice of the amendment to the parents of all enrolled infants aged 12 months or younger at least 14 days before the amended policy is implemented. Each parent shall sign a statement acknowledging the receipt and explanation of the amendment. The center shall retain the acknowledgement in the child's record as long as the child is enrolled at the center.



(e) A health care ~~provider's~~ professional's or parent's waiver of the requirement that all infants aged 12 months or younger be placed on their backs for sleeping as specified in Subparagraph (a)(1) of this Rule shall:

- (1) bear the infant's name and birth date;
- (2) be signed and dated by the infant's ~~physician~~ health care professional or parent; and
- (3) specify the infant's authorized sleep positions;

The center shall retain the waiver in the child's record as long as the child is enrolled at the center.

(f) For each infant with a waiver on file at the center as specified in Paragraph (e) of this Rule, a notice shall be posted for quick reference near the infant's crib, bassinet, or play pen that shall include:

- (1) the infant's name;
- (2) the infant's authorized sleep position; and
- (3) the location of the signed waiver.

No confidential medical information, including an infant's medical diagnosis, shall be shown on the notice.

(g) The center's safe sleep policy shall be developed and shared with parents of infants currently enrolled within 30 days of this Rule becoming effective.

*Authority G.S. 110-85; 110-91(15); 143B-168.3.*

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

### **10A NCAC 09 .0701 HEALTH STANDARDS FOR STAFF**

(a) All personnel, including the director, shall have on file within 60 days of the date of employment, a statement signed by a health care professional ~~licensed physician or an authorized health professional under his/her supervision~~, that indicates that the person is emotionally and physically fit to care for children. When submitted the medical statement shall not be older than 12 months. ~~For the purposes of this Rule, an authorized health professional means a nurse practitioner or physician assistant currently approved to perform medical acts by the North Carolina Board of Medical Examiners.~~

(b) The Division, or the director of the child care center, may request another evaluation of an employee's emotional and physical fitness to care for children when there is reason to believe that there has been deterioration in the person's emotional or physical fitness to care for children.

(c) A test showing each employee, including the director, to be free of active tuberculosis is required prior to employment. The results indicating the individual is free of active tuberculosis shall be obtained within the 12 months prior to the date of employment.

(d) Each employee, including the director, shall also annually submit a medical statement from a ~~licensed physician or a~~ health care professional, ~~professional as defined in (a) of this Rule~~, or must complete a health questionnaire giving information about the status of his/her health on a form provided by the Division.

(e) Staff medical statements, proof of a tuberculosis test, and completed health questionnaires shall be included in the employee's individual personnel file in the center.

(f) Emergency medical care information shall be on file for each individual staff person. That information shall include the name, address, and telephone number of the person to be contacted in case of an emergency, the responsible party's choice of health care ~~provider~~, professional, and preferred hospital; any chronic illness the individual has and any medication taken for that illness; and any other information that has a direct bearing on assuring safe medical treatment for the individual. This emergency medical care information shall be on file in the center on the staff person's first day of ~~employment~~. employment and shall be updated at least annually.

*Authority G.S. 110-85; 110-91(1),(8),(9); 143B-168.3.*

### **10A NCAC 09 .0702 STANDARDS FOR SUBSTITUTES AND VOLUNTEERS**

(a) The substitute staff and volunteers who are counted in the child care staff/child ratio shall comply with the health standards contained in this Section.

(b) All substitutes and volunteers not included in the child care staff/child ratio shall complete the health questionnaire described in Rule .0701 of this Section prior to the first day of work and will complete a health questionnaire annually thereafter as long as they continue to work in the center.

(c) A test showing each substitute and volunteer is free of active tuberculosis is required prior to the first day of work. The results of the test shall be obtained within the 12 months prior to employment or the beginning of the volunteer activity. This requirement shall apply only to individuals who volunteer more than once per week.

(d) The age of substitute staff and volunteers shall be verified prior to the first day of work by documenting the substitute staff or volunteer's date of birth in the individual's record. Any substitute teacher shall be at least 18 years old and literate.

(e) Emergency medical care information as described in Rule .0701(f) of this Section shall be on file for all substitutes and volunteers on the person's first day of ~~work~~. work and shall be updated at least annually.

*Authority G.S. 110-85; 110-91(1),(8),(9); 143B-168.3.*

## **SECTION .0800 - HEALTH STANDARDS FOR CHILDREN**

### **10A NCAC 09 .0802 EMERGENCY MEDICAL CARE**

(a) Each child care center shall have a written plan which assures that emergency medical care is available or can be obtained for children. The plan shall be reviewed during staff orientation with new staff and with all staff at least twice each year. This plan shall give the procedures to be followed to assure that any child who becomes ill or is injured and requires medical attention while at the center, or while participating in any activity provided or sponsored by the

center, receives appropriate medical attention. The following information shall be included in the center's emergency medical care plan:

- (1) The name, address, and telephone number of a health care professional; ~~physician, nurse, physician's assistant, nurse practitioner,~~ community clinic, or local health department that is available to provide medical consultation;
- (2) The name, address, and telephone number of the emergency room to be used when the parents or ~~family physician~~ family's health care professional cannot be reached or when transporting the ill or injured child to the person's preferred hospital could result in serious delay in obtaining medical attention;
- (3) Designation of a means of transportation always available for use in the event of a medical emergency;
- (4) The name of the person, and his or her alternate, at the center, responsible for determining which of the following is needed, carrying out that plan of action, and assuring that appropriate medical care is given:
  - (A) Simple first aid given at the center for an injury or illness needing only minimal attention;
  - (B) Advice from previously identified medical consultant in order to decide if care is to be given at the center or if the ill or injured child is to be transported to a designated medical resource; or
  - (C) Immediate transportation of the child to a designated medical resource for appropriate treatment;
- (5) The person(s) at the center responsible for:
  - (A) Assuring that the signed authorization described in Paragraph (c) of this Rule is taken with the ill or injured child to the medical facility;
  - (B) Accompanying the ill or injured child to the medical facility;
  - (C) Notifying a child's parents or emergency contact person about the illness or injury and where the child has been taken for treatment;
  - (D) Notifying the medical facility about the ill or injured child being transported for treatment; and
  - (E) Obtaining substitute staff, if needed, to maintain required staff/child ratio and adequate supervision of children who remain in the center;
- (6) A statement giving the location of the telephone located on the premises which is

in good working condition and is always available for use in case of emergency. Telephone numbers for the fire department, law enforcement office, emergency medical service, and poison control center shall be posted near the telephone. A telephone located in an office in the center that is sometimes locked during the time the children are present cannot be designated for use in an emergency.

(b) Emergency medical care information shall be on file for each individual child. That information shall include the name, address, and telephone number of the parent or other person to be contacted in case of an emergency, the responsible party's choice of health care ~~provider~~, professional and preferred hospital; any chronic illness the individual has and any medication taken for that illness; and any other information that has a direct bearing on assuring safe medical treatment for the child. This emergency medical care information shall be on file in the center on the child's first day of ~~attendance~~. attendance and shall be updated at least annually.

(c) Each child's parent, legal guardian, or full-time custodian shall sign a statement authorizing the center to obtain medical attention for the child in an emergency. That statement shall be on file on the first day the child attends the center. It shall be easily accessible to staff so that it can be taken with the child whenever emergency medical treatment is necessary.

(d) An incident report shall be completed each time a child receives medical treatment by a ~~physician, nurse, physician's assistant, nurse practitioner,~~ health care professional, community clinic, or local health department, as a result of an incident occurring while the child is at the child care center. This incident report shall include, at a minimum: child's name, date and time of incident, part of body injured, type of injury, names of adult witnesses to incident, description of how and where incident occurred, piece of equipment involved (if any), treatment received and steps taken to prevent reoccurrence. This report shall be signed by the person completing it and by the parent, and maintained in the child's file. A copy of the incident report shall be mailed to a representative of the Division within seven calendar days after treatment.

(e) An incident log shall be completed any time an incident report is completed. This log shall be cumulative and maintained in a separate file and shall be available for review by a representative of the Division. This log shall be completed on a form provided by the Division.

*Authority G.S. 110-85; 110-91(1),(9); 143B-168.3.*

## **SECTION .0900 - NUTRITION STANDARDS**

### **10A NCAC 09 .0901 GENERAL NUTRITION REQUIREMENTS**

(a) Meals and snacks served shall comply with the Meal Patterns for Children in Child Care standards which are based on the recommended nutrient intake judged by the National Research Council to be adequate for maintaining good nutrition. The types of food, number and size of servings shall

be appropriate for the ages and developmental levels of the children in care. The Meal Patterns for Children in Child Care nutrition standards are incorporated by reference and include subsequent amendments. A copy of these standards is available free of charge from the Division at the address in Rule .0102(1) of this ~~Subchapter~~ Chapter.

(b) Menus for nutritious meals and snacks shall be planned at least one week in advance. At least one dated copy of the current week's menu shall be posted where it can be seen easily by parents and food preparation staff when food is prepared or provided by the center, except in centers with a licensed capacity of ~~three~~ 3 to 12 children located in a residence. A variety of food shall be included in meals and snacks. Any substitution will be of comparable food value and will be recorded on the menu.

(c) When children bring their own food for meals or snacks to the center, if the food does not meet the nutritional requirements specified in Paragraph (a) of this Rule, the center must provide additional food necessary to meet those requirements.

(d) Drinking water must be freely available to children of all ages and offered at frequent intervals. Approved drinking fountains or individual drinking utensils shall be provided. When a private water supply is used, it must be tested by and meet the requirements of the Department of Environment and Natural Resources.

(e) Children's special diets or food allergies shall be posted in the food preparation area and in the child's eating area.

(f) The food required by special diets may be provided by the center or may be brought to the center by the parents. If the diet is prescribed by a health care ~~provider~~ professional, a statement signed by the health care ~~provider~~ professional shall be on file at the center and written instructions shall be provided by the child's parent, health care ~~provider~~ professional, or a registered dietitian. If the diet is not prescribed by a health care ~~provider~~ professional, written instructions shall be provided by the child's parent and shall be on file at the center.

(g) Food and beverages with little or no nutritional value served as a snack, such as sweets, fruit drinks, soft drinks, etc., will be available only for special occasions.

(h) The center shall provide seating and an electrical outlet, if needed, for mothers while they are breastfeeding or expressing milk.

*Authority G.S. 110-85; 110-91(2); 143B-168.3.*

## **SECTION .1400 - SPACE REQUIREMENTS**

### **10A NCAC 09 .1403 AQUATIC ACTIVITIES**

(a) The requirements in this Rule apply to aquatic activities, which are defined as activities that take place in, on, or around a body of water such as swimming, swimming instruction, wading, visits to water parks, and boating. Aquatic activities do not include water play activities such as water table play, slip and slide activities, or playing in sprinklers.

(b) For every 25 children in care participating in aquatic activities, there shall be at least one person who has a current life guard training certificate issued by the Red Cross or other

training determined by the Division to be equivalent to the Red Cross training, appropriate for both the type of body of water and type of aquatic activities. These certified lifeguards shall not be counted in the required staff-child ratios referenced in Paragraph (d) of this Rule.

(c) Children under the age of three shall not participate in aquatic activities except, to the extent necessary, to implement any child's Individualized Family Service Plan (IFSP) or Individualized Education Program (IEP).

(d) The following staff-child ratios shall be maintained whenever children participate in aquatic activities:

Age of Children	Ratio Staff/Children
3 to 4 Years	1/8
4 to 5 Years	1/10
5 Years and Older	1/13

Notwithstanding the staff-child ratios, at no time shall there be fewer than two staff members supervising the aquatic activity.

(e) Children shall be adequately supervised by center staff at all times while participating in aquatic activities. Adequate supervision shall mean that half of the center staff needed to meet the staff-child ratios in Paragraph (d) of this Rule is in the water and the other half is out of the water. If an uneven number of staff are needed to meet the required staff-child ratios, the majority shall be in the pool. Staff shall be stationed in pre-assigned areas that will enable them at all times to hear, see, and respond quickly to the children who are in the water and children who are out of the water. Children shall not enter the water before center staff are stationed in their pre-assigned areas. Center staff shall devote their full attention to supervising the children in their pre-assigned areas of coverage and shall communicate with one another about children moving from one area to another area.

(f) Prior to children participating in aquatic activities, the center shall develop policies that address the following:

- (1) aquatic safety hazards;
- (2) pool and aquatic activity area supervision including restroom or changing room use;
- (3) how discipline is handled during aquatic activities; and
- (4) the facility's specific field trip and transportation policies and procedures.

(g) Before staff first supervise children on an aquatic activity, and annually thereafter, staff shall sign and date statements that they have reviewed:

- (1) the center policies as specified in Paragraph (f) of this Rule;
- (2) any specific guidelines provided by the pool operator or other off-site aquatic facility; and
- (3) the requirements of this Rule.

The current statement shall be maintained in the staff person's personnel file for one year or until it is superseded by a new statement.

(h) Any outdoor swimming pool which is located on the child care facility premises shall be enclosed by a fence and shall be separated from the remaining outdoor play area by that fence.

(i) Swimming pool safety rules shall be posted near any swimming pool located on the child care facility premises. At a minimum, these Rules shall state:

- (1) the location of a first-aid kit;
- (2) that only water toys are permitted;
- (3) that children shall not run or push one another;
- (4) that swimming is allowed only when an adult is present; and
- (5) that glass objects are not allowed.

(j) All swimming pools used by children shall meet the "Rules Governing Public Swimming Pools" in accordance with 15A NCAC 18A .2500 which are incorporated by reference, including subsequent amendments. A copy of these Rules is on file with the Division of Child Development, 319 Chapanoke Road, Raleigh, NC ~~27626~~, 27603, or may be obtained at no cost by writing the North Carolina Division of Environmental Health, 1630 Mail Service Center, Raleigh, NC 27699-1630.

(k) Children shall wear an age or size appropriate life jacket whenever they participate in boating, rafting or canoeing activities.

*Authority G.S. 110-85; 110-88(5); 110-91(1),(6); 143B-168.3.*

### **SECTION .1500 - TEMPORARY CARE REQUIREMENTS**

#### **10A NCAC 09 .1505 BUILDING APPROVAL FOR SCHOOL-AGED CARE**

~~Any building which is currently approved for school occupancy and which houses a public or private school during the school year shall be considered an approved building to house any temporary care arrangement for school-aged children only. The operator of the arrangement will be responsible for obtaining and submitting copies of all applicable inspection reports to document such approval.~~

*Authority G.S. 110-92; 143B-168.3.*

### **SECTION .1700 –FAMILY CHILD CARE HOME REQUIREMENTS**

#### **10A NCAC 09 .1702 APPLICATION FOR A LICENSE FOR A FAMILY CHILD CARE HOME**

(a) Any person who plans to operate a family child care home shall apply for a license using a form provided by the Division. The applicant shall submit the completed application, which complies with the following, to the Division:

- (1) Only one licensed family child care home shall operate at the location address of any home.
- (2) The applicant shall list each location address where a licensed family child care home will operate.

(b) When a family child care home will operate at more than one location address by cooperative arrangement among two or more families, the following procedures shall apply:

- (1) One parent whose home is used as a location address shall be designated the coordinating

parent and shall co-sign the application with the applicant.

- (2) The coordinating parent is responsible for knowing the current location address at all times and shall provide the information to the Division upon request.

(c) The applicant shall assure that the structure in which the family child care home is located complies with the following requirements:

- (1) The North Carolina Building Code for family child care homes or have written approval for use as a family child care home by the local building inspector as follows:

(A) Meet North Carolina Residential Building Code or be a manufactured home bearing a third party inspection label certifying compliance with the Federal Manufactured Home Construction and Safety Standards or certifying compliance with construction standards adopted and enforced by the State of North Carolina. Homes shall be installed in accordance with North Carolina Manufactured/Mobile Home Regulations published by the NC Department of Insurance.

Exception: Single wide manufactured homes will be limited to a maximum of three ~~preschool-aged~~ preschool-age children (not more than two may be two years of age or less) and two ~~school-aged~~ school-age children.

- (B) All children are kept on the ground level with an exit at grade.
- (C) All homes are equipped with an electrically operated (with a battery backup) smoke detector, or one electrically operated and one battery operated smoke detector located next to each other.
- (D) All homes are provided with at least one five lb. 2-A: 10-B: C type extinguisher readily accessible for every 2,500 square feet of floor area.
- (E) Fuel burning space heaters, fireplaces and floor furnaces which are listed and approved for that installation and are provided with a protective screen attached securely to substantial supports will be allowed. However, unvented fuel burning heaters and portable electric space heaters of all types are prohibited.

- (2) All indoor areas used by children are heated in cool weather and ventilated in warm weather.
- (3) Hot pipes or radiators which are accessible to the children are covered or insulated.
- (4) Accommodations for breastfeeding mothers shall be provided that include seating and an electrical outlet for mothers while they are breastfeeding or expressing milk.

(d) The applicant shall also submit supporting documentation with the application for a license to the Division. The supporting documentation shall include a copy of the certified criminal history check from the Clerk of Superior Court's office in the county or counties where the applicant and any household member(s) over age 15, have resided during the previous 12 months; a copy of documentation of completion of a first aid and cardiopulmonary resuscitation (CPR) course; proof of negative results of the applicant's tuberculosis test completed within the past 12 months; a completed health questionnaire; a copy of current pet vaccinations for any pet in the home; a negative well water bacteriological analysis if the home has a private well; copies of any inspections required by local ordinances; and any other documentation required by the Division according to these Rules to support the issuance of a license.

(e) Upon receipt of a complete application and supporting documentation, a Division representative shall make an announced visit to each home unless the applicant meets the criteria in Paragraph (g) of this Rule to determine compliance with the requirements to offer technical assistance when needed, and to provide information about local resources.

- (1) If all applicable requirements of G.S. 110 and this Section are met, a license shall be issued.
- (2) If the applicable requirements are not met but the applicant has the potential to comply, the Division representative shall establish with the applicant a time period for the home to achieve full compliance. If the Division representative determines that all applicable requirements are met within the established time period, a license shall be issued.
- (3) If all applicable requirements are not met or cannot be met within the established time, the Division shall deny the application. Final disposition of the recommendation to deny is the decision of the Division.

(f) The Division may allow the applicant to temporarily operate prior to the Division representative's visit described in Paragraph (e) of this Rule, when the applicant is currently licensed as a family child care home operator, needs to relocate, notifies the Division of the relocation, and the Division representative is unable to visit before the relocation occurs. A person is not able to operate legally until he or she has received from the Division either temporary permission to operate or a license.

(g) When a person applies for a family child care home license, the Secretary may deny the application for the license under the following circumstances:

- (1) if any child care facility license previously held by that person has been denied, revoked or summarily suspended by the Division;
- (2) if the Division has initiated denial, revocation or summary suspension proceedings against any child care facility license previously held by that person and the person voluntarily relinquished the license;
- (3) during the pendency of an appeal of a denial, revocation or summary suspension of any child care facility license previously held by that person;
- (4) if the Division determines that the applicant has a relationship with an operator or former operator who previously held a license under an administrative action described in Subparagraph (g)(1), (2), or (3) of this Rule. As used in this Rule, an applicant has a relationship with a former operator if the former operator would be involved with the applicant's child care facility in one or more of the following ways:
  - (A) would participate in the administration or operation of the facility;
  - (B) has a financial interest in the operation of the facility;
  - (C) provides care to the children at the facility;
  - (D) resides in the facility; or
  - (E) would be on the facility's board of directors, be a partner of the corporation, or otherwise have responsibility for the administration of the business;
- (5) based on the person's previous non-compliance as an operator with the requirements of G.S. 110 and this ~~Subchapter~~ Chapter; or
- (6) if abuse or neglect has been substantiated against the person, or if abuse or neglect was substantiated against a household member.

(h) Use of the license is limited to the following conditions:

- (1) The license cannot be bought, sold, or transferred from one individual to another.
- (2) The license is valid only for the location address/addresses listed on it.
- (3) The license must be returned to the Division in the event of termination, revocation, suspension, or summary suspension.
- (4) The license shall be displayed in a prominent place that parents are able to view daily and shall be shown to each child's parent when the child is enrolled.

(i) A licensee is responsible for notifying the Division whenever a change occurs which affects the information shown on the license.

*Authority G.S. 110-85; 110-88(5); 110-91; 110-93; 110-99; 143B-168.3.*

**10A NCAC 09 .1703 CAREGIVER INTERACTIONS**  
Caregivers will relate to children in positive ways by helping them feel welcome and comfortable, treating them with respect, listening to what they say, responding to them with acceptance and appreciation and participating in many activities with the children. Caregivers shall:

- (1) Make eye contact whenever possible when speaking to children.
- (2) Actively engage children in conversation to share experiences, ideas and opinions.
- (3) Help children develop problem-solving skills.
- (4) Facilitate learning by providing positive reinforcement, encouraging efforts and recognizing accomplishments.

*Authority G.S. 110-85; 110-91(8), (11); 143B-168.3.*

**10A NCAC 09 .1718 REQUIREMENTS FOR DAILY OPERATIONS**

The operator shall provide the following on a daily basis for all children in care:

- (1) Meals and snacks which comply with the Meal Patterns for Children in Child Care standards which are based on the recommended nutrient intake judged by the National Research Council to be adequate for maintaining good nutrition. The types of food and number and size of servings shall be appropriate for the ages and developmental levels of the children in care. The Meal Patterns for Children in Child Care nutrition standards are incorporated by reference and include subsequent amendments. A copy of these standards is available free of charge from the Division at the address in Rule .0102 of this Chapter.
- (2) No child shall go more than four hours without a meal or a snack being provided.
- (3) Drinking water shall be freely available to children and offered at frequent intervals.
- (4) When milk, milk products, or fruit juices are provided by the operator, only pasteurized products or products which have undergone an equivalent process to pasteurization shall be used. Any formula which is prepared by the operator shall be prepared according to the instructions on the formula package or label, or according to written instructions from the child's health care ~~provider~~ professional.

- (5) Each infant shall be held for bottle feeding until able to hold his or her own bottle. Bottles shall not be propped. Each child shall be held or placed in feeding chairs or other age-appropriate seating apparatus to be fed.
- (6) The parent or health care ~~provider~~ professional of each child under 15 months of age shall provide the operator an individual written feeding schedule for the child. This schedule shall be followed at the home. This schedule shall include the child's name, be signed by the parent or health care ~~provider~~ professional, and be dated when received by the operator. Each infant's schedule shall be modified in consultation with the child's parent or health care ~~provider~~ professional to reflect changes in the child's needs as he or she develops.
- (7) ~~Frequent opportunities for outdoor play or fresh air.~~ Developmentally appropriate equipment and materials shall be provided for a variety of outdoor activities which allow for vigorous play, large and small muscle development and social, emotional, and intellectual development. Each child shall have the opportunity for outdoor play each day that weather conditions permit. The operator shall provide space and time for vigorous indoor activities when children cannot play outdoors.
- (8) An individual sleeping space such as a bed, crib, play pen, cot, mat, or sleeping bag with individual linens for each pre-school aged child in care for four hours or more, or for all children if overnight care is provided, to rest comfortably. Individual sleep requirements for infants aged 12 months or younger shall be provided for as specified in 10A NCAC 09 .1724(a)(2). Linens shall be changed weekly or whenever they become soiled or wet.
- (9) A quiet, separate area which can be easily supervised for children too sick to remain with other children. Parents shall be notified immediately if their child becomes too sick to remain in care.
- (10) Adequate supervision as described below:
  - (a) For children who are awake, staff shall interact with the children while moving about the indoor or outdoor area, and shall be able to hear and see the children at all times, except when emergencies necessitate that direct supervision is impossible for brief periods of time.
  - (b) For children who are sleeping or napping, the staff are not required

to visually supervise them, but shall be able to hear and respond quickly to them. Children shall not sleep or nap in a room with a closed door between the children and the supervising staff. The staff shall be on the same level of the home where children are sleeping or napping.

- (11) A safe sleep environment by ensuring that when a child is sleeping or napping, bedding or other objects shall not be placed in a manner that covers the child's face.
- (12) The opportunity each day for each child under the age of 12 months to play while awake while positioned on his or her stomach.
- (13) Developmentally appropriate activities as planned on a written schedule. Materials or equipment shall be available indoors and outdoors to support the activities listed on the written schedule. The written schedule shall:
  - (a) Show blocks of time usually assigned to types of activities and shall include periods of time for both active play and quiet play or rest; and
  - (b) Be displayed in a place where parents are able to view; and
  - (c) Reflect daily opportunities for both free-choice and guided ~~activities.~~ activities;
  - (d) Include a minimum of one hour of outdoor play throughout the day, if weather conditions permit; and
  - (e) Include a daily gross motor activity which may occur indoors or outdoors.
- (14) When screen time, including, but not limited to television, videos, video games, and computer usage, is provided, it shall be:
  - (a) Offered only as a free choice activity.
  - (b) Limited to no more than two and a half hours per week for each child two years of age and older.
  - (c) Used to meet a developmental goal. Usage time periods may be extended for specific special events, projects, occasions such as a current event, homework, holiday, or birthday celebration. Screen time is prohibited for children under the age of two years. The operator shall offer alternate activities for children under the age of two years.

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

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

- (1) a copy of the child's health assessment as required by G.S. 110-91(1);
- (2) a copy of the child's immunization record;
- (3) a health and emergency information form provided by the Division that is completed and signed by a child's parent. The completed form shall be on file the first day the child attends. An operator may use another form other than the one provided by the Division, as long as the form includes the following information:
  - (A) the child's name, address, and date of birth;
  - (B) the names of individuals to whom the child may be released;
  - (C) the general status of the child's health;
  - (D) any allergies or restrictions on the child's participation in activities with specific instructions from the child's parent or physician;
  - (E) the names and phone numbers of persons to be contacted in an emergency situation;
  - (F) the name and phone number of the child's physician and preferred hospital; and
  - (G) authorization for the operator to seek emergency medical care in the parent's absence;
- (4) when medication is administered, authorization for the operator to administer the specific medication according to the parent's or physician's instructions.

(b) The operator shall complete and maintain other records which include:

- (1) documentation of the operator's procedures in emergency situations, on a form which is provided by the Division;
- (2) documentation that monthly fire drills are practiced. The documentation shall include the date each drill is held, the time of day, the length of time taken to evacuate the home, and the operator's signature;
- (3) incident reports that are completed each time a child receives medical treatment by a physician, nurse, physician's assistant, nurse practitioner, community clinic, or local health department, as a result of an incident occurring while the child is in the family child care home. Each incident shall be reported on a form provided by the Division, signed by the operator and the parent, and maintained in the child's file. A copy shall

Authority G.S. 110-85; 110-88; 110-91(2),(12).

be mailed to a representative of the Division within seven calendar days after the incident occurs;

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

(c) Written records shall be maintained as follows:

- (1) All children's records as required in this Chapter, except medication permission slips as required in Rule .1720(c)(13) of this Section, must be kept on file one year from the date the child is no longer enrolled.
- (2) Additional caregiver records as required in this Chapter shall be maintained on file one year from the employee's last date of employment.
- (3) Current program records as required in this Chapter shall be maintained on file for as long as the license ~~remains~~ remains valid. Prior versions shall be maintained based on the time frame in the following charts:
  - (A) A minimum of 30 days from the revision or replacement date:

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

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

Record	Rule
Attendance	.1721 (b)(6)
Emergency Numbers	.1720(a)(8)
Emergency Procedures Form	.1721(b)(1)
Field Trip/Transportation Permission	.1723(1)
Fire Drill Log	.1721(b)(2)
Incident Log	.1721(b)(4)
Playground Inspection	.1721(b)(5)
Pet Vaccinations	.1720(d)(10)

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

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

#### **10A NCAC 09 .1724 SAFE SLEEP POLICY**

(a) Each operator licensed to care for infants aged 12 months or younger shall develop and adopt a written safe sleep policy that:

- (1) specifies that the operator shall place infants aged 12 months or younger on their backs for sleeping, unless:
  - (A) for an infant aged six months or less, the operator receives a written waiver of this requirement from a health care ~~provider, professional, as defined in G.S. 58-50-61(a)(8);~~ or
  - (B) for an infant older than six months, the operator receives a written waiver of this requirement from a health care ~~provider, professional, as defined in G.S. 58-50-61(a)(8);~~ or a parent, or a legal guardian;
- (2) specifies that infants aged 12 months or younger shall be placed in a crib, bassinet or play pen with a firm padded surface when sleeping;
- (3) specifies whether pillows, blankets, toys, and other objects may be placed in a crib with a sleeping infant aged 12 months or younger, and if so, specifies the number and types of allowable objects;
- (4) specifies that nothing shall be placed over the head or face of an infant aged 12 months or younger when the infant is laid down to sleep;
- (5) specifies that the temperature in the room where infants aged 12 months or younger are sleeping does not exceed 75 F;
- (6) specifies the means by which the operator shall visually check sleeping infants aged 12 months or younger;
- (7) specifies the frequency with which the operator shall visually check sleeping infants aged 12 months or younger;
- (8) specifies how the operator shall document compliance with visually checking on



sleeping infants aged 12 months or younger, with such documents to be maintained for a minimum of one month;

- (9) specifies any other steps the operator shall take to provide a safe sleep environment for infants aged 12 months or younger.

(b) The operator shall post a copy of the safe sleep policy or a poster about safe sleep practices in a prominent place in the infant sleeping room or area.

(c) A copy of the operator's safe sleep policy shall be given and explained to the parents of an infant aged 12 months or younger on or before the first day the infant attends the home. The parent shall sign a statement acknowledging the receipt and explanation of the policy. The acknowledgement shall contain:

- (1) the infant's name;
- (2) the date the infant first attended the home;
- (3) the date the operator's safe sleep policy was given and explained to the parent; and
- (4) the date the parent signed the acknowledgement.

The operator shall retain the acknowledgement in the child's record as long as the child is enrolled at the home.

(d) If an operator amends a home's safe sleep policy, the operator shall give written notice of the amendment to the parents of all enrolled infants aged 12 months or younger at least 14 days before the amended policy is implemented. Each parent shall sign a statement acknowledging the receipt and explanation of the amendment. The operator shall retain the acknowledgement in the child's record as long as the child is enrolled at the home.

(e) A health care professional's ~~physician's~~ or parent's waiver of the requirement that all infants aged 12 months or younger be placed on their backs for sleeping shall:

- (1) bear the infant's name and birth date;
- (2) be signed and dated by the infant's ~~physician~~ health care professional or parent; and
- (3) specify the infant's authorized sleep positions;

The operator shall retain the waiver in the child's record as long as the child is enrolled at the home.

(f) For each infant with a waiver on file at the home as specified in Paragraph (e) of this Rule, a notice shall be posted for quick reference near the infant's crib, bassinet, or play pen that shall include:

- (1) the infant's name;
- (2) the infant's authorized sleep position; and
- (3) the location of the signed waiver.

No confidential medical information, including an infant's medical diagnosis, shall be shown on the notice.

(g) The home's safe sleep policy shall be developed and shared with parents of infants currently enrolled within 30 days of this Rule becoming effective.

*Authority G.S. 110-85; 110-91(15); 143B-168.3.*

## **SECTION .2200 - ADMINISTRATIVE ACTIONS AND CIVIL PENALTIES**

## **10A NCAC 09 .2201 ADMINISTRATIVE PENALTIES: GENERAL PROVISIONS**

(a) Pursuant to G.S. 110-102.2, the secretary or designee may order one or more administrative penalties against any operator who violates any provision of Article 7 of Chapter 110 of the General Statutes or of this Chapter.

(b) Nothing in this Section shall restrict the Secretary from using any other statutory or civil penalty available. A civil penalty in accordance with G.S. 110-103.1 and Section .2200 of this Chapter may be imposed in conjunction with any other administrative activity.

(c) The issuance of an administrative penalty may be appealed pursuant to G.S. 150B-23.

(d) Following the substantiation of any abuse or neglect complaint or the issuance of any administrative action against a child care facility, the operator ~~shall~~ shall, within 30 days, notify the parents of the children currently enrolled that a complaint was substantiated or that an administrative action was taken against the facility, including administrative actions that may be stayed pending appeal. The notification shall be in writing and shall include information on the nature of the substantiated complaint or the type of administrative action taken. The operator shall maintain copies of documentation of the substantiated complaint investigation or the administrative action issued against the facility for the past three years in a binder, which shall be accessible to parents. The written notice shall state where the binder containing copies of the substantiated complaint investigation or administrative action may be found on site for review by the parents. The operator shall document the date that the written notice was given to all ~~parents.~~ parents and maintain written documentation that all parents of children currently enrolled at the facility have received said notice.

*Authority G.S. 110-85; 110-102.2; 110-103.1; 143B-168.3; 150B-23.*

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

### **10A NCAC 09 .2501 SCOPE**

The regulations in this Section apply to all child care centers offering care to three or more ~~school-aged~~ school-age children exclusively or as a component of any other program. All rules in this ~~Subchapter~~ Chapter pertaining to ~~full-time, part-time, or seasonal child care shall apply to programs for school-aged~~ school-age children shall apply except as provided in this Section.

*Authority G.S. 110-85; 110-86(3); 110-91; 143B-168.3.*

### **10A NCAC 09 .2502 SPECIAL PROVISIONS FOR LICENSURE**

~~A center providing care for school-aged children exclusively shall be issued a license restricting care to school-aged children as defined in Rule .0102 of this Chapter.~~ A center providing care for ~~school-aged~~ school-age children exclusively on a seasonal basis between May 15 and September 15 shall be licensed as a summer day camp. A

track-out program that operates all four tracks for more than four hours per day must be licensed.

*Authority G.S. 110-85; 110-88(1); 110-91; 143B-168.3.*

**10A NCAC 09 .2503 BUILDING CODE REQUIREMENTS**

(a) Building code requirements adopted by reference in Section .1300 of this ~~Subchapter~~ Chapter shall apply for a facility providing care to school-age children except in the following situations: when any preschool-age child is also in care:

~~(b)(1)~~ (1) Any building which is currently approved for school occupancy and which houses a public or private school during the school year shall be considered an approved building to house a facility serving school-age children exclusively. The operator shall be responsible for obtaining and submitting copies of all applicable inspection reports.

~~(c)(2)~~ (2) For the purpose of carrying out the provisions of G.S. 110-91(4) for summer day camps not covered by Paragraphs (a) or (b) of this Rule, the following North Carolina Building Codes shall apply to the structure described in Rule ~~.2504(b):~~ .2504(b) of this Section:

~~(1)(A)~~ (A) When the authorized capacity of the facility is less than 30 children, the structure shall, at the minimum, meet the requirements for residential occupancy as prescribed in Volume IB of the North Carolina Building Code. Children may use only those floors which have at least one grade level exit.

~~(2)(B)~~ (B) When the authorized capacity of the facility is more than 29 children, but less than 100 children, the structure shall, at the minimum, meet the North Carolina Building Code requirements for business occupancy.

~~(3)(C)~~ (C) When the authorized capacity of the facility is more than 99 children, the structure shall, at the minimum, meet the North Carolina Building Code requirements for assembly occupancy, or educational occupancy or institutional occupancy.

~~(d)(b)~~ (b) A copy of the North Carolina Building Code is on file at the Division of Child Development at the address given in Rule .0102 of this ~~Subchapter~~ Chapter and shall be available for public inspection during regular business hours.

*Authority G.S. 110-85; 110-88(2); 110-91(4); 143B-168.3.*

**10A NCAC 09 .2504 SPACE REQUIREMENTS**

(a) All space requirements specified in Section .1400 apply when a facility provides care for school-age children and any preschool child is also in care, or when a program which provides care exclusively for school-age children routinely operates indoors in a permanent structure for more than 25 percent of each day. A gymnasium or other single use room may be included in the space measured for licensed capacity when used as primary space.

(b) A facility licensed as a summer day camp shall have a permanent structure located at the home base which is the primary site of the summer day camp activities. The permanent structure may be a building or permanent roofed shelter with overhang. The summer day camp shall meet one of the following space requirements:

(1) When activities for children are routinely conducted outdoors or off the premises for at least 75 percent of each day, a minimum of ~~ten~~ 10 square feet per child of indoor space, exclusive of kitchens, hallways, restrooms, closets, and storage areas, shall be provided.

(2) When the camp's home base does not provide ~~ten~~ 10 square feet of primary space indoors, the camp shall provide notarized copies of all letters, agreements, or contracts with other facilities which guarantee that children will be accommodated comfortably indoors in the event of inclement weather.

*Authority G.S. 110-85; 110-91(3), (6); 143B-168.3.*

**10A NCAC 09 .2505 HEALTH REQUIREMENTS FOR CHILDREN**

(a) All requirements of Section .0800 of this ~~Subchapter~~ Chapter apply to school-age child care arrangements with the following exceptions:

(1) A medical examination report shall not be required for any child enrolled in an accredited or approved public or private school.

(2) Rule .0806 does not apply.

(3) If ~~the~~ a summer day camp maintains its master records for children and staff in a central location, emergency information for each staff person and child shall always be on site. The emergency information on site shall include the name and telephone numbers of the child's parent or other responsible person, the child's or staff person's physician health care professional or preferred hospital, any chronic illnesses and medication taken for that illness, any allergy and recommended treatment for that allergy, and any other information that has a direct bearing on medical treatment and safe care. The parent's signed permission to obtain medical attention must also be on site with the child.

(b) All requirements specified in ~~the Nutrition Section .0900~~ of this Chapter ~~apply. apply when any preschool child is in care or when food is provided by the facility.~~

(c) If food is prepared at the summer day camp, the regulations regarding sanitary facilities, food preparation and service for summer camps as adopted by the Commission for Public Health and codified in 15A NCAC 18A .1000 shall apply. If food is prepared at a licensed track-out program, the sanitation requirements of child care centers must be met.

(d) If food is brought from home by children or catered, the following requirements apply:

- (1) Sanitary cold storage shall be provided for perishable snacks or lunches brought from home.
- (2) Safe drinking water shall be available at all times regardless of where activities are provided.

*Authority G.S. 110-85; 110-91(1), (2); 143B-168.3.*

**10A NCAC 09 .2506 GENERAL SAFETY REQUIREMENTS**

(a) First aid equipment shall always be available regardless of where activities are provided.

(b) All regulations in Rule .1403 regarding swimming pools apply.

(c) Potentially hazardous items, such as archery equipment, ~~firearms and ammunition~~, hand and power tools, nails, chemicals, or propane stoves, or chemicals shall be used by children only when adult supervision is provided. Such potentially hazardous items, whether or not intended for use by the children, shall be stored in locked areas or with other appropriate safeguards, or shall be removed from the premises.

(d) All children shall be adequately supervised. Adequate supervision means staff shall be with the group of children and able to hear and see each child in his/her care, except:

- (1) Children who are developmentally able may be permitted to go to the restroom independently, provided that:
  - (A) Staff members' proximity to children assures immediate intervention to safeguard a child from harm; and
  - (B) Individuals who are not staff members may not enter the restroom area while in use by any child; and
  - (C) Children up to nine years of age are supervised by staff members who are able to hear the child. Children nine years of age and older are not required to be directly supervised, however, staff members shall know the whereabouts of children who have left their group to use the restroom.
- (2) Adequate supervision for children ages nine and older means that staff shall be with the

group of children and able to hear or see each child in his/her care. A staff member shall accompany any children that leave the group to go indoors or outdoors.

- (3) When emergencies necessitate that direct supervision is impossible for brief periods of time.

(e) ~~Children shall wear life jackets whenever they participate in boating, rafting or canoeing activities and children riding bicycles shall must wear bicycle safety helmets.~~ Children riding bicycles shall must wear bicycle safety helmets.

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

**10A NCAC 09 .2508 AGE APPROPRIATE ACTIVITIES**

(a) Child care facilities which provide care to school-age children shall provide activities appropriate to the age, age, needs and interests of the children.

(b) Opportunities must be provided for children to participate in the planning and the implementation of activities.

~~(b)(c) Facilities, other than those operating under the provisions of G.S. 110-106, which routinely operate a program of care indoors for school age children for more than 25 percent of each day in space designated and approved by the Division for that purpose shall make activities which are appropriate for the ages of children in care available on a daily basis.~~ Facilities which operate a school-age component for three or fewer hours per day shall make at least three of the following activities available daily; those which operate a school-age component for more than three hours per day shall make at least four of the following activities available daily:

- (1) Homework with assistance available as needed from center personnel;
  - (2) Reading activities;
  - (3) Hands-on academic enrichment activities including but not limited to language, math, science, social studies, or foreign language activities;
  - (4) Structured or unstructured physical activities;
  - (5) Health education or wellness activities;
  - (6) Social skills, life skills or problem-solving activities;
  - (7) Creative arts activities;
  - (8) Community awareness activities;
  - (9) Cultural activities;
  - (10) Career development activities;
  - (11) Games or manipulatives;
  - (12) Sand or water play;
  - (13) Technology skill-building activities.
- (1) ~~active outdoor play;~~
  - (2) ~~arts and crafts;~~
  - (3) ~~block play;~~
  - (4) ~~books and language;~~
  - (5) ~~carpentry;~~
  - (6) ~~community awareness;~~
  - (7) ~~creative art;~~
  - (8) ~~cultural studies;~~
  - (9) ~~dramatic play;~~

- (10) ~~environmental studies;~~
- (11) ~~field trips;~~
- (12) ~~food experiences;~~
- (13) ~~games for individuals and small groups;~~
- (14) ~~health and safety;~~
- (15) ~~life-related chores;~~
- (16) ~~money making projects;~~
- (17) ~~music, rhythm and creative movement;~~
- (18) ~~number concepts;~~
- (19) ~~problem solving;~~
- (20) ~~sand and water play;~~
- (21) ~~science and nature;~~
- (22) ~~self help skills;~~
- (23) ~~sewing.~~

~~(e) When activities for children are routinely conducted outdoors or off the premises for at least 75 percent of each day, equipment and materials shall be provided to enable children to participate in at least three different activities each day.~~

(d) All equipment and materials used by school-age children shall be appropriate for the age and size of the children using the items.

(e) When screen time, including, but not limited to, television, videos, video games, and computer usage, is provided, it shall be:

- (1) Offered as a free choice activity;
- (2) Limited to no more than two and a half hours per week, per child; and
- (3) Used to meet a developmental goal.

Usage time periods may be extended for specific special events, projects, or occasions such as a current event, homework, researching topics, holiday, or birthday celebration.

*Authority G.S. 110-85; 110-91(6), (12); 143B-168.3.*

#### **10A NCAC 09 .2510 STAFF QUALIFICATIONS**

(a) The individual who is responsible for ensuring the administration of the program, whether on-site or off-site, shall:

- (1) Prior to employment, have at least 400 hours of verifiable experience working with school-aged school-age children in a licensed child care program or 600 hours of verifiable experience working with school-aged school-age children in an unlicensed school-age care or camp setting; or have an undergraduate, graduate, or associate degree, with at least 12 semester hours in school-age care related coursework; and
- (2) Meet the requirements for a child care administrator in G.S. 110-91(8).

(b) At least one individual who is responsible for planning and ensuring the implementation of daily activities for a school-age program (program coordinator) shall:

- (1) Be at least 18 years old and have a high school diploma or its equivalent prior to employment;

- (2) Have completed two semester credit hours in child and youth development and two semester credit hours in school-age programming. Each individual who does not meet this requirement shall enroll in coursework within six months after becoming employed and shall complete this coursework within 18 months of enrollment. An individual who meets the staff requirements for administrator or lead teacher shall be considered as meeting the requirements for program coordinator, provided the individual completes Basic School-Age Care (BSAC) ~~training;~~ Training, or its equivalent; and

- (3) In a part day program be on site when children are in care. For a full day program be on site for two thirds of the hours of operation. This includes times when the individual is off site due to illness or vacation.

(c) Staff who are responsible for supervising groups of ~~school-aged school-age~~ children (group leaders) shall be at least 18 years of age and have a high school diploma or its equivalent prior to employment, and shall complete the BSAC ~~Training.~~ Training, or its equivalent.

(d) Staff who assist group leaders (assistant group leaders) shall be at least 16 years of age and shall complete the BSAC ~~training.~~ Training, or its equivalent.

(e) The individual who is on-site and responsible for the administration of the school-age component of a center which also provides care to preschool-age children, shall meet the requirements for child care administrator in G.S. 110-91(8) and Section .0700 of this Chapter.

(f) When an individual has responsibility for both administering the program and planning and ensuring the implementation of the daily activities of a school-age program, the individual shall meet the staff requirements for an administrator and shall complete the BSAC ~~Training.~~ Training, or its equivalent.

(g) Completion of the BSAC Training course, or its equivalent, counts toward meeting five hours of one year's annual on-going training requirements in Section .0700 of this Chapter.

~~(h) Individuals who completed seven hours of school-age program training as approved by the Division prior to July 1, 2000 are not required to complete the BSAC Training.~~

~~(+)(h)~~ As used in this Rule, the term "experience working with school-aged school-age children" means experience working with school-aged school-age children as an administrator, program coordinator, group leader, assistant group leader, lead teacher, teacher, or aide.

~~(+)(i)~~ All staff shall receive on-site training and orientation as follows:

- (1) Within the first two weeks of assuming responsibility for supervising a group of children, each employee shall complete at least six clock hours of training on:

- (A) the recognition of the signs and symptoms of child abuse or neglect and in the employee's duty to report suspected abuse and neglect;
  - (B) the center's operational policies;
  - (C) adequate supervision of children, taking into account their age, emotional, physical, and cognitive development.
- (2) Within the first six weeks of assuming responsibility for supervising a group of children, each employee shall complete at least three additional clock hours of training on maintaining a safe and healthy environment and developmentally appropriate activities for school-age children.

~~(k)(j)~~ Staff in ~~part-time or full-day part-time, full day, or track-out~~ school-age care programs required to complete BSAC Training or its equivalent, shall do so within three months of becoming employed. Staff in ~~seasonal school-age care~~ summer day camp programs required to complete BSAC Training or its equivalent, shall do so within ~~six~~ four weeks of becoming employed.

*Authority G.S. 110-85; 110-91(8),(11); 143B-168.3.*

## **SECTION .2800 - VOLUNTARY RATED LICENSES**

### **10A NCAC 09 .2801 SCOPE**

(a) This Section shall apply to all child care facilities that have achieved a voluntary rated license of two stars or higher or that apply to be assessed for a voluntary rated license of two stars or higher.

(b) A child care facility is eligible for a voluntary rated license of two through five stars.

(c) No requirement in any component of a two-star or higher rating shall be less than the requirements for a one-star rating described in G.S. 110-91 and this Chapter. Prior to issuance of an initial two through five-star rating, all minimum requirements in G.S. 110-91 and this Chapter must be in compliance at the time the program is assessed. The requirements for a voluntary rated license of two stars or higher are in addition to the minimum standards found in G.S. 110-91 and this Chapter.

~~(d) Any program operating prior to January 1, 2006 may choose to be assessed for a star rating as described in Rules .2803-.2816 of this Section until January 1, 2008. The operator may request assessment of their star rating based on Rules .2817-.2823 of this Section prior to that date.~~

~~(e) For any program that began operation after January 1, 2006 and applies for a voluntary rated license of two through five stars, the rating shall be assessed according to Rules .2817-.2823 of this Section.~~

~~(f)(d)~~ Nothing in this Section is to preclude or interfere with issuance of an administrative action as allowed by G.S. 110 and this Chapter.

~~(g)(e)~~ As used in this Section a two component license refers to a license issued based on an evaluation of program

standards and education standards. ~~A three component license refers to a license issued based on an evaluation of program standards, education standards and compliance history.~~

*Authority G.S. 110-88(7); 110-90(4); 143B-168.3.*

### **10A NCAC 09 .2802 APPLICATION FOR A VOLUNTARY RATED LICENSE**

(a) After a licensed child care center or home has been in operation for a minimum of six consecutive months, the procedures in this Rule shall apply to request an initial two-through five-star rated license or to request that a rating be changed to a two- through five-star rated license.

(b) The operator shall submit a completed application to the Division for a voluntary rated license on the form provided by the Division.

(c) An operator may apply for a star rating based on the total number of points achieved for each component of the voluntary rated license. ~~In order to achieve a two- through five star rating, for a three component license the minimum score achieved must be a least five points as follows:~~

TOTAL NUMBER OF POINTS	RATING
5 through 7	Two Stars
8 through 10	Three Stars
11 through 13	Four Stars
14 through 15	Five Stars

In order to achieve a two- through five-star rating, for a two component license the minimum score achieved must be a least four points as follows:

TOTAL NUMBER OF POINTS	RATING
4 through 6	Two Stars
7 through 9	Three Stars
10 through 12	Four Stars
13 through 15	Five Stars

(d) A Division representative shall assess the facility requesting a voluntary rated license to determine if all applicable requirements have been met to achieve the score for the requested star rating. The assessment may include a review of Division records and site visits.

(e) The Division shall provide for Infant/Toddler Environment Rating Scale Revised edition, Early Childhood Environment Rating Scale - Revised edition, School-Age Care Environment Rating Scale, or Family Day Care Rating Scale assessments to be completed, as appropriate for the program, free of charge to operators requesting an initial three or more points for program standards.

(f) Upon completion of the Division's assessment:

- (1) If the assessment indicates all the applicable requirements to achieve the score for the requested rating have been met, the Division shall issue the rating.
- (2) If the assessment indicates all the applicable requirements to achieve the score for the requested rating are not met, the Division shall notify the operator of the requirements that were not met and the requested voluntary rating shall not be issued.

- (A) Accept the rating for which the Division has found the operator to be eligible;
- (B) Withdraw the request and reapply when the identified requirements to achieve the score for the requested rating have been met; or
- (C) Appeal the denial of the requested rating as provided in G.S. 110-94.

*Authority G.S. 110-88(7); 110-90(4); 143B-168.3.*

**10A NCAC 09 .2803 PROGRAM STANDARDS FOR A THREE COMPONENT RATED LICENSE FOR CHILD CARE CENTERS**

- ~~(a) This Rule applies to evaluating the program standards for a three component rated license for child care centers.~~
- ~~(b) To achieve two points for program standards, the center shall meet all the applicable requirements in Rules .2804—.2810(b) of this Section, except that either the space requirements in Rule .2809 of this Section or the staff/child ratio requirements in Rule .2810(b) of this Section shall be met.~~
- ~~(c) To achieve three points for program standards, the center shall meet all the applicable requirements in Rules .2804—.2810(b) of this Section, and have an average score of 4.0 on~~

- ~~the appropriate environment rating scale referenced in Rule .2802(e) of this Section in each classroom evaluated.~~
- ~~(d) To achieve four points for program standards, the center shall meet all the applicable requirements in Rules .2804—.2810(b) of this Section, and have an average score of 4.5 on the appropriate environment rating scale referenced in Rule .2802(e) of this Section in each classroom evaluated.~~
- ~~(e) To achieve five points for program standards, the center shall meet all the applicable requirements in Rules .2804—.2810(e) of this Section, and have an average score of 5.0 on the appropriate environment rating scale referenced in Rule .2802(e) of this Section in each classroom evaluated.~~
- ~~(f) For centers with a licensed capacity of three to twelve children located in a residence, a Family Day Care Rating Scale shall be the rating scale used in Paragraphs (c), (d), and (e) of this Rule.~~

*Authority G.S. 110-88(7); 110-90(4); 143B-168.3.*

**10A NCAC 09 .2810 STAFF/CHILD RATIOS FOR A THREE COMPONENT RATED LICENSE**

- ~~(a) This Rule applies to evaluating the staff/child ratios and maximum group sizes for the program standards for a three component rated license for child care centers.~~
- ~~(b) The center shall comply with the following staff/child ratios and maximum group sizes:~~

AGE OF CHILDREN	RATIO STAFF/CHILDREN	MAXIMUM GROUP SIZE
0 to 12 Months	1/5	10
1 to 2 Years	1/6	12
2 to 3 Years	1/9	18
3 to 4 Years	1/10	20
4 to 5 Years	1/13	25
5 to 6 Years	1/15	25
6 Years and Older	1/20	25

- ~~(c) To earn five points for program standards, the center shall comply with the following staff/child ratios and maximum group sizes.~~

AGE	RATIO STAFF/CHILDREN	MAXIMUM GROUP SIZE
0 to 12 Months	1/4	8
1 to 2 Years	1/5	10
2 to 3 Years	1/8	16
3 to 4 Years	1/9	18
4 to 5 Years	1/12	24
5 to 6 Years	1/14	25
6 Years and Older	1/19	25

- ~~(d) The provisions of rules 10A NCAC 09 .0712(a)(1), (2) and .0713(b) through (j) shall apply in evaluating the staff/child ratios and maximum group sizes within this Rule.~~
- ~~(e) The staff/child ratio applicable to a classroom shall be posted in that classroom in an area that parents are able to view at all times.~~

*Authority G.S. 110-88(7); 110-90(4); 143B-168.3.*

**10A NCAC 09 .2811 EDUCATION STANDARDS FOR A RATED LICENSE FOR CHILD CARE CENTERS**

- ~~(a) To achieve two points for education standards for a star rating, child caring staff in the center shall meet the following requirements:~~
  - ~~(1) The on-site administrator shall have:~~
    - ~~(A) A Level I North Carolina Early Childhood Administration Credential or its equivalent; and~~

- ~~(B) Two years of full time verifiable early childhood work experience.~~
- ~~(2) For centers with a licensed capacity of 200 or more, there shall be a second administrator on site for a minimum of 20 hours per week who shall have the Level I North Carolina Early Childhood Administration Credential or its equivalent.~~
- ~~(3) All lead teachers shall have the North Carolina Early Childhood Credential or its equivalent, and 75% of the lead teachers shall have:~~
  - ~~(A) Completed or be enrolled in 3 semester hours in early childhood education or child development (not including North Carolina Early Childhood Credential coursework); or~~
  - ~~(B) One year of full time verifiable early childhood work experience.~~
- ~~(4) 50% of the teachers counted in staff/child ratios shall have:~~
  - ~~(A) Completed or be enrolled in two semester hours in early childhood education or child development; or~~
  - ~~(B) One year of full time verifiable early childhood work experience.~~
- ~~(5) For centers with a school age care component, the following requirements shall also apply. Completion of these requirements may count toward meeting education and experience requirements in Paragraph (a)(1) through (a)(4) of this Rule.~~
  - ~~(A) If none of the administrator's verifiable experience includes working with school aged children in a school age care or camp setting, he or she shall complete the Basic School Age Care (BSAC) Training.~~
  - ~~(B) The individual designated as the program coordinator as allowed in Rule .2510 shall have at least 200 hours of verifiable experience working with school aged children in a licensed child care program; or have at least 300 hours of verifiable experience working with school aged children in an unlicensed school age care or camp setting; or have completed or be enrolled in at least two semester hours of school age care related coursework.~~
  - ~~(C) For centers with a school age care component with 200 or more school aged children enrolled, there shall be two program coordinators on site, one of whom shall not have concurrent group leader~~

responsibilities. The additional program coordinator shall meet the staff requirements in Rule .2510 of this Chapter.

~~(b) To achieve three points for education standards for a star rating, child caring staff in the center shall meet the following requirements.~~

- ~~(1) The on site administrator shall have:~~
  - ~~(A) A Level I North Carolina Early Childhood Administration Credential or its equivalent; and~~
  - ~~(B) Six semester hours in early childhood education or child development (not including North Carolina Early Childhood Administration Credential coursework); and~~
  - ~~(C) Two years of full time verifiable early childhood work experience.~~
- ~~(2) For centers with a licensed capacity of 200 or more, there shall be a second administrator on site for a minimum of 20 hours per week who shall have the Level I North Carolina Early Childhood Administration Credential or its equivalent.~~
- ~~(3) All lead teachers shall have the North Carolina Early Childhood Credential or its equivalent, and 75% of the lead teachers shall have:~~
  - ~~(A) Three semester hours in early childhood education or child development (not including North Carolina Early Childhood Credential coursework); or~~
  - ~~(B) Two years of full time verifiable early childhood work experience.~~
- ~~(4) 50% of the teachers counted in staff/child ratios shall have:~~
  - ~~(A) Completed or be enrolled in the North Carolina Early Childhood Credential or its equivalent; or~~
  - ~~(B) Completed or be enrolled in four semester hours in early childhood education or child development; or~~
  - ~~(C) Three years of full time verifiable early childhood work experience.~~
- ~~(5) For centers with a school age care component, the following requirements shall also apply. Completion of these requirements may count toward meeting education and experience requirements in Paragraph (b)(1) through (b)(4) of this Rule.~~
  - ~~(A) The administrator shall have at least 300 hours of verifiable experience working with school aged children in a licensed child care program, or at least 450 hours of verifiable experience working with school aged children in an~~

unlicensed school age care or camp setting, or shall complete the BSAC Training.

(B) ~~The individual designated as the program coordinator as allowed in Rule .2510 shall have at least 400 hours of verifiable experience working with school aged children in a licensed child care program; or have at least 600 hours of verifiable experience working with school-aged children in an unlicensed school age care or camp setting; or have completed at least two semester hours of school age care related coursework.~~

(C) ~~For centers with a school age care component with 200 or more school aged children enrolled, there shall be two program coordinators on site; one of whom shall not have concurrent group leader responsibilities. The additional program coordinator shall meet the staff requirements of Rule .2510 of this Subchapter.~~

(D) ~~25% of the individuals designated as group leaders as allowed in Rule .2510 shall have at least 100 hours of verifiable experience working with school aged children in a licensed child care program; or have at least 150 hours of verifiable experience working with school-aged children in an unlicensed school age care or camp setting; or have completed or be enrolled in at least two semester credit hours of school age care related coursework.~~

(e) ~~To achieve four points for education standards for a star rating, child caring staff in the center shall meet the following requirements:~~

(1) ~~The on-site administrator shall have:~~

(A) ~~A Level II North Carolina Early Childhood Administration Credential or its equivalent; and~~

(B) ~~Two years of full time verifiable early childhood work experience.~~

(2) ~~For centers with a licensed capacity of 200 or more, there shall be a second administrator on site for a minimum of 20 hours per week who shall have the Level I North Carolina Early Childhood Administration Credential or its equivalent.~~

(3) ~~All lead teachers shall have the North Carolina Early Childhood Credential or its equivalent, and 75% shall have:~~

(A) ~~Nine semester hours in early childhood education or child~~

~~development (not including the North Carolina Early Childhood Credential coursework); and~~

(B) ~~Two years of full time verifiable early childhood work experience.~~

(4) ~~50% of the teachers counted in staff/child ratios shall have:~~

(A) ~~The North Carolina Early Childhood Credential or its equivalent; or~~

(B) ~~Four semester hours in early childhood education or child development; or~~

(C) ~~Five years of full time verifiable early childhood work experience.~~

(5) ~~For centers with a school age care component, the following requirements shall also apply. Completion of these requirements may count toward meeting education and experience requirements in Paragraph (e)(1) through (e)(4) of this Rule.~~

(A) ~~The administrator shall have at least 600 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 900 hours of verifiable experience working with school aged children in an unlicensed school age care or camp setting, or shall complete the BSAC Training.~~

(B) ~~The individual designated as the program coordinator as allowed in Rule .2510 of this Subchapter shall have at least 900 hours of verifiable experience working with school-aged children in a licensed child care program or at least 1350 hours of verifiable experience working with school aged children in an unlicensed school age care or camp setting; and have completed at least four semester hours of school age care related coursework.~~

(C) ~~For centers with a school age care component with 200 or more school aged children enrolled, there shall be two program coordinators on site, one of whom shall not have concurrent group leader responsibilities. The additional program coordinator shall meet the staff requirements in Rule .2510 of this Subchapter.~~

(D) ~~50% of the individuals designated as group leaders as allowed in Rule .2510 of this Subchapter shall have at least 300 hours of verifiable experience working with school-~~



aged children in a licensed child care program; or have at least 450 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting; or have completed at least two semester credit hours of school-age care related coursework.

(E) Assistant group leaders shall be at least 18 years of age.

(d) To achieve five points for education standards for a star rating, child caring staff in the center shall meet the following requirements:

(1) The on-site administrator shall have:

(A) A Level III North Carolina Early Childhood Administration Credential or its equivalent; and

(B) Four years of full-time verifiable work experience in an early childhood center teaching young children, or four years of administrative experience, or four years of a combination of both.

(2) For centers with a licensed capacity of 200 or more, there shall be a second administrator on site for a minimum of 20 hours per week who shall have the Level I North Carolina Early Childhood Administration Credential or its equivalent.

(3) All lead teachers shall have the North Carolina Early Childhood Credential or its equivalent, and 75% of the lead teachers shall have:

(A) At least an A.A.S. degree in early childhood education or child development or an A.A.S. degree in any major with 12 semester hours in early childhood education or child development; and

(B) Two years of full-time verifiable early childhood work experience.

(4) 50% of the teachers counted in staff/child ratios shall have:

(A) The North Carolina Early Childhood Credential or its equivalent; and

(B) Four semester hours in early childhood education or child development (not including North Carolina Early Childhood Credential coursework); and

(C) Two years of full-time verifiable early childhood experience.

(5) For centers with a school-age care component, the following requirements shall also apply. Completion of these requirements may count toward meeting education and experience requirements in Paragraph (d)(1) through (d)(4) of this Rule.

(A) The administrator shall have at least 900 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 1350 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or shall complete the BSAC Training.

(B) The individual designated as the program coordinator as allowed in Rule .2510 of this Chapter shall have at least 900 hours of verifiable experience working with school-aged children in a licensed child care program or at least 1350 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, and have completed at least six semester hours of school-age care related coursework; or shall have at least 600 hours of verifiable experience working with school-aged children in a licensed child care program or at least 900 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, and have completed at least nine semester hours of school-age care related coursework.

(C) For centers with a school-age care component with 200 or more school-aged children, there shall be two program coordinators on site, one of whom shall not have concurrent group leader responsibilities. The additional program coordinator shall meet the minimum staff requirements in Rule .2510 of this Subchapter.

(D) 75% of the individuals designated as group leaders as allowed in Rule .2510 of this Chapter shall have at least 600 hours of verifiable experience working with school-aged children in a licensed child care program or at least 900 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting; or shall have completed at least two semester hours of school-age care related coursework and have completed or be enrolled in at least two additional semester credit

~~hours of school age related coursework.~~

- (E) ~~Assistant group leaders shall be at least 18 years of age.~~

(e) ~~For centers with a licensed capacity of three to twelve children located in a residence, when an individual has responsibility both for administering the child care program and for planning and implementing the daily activities of a group of children, the educational requirements for lead teacher in this Rule shall apply. All other teachers shall follow the educational requirements for teachers in this Rule.~~

(f) ~~As used in this Rule, the definition of the term "experience working with school aged children" in Rule .2510(i) of this Chapter shall apply.~~

Authority G.S. 110-88(7); 110-90(4); 143B-168.3.

# **10A NCAC 09 .2812 EDUCATION STANDARDS FOR CENTERS THAT PROVIDE CARE ONLY TO SCHOOL-AGED CHILDREN**

(a) ~~For child care programs that serve school-aged children only, the following staff education requirements apply instead of those in Rule .2804 of this Subchapter.~~

(b) ~~To achieve two points for education standards for a star rating, child caring staff in the school age care program shall meet the following requirements:~~

- (1) ~~The administrator shall have a Level I North Carolina Early Childhood Administration Credential or its equivalent.~~
- (2) ~~The program coordinator shall have completed the coursework or the requirements for staff described in Rule .2510(b)(2); and have~~
  - (A) ~~At least 200 hours of verifiable experience working with school-aged children in a licensed child care program, or~~
  - (B) ~~At least 300 hours of verifiable experience working with school-aged children in an unlicensed school age care or camp setting, or~~
  - (C) ~~Completed or be enrolled in at least two additional semester credit hours of school age care related coursework.~~

(c) ~~To achieve three points for education standards for a star rating, child caring staff in the school age care program shall meet the following requirements:~~

- (1) ~~The administrator shall have:~~
  - (A) ~~A Level I North Carolina Early Childhood Administration Credential or its equivalent; and~~
  - (B) ~~At least 300 additional hours of verifiable experience working with school aged children in a licensed child care program, or at least 450 additional hours of verifiable experience working with school-~~

~~aged children in an unlicensed school age care or camp setting.~~

- (2) ~~The program coordinator shall have completed the coursework or the requirements for staff described in Rule .2510(b)(2); and have~~

- (A) ~~At least 400 hours of verifiable experience working with school-aged children in a licensed child care program, or~~
- (B) ~~At least 600 hours of verifiable experience working with school-aged children in an unlicensed school age care or camp setting or~~
- (C) ~~Completed at least two additional semester credit hours of school age care related coursework.~~

- (3) ~~Twenty-five percent of group leaders shall have:~~

- (A) ~~At least 100 hours of verifiable experience working with school-aged children in a licensed child care program, or~~
- (B) ~~At least 150 hours of verifiable experience working with school-aged children in an unlicensed school age care or camp setting, or~~
- (C) ~~Completed or be enrolled in at least two semester credit hours of school age care related coursework.~~

(d) ~~To achieve four points for education standards for a star rating, child caring staff in the school age care program shall meet the following requirements:~~

- (1) ~~The administrator shall have:~~
  - (A) ~~A Level II North Carolina Early Childhood Administration Credential or its equivalent; and~~
  - (B) ~~At least 600 additional hours of verifiable experience working with school aged children in a licensed child care program, or at least 900 additional hours of verifiable experience working with school-aged children in an unlicensed school age care or camp setting.~~

- (2) ~~The program coordinator shall have completed the coursework or the requirements for staff described in Rule .2510(b)(2); and have~~

- (A) ~~At least 900 hours of verifiable experience working with school-age children in a licensed child care program or at least 1350 hours of verifiable experience working with school aged children in an unlicensed school age care or camp setting; and~~

- (B) ~~Completed at least four additional semester credit hours of school age care related coursework.~~
- (3) ~~Fifty percent of group leaders shall have:~~
  - (A) ~~At least 300 hours of verifiable experience working with school aged children in a licensed school age care or camp setting, or~~
  - (B) ~~At least 450 hours of verifiable experience working with school aged children in an unlicensed school age care or camp setting, or~~
  - (C) ~~Completed at least two semester credit hours of school age care related coursework;~~
- (4) ~~Assistant group leaders shall be at least 18 years old.~~
- (e) ~~To achieve five points for education standards for a star rating, child caring staff in the school age care program shall meet the following requirements:~~
  - (1) ~~The administrator shall have:~~
    - (A) ~~A Level III North Carolina Early Childhood Administration Credential or its equivalent; and~~
    - (B) ~~At least 900 additional hours of verifiable experience performing administrative duties in a licensed child care program serving school aged children, or at least 1350 additional hours of verifiable experience performing administrative duties in an unlicensed school age care or camp setting.~~
  - (2) ~~The program coordinator shall have completed the coursework or the requirements for staff described in Rule .2510(b)(2); and have~~
    - (A) ~~At least 900 hours of verifiable experience working with school aged children in a licensed child care program or at least 1350 hours of verifiable experience working with school aged children in an unlicensed school age or camp setting, and completed at least six additional semester credit hours of school age care related coursework; or~~
    - (B) ~~At least 600 hours of verifiable experience working with school aged children in a licensed child care program or at least 900 hours of verifiable experience working with school aged children in an unlicensed school age care or camp setting, and completed at least nine additional semester credit hours of school age care related coursework.~~

- (3) ~~Seventy five percent of group leaders shall have:~~
  - (A) ~~At least 600 hours of experience working with school aged children in a licensed child care program; or~~
  - (B) ~~At least 900 hours of experience working with school aged children in an unlicensed school age care or camp setting; or~~
  - (C) ~~Completed at least two semester credit hours of school age care related coursework and have completed or be enrolled in at least two additional semester credit hours of school age care related coursework.~~
- (4) ~~Assistant group leaders shall be at least 18 years old.~~
- (f) ~~Unless otherwise stated in this Rule, group leaders and assistant group leaders shall meet the minimum qualifications required in Rule .2510 of this Chapter, including completion of BSAC Training.~~
- (g) ~~For programs with a licensed capacity of 200 or more school aged children, there shall be two program coordinators on site, one of whom shall not have concurrent group leader responsibilities. The additional program coordinator shall meet the staff requirements in Rule .2510 of this Chapter.~~
- (h) ~~As used in this Rule, the definition of the term "experience working with school aged children" in Rule .2510(i) of this Chapter shall apply.~~

*Authority G.S. 110-88(7); 110-90(4); 110-91; 143B-168.*

#### **10A NCAC 09 .2813 COMPLIANCE HISTORY STANDARDS FOR A RATED LICENSE FOR CHILD CARE CENTERS**

- (a) ~~To achieve two points for compliance history standards for a star rating, a center shall have a compliance history rating of 65% or higher as assessed by the Division.~~
- (b) ~~To achieve three points for compliance history standards for a star rating, a center shall have a compliance history rating of 70% or higher as assessed by the Division.~~
- (c) ~~To achieve four points for compliance history standards for a star rating, a center shall have a compliance history rating of 75% or higher as assessed by the Division.~~
- (d) ~~To achieve five points for compliance history standards for a star rating, a center shall have a compliance history rating of 80% or higher as assessed by the Division.~~
- (e) ~~The Division shall assess the compliance history by evaluating the violations of requirements that have occurred over the previous three years or during the length of time the center has been operating, whichever is less. Demerits shall be assigned for each occurrence of violations of these requirements: supervision of children (6 points), staff/child ratio (6 points), staff qualifications and training (2-5 points), health and safety practices (3-6 points), discipline (6 points), developmentally appropriate activities (2-4 points), adequate space (6 points), nutrition and feeding practices (1-3 points), program records (1-3 points), sanitation inspections (6 points);~~

and transportation (1-3 points), if applicable. The point value of each demerit shall be based on the potential detriment to the health and safety of children. A compliance history percentage shall be calculated each year by subtracting the total number of demerits from the total demerits possible and converting to a percentage. The yearly compliance history percentage shall be averaged over three years for the compliance history percentages referenced in this Rule. A copy of the Division compliance history score sheet used to calculate the compliance history percentage is available for review at the address given in Rule .0102 of this Subsection.

*Authority G.S. 110-88(7); 110-90(4); 143B-168.3.*

**10A NCAC 09 .2814 PROGRAM STANDARDS FOR A RATED LICENSE FOR FAMILY CHILD CARE HOMES**

(a) To achieve two points for program standards for a star rating, the operator shall have written operational policies and procedures that include information about meal and snack practices, daily activities, parent involvement, health and safety practices, infection control/ill child exclusion/inclusion, and business practice.

(b) To achieve three points for program standards for a star rating, the operator shall:

- (1) Have written operational policies and procedures that include information about meal and snack practices, daily activities, parent involvement, health and safety practices, infection control/ill child exclusion/inclusion, and business practice; and
- (2) Have an average score of 4.0 or higher on the Family Day Care Rating Scale or be accredited by a national organization approved by the Division. Organizations shall be approved if the Division determines that the accreditation standards are substantially equivalent to those of the National Association for Family Child Care.

(c) To achieve four points for program standards for a star rating, the operator shall:

- (1) Have written operational policies and procedures that include information about meal and snack practices, daily activities, parent involvement, health and safety practices, infection control/ill child exclusion/inclusion, and business practice; and
- (2) Have an average score of 4.5 or higher on the Family Day Care Rating Scale or be accredited by a national organization approved by the Division. Organizations shall be approved if the Division determines that the accreditation standards are substantially equivalent to those of the National Association for Family Child Care; and

(3) Be a member of a national, state, or local professional organization.

(d) To achieve five points for program standards for a star rating, the operator shall:

- (1) Have written operational policies and procedures that include information about meal and snack practices, daily activities, parent involvement, health and safety practices, infection control/ill child exclusion/inclusion, and business practice; and
- (2) Have an average score of 5.0 or higher on the Family Day Care Rating Scale or be accredited by a national organization approved by the Division. Organizations shall be approved if the Division determines that the accreditation standards are substantially equivalent to those of the National Association for Family Child Care; and
- (3) Be a member of a national, state, or local professional organization; and
- (4) Of the five preschoolers allowed to be enrolled, no more than three children shall be under one year of age.

*Authority G.S. 110-88(7); 110-90(4); 143B-168.3.*

**10A NCAC 09 .2815 EDUCATION STANDARDS FOR A RATED LICENSE FOR FAMILY CHILD CARE HOMES**

(a) To achieve two points for educational standards for a rated license, the operator shall have completed:

- (1) The North Carolina Family Child Care Credential or its equivalent; or
- (2) At least four semester credit hours in early childhood education or child development; or
- (3) At least 10 years of full-time verifiable early childhood work experience and six additional clock hours of annual in-service training.

(b) To achieve three points for education standards for a rated license, the operator shall have completed:

- (1) The North Carolina Family Child Care Credential or its equivalent and three semester credit hours in early childhood education or child development (not including the North Carolina Family Child Care Credential coursework) and one year of full-time verifiable early childhood work experience; or
- (2) The North Carolina Family Child Care Credential or its equivalent and five years of full-time verifiable early childhood work experience; or
- (3) At least six semester hours of early childhood education/child development coursework and one year of full-time

verifiable early childhood work experience;  
or

- (4) ~~At least an A.A.S. degree in any major with at least six semester credit hours in early childhood education/child development coursework and six months of full-time verifiable early childhood work experience;~~  
or

- (5) ~~At least an A.A.S. degree in early childhood education/child development and three months of full-time verifiable early childhood work experience.~~

(e) ~~To achieve four points for education standards for a rated license, the operator shall have completed:~~

- (1) ~~The North Carolina Family Child Care Credential or its equivalent and six semester credit hours in early childhood education or child development (not including the North Carolina Family Child Care Credential coursework) and two years of full-time verifiable early childhood work experience;~~  
or

- (2) ~~At least nine semester hours of early childhood education/child development coursework and two years of full-time verifiable early childhood work experience;~~  
or

- (3) ~~At least an A.A.S. degree in any major with at least nine semester credit hours in early childhood education/child development coursework and eighteen months of full-time verifiable early childhood work experience;~~ or

- (4) ~~At least an A.A.S. in early childhood education/child development and one year of full-time verifiable early childhood work experience.~~

(d) ~~To achieve five points for education standards for a rated license, the operator shall have completed:~~

- (1) ~~At least an A.A.S. degree in any major with at least twelve semester credit hours in early childhood education/child development coursework and two years of full-time verifiable early childhood work experience;~~  
or

- (2) ~~At least an A.A.S. in early childhood education/child development and 18 months of full-time verifiable early childhood work experience.~~

*Authority G.S. 110-88(7); 110-90(4); 143B-168.3.*

#### **10A NCAC 09 .2816 COMPLIANCE HISTORY STANDARDS FOR A RATED LICENSE FOR FAMILY CHILD CARE HOMES**

(a) ~~To achieve one point for compliance history standards for a star rating, a family child care home shall have a compliance history of 60%–64% as assessed by the Division.~~

(b) ~~To achieve two points for compliance history standards for a star rating, a family child care home shall have a compliance history of 65%–69% as assessed by the Division.~~

(c) ~~To achieve three points for compliance history standards for a star rating, a family child care home shall have a compliance history of 70%–74% as assessed by the Division.~~

(d) ~~To achieve four points for compliance history standards for a star rating, a family child care home shall have a compliance history of 75%–79% as assessed by the Division.~~

(e) ~~To achieve five points for compliance history standards for a star rating, a family child care home shall have a compliance history of 80% or higher as assessed by the Division.~~

(f) ~~The Division shall assess the compliance history by evaluating the violations of requirements that have occurred over the previous three years or during the length of time the family child care home has been operating, whichever is less. Demerits shall be assigned for each occurrence of violations within these categories: supervision of children (6 points), exceeding capacity (6 points), staff qualifications and training (2–5 points), health and safety practices (3–6 points), discipline (6 points), developmentally appropriate activities (2–4 points), adequate space (6 points), nutrition and feeding practices (1–3 points), program records (1–3 points), and transportation (1–3 points), if applicable. When a range of points is listed, the minimum and maximum number of demerits possible for the violations within these categories are indicated. The point value of each demerit for violations within the categories shall be based on the potential detriment to the health and safety of children. A compliance history percentage shall be calculated each year by subtracting the total number of demerits on each visit from the total demerits possible during a 12 month period based on the services provided and converting to a percentage. The yearly compliance history percentage shall be averaged over three years for the compliance history percentage referenced in this Rule. A copy of the Division compliance history score sheet used to calculate the compliance history percentage is available for review at the address given in Rule .0102 of this Chapter.~~

*Authority G.S. 110-88(7); 110-90(4); 143B-168.3.*

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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Insurance intends to adopt the rule cited as 11 NCAC 05A .0801.*

**Proposed Effective Date:** February 1, 2010

**Public Hearing:**

**Date:** November 20, 2009

**Time:** 10:00 a.m.

**Location:** 3<sup>rd</sup> Floor, Dobbs Building, 430 N. Salisbury Street, Raleigh, NC 27603

**Reason for Proposed Action:** *This rule is necessary because of the enactment of Article 92 of Chapter 58 known as the "Fire-Safety Standard and Firefighter Protection Act" (2007-451, s.1.)*

**Procedure by which a person can object to the agency on a proposed rule:** *The Department of Insurance will accept written objections to this rule until the expiration of the comment period on December 14, 2009.*

**Comments may be submitted to:** *Karen E. Waddell, 1201 Mail Service Center, Raleigh, NC 27699-1201; phone (919) 733-4529; fax (919) 733-6495; email karen.waddell@ncdoi.gov*

**Comment period ends:** *December 14, 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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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  
☐ Substantial Economic Impact (≥\$3,000,000)  
☒ None

**CHAPTER 05 - OFFICE OF STATE FIRE MARSHAL**

**SUBCHAPTER 05A - FIRE AND RESCUE**

**SECTION .0800 - CIGARETTE FIRE-SAFETY STANDARDS**

**11 NCAC 05A .0801 CERTIFICATIONS**

(a) Certifications and fees submitted pursuant to G.S. 58-92-20 shall be sent to:

NCDOI-OSFM  
NC Fire Safety Programs  
1202 Mail Service Center  
Raleigh, NC 27699-1202

(b) OSFM shall return incomplete certifications. The submitter shall complete or correct the original submittal within 90 days after the date of return. If the submitter fails to return a completed or corrected submittal within the 90-day

period, the submitter shall pay the fee specified in G.S. 58-92-20(e) for each subsequent submittal.

(c) Payment of all fees under Article 92 of Chapter 58 of the General Statutes shall be remitted by way of a check drawn on a bank. As used in this Paragraph, "bank" has the meaning set forth in Section 2(c) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841(c)).

*Authority G.S. 58-2-40; 58-92-20; 58-92-35; 58-92-30(g).*

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Insurance intends to adopt the rules cited as 11 NCAC 05D .0101-.0115.*

**Proposed Effective Date:** *February 1, 2010*

**Public Hearing:**

**Date:** *November 5, 2009*

**Time:** *10:00 a.m.*

**Location:** *322 Chapanoke Road, Raleigh, NC 27603*

**Reason for Proposed Action:** *Needs to be in compliance with newly enacted S.L. 2009-507 and for public safety and health concerns.*

**Procedure by which a person can object to the agency on a proposed rule:** *The Department of Insurance will accept written objections to this rule until the expiration of the comment period on December 14, 2009.*

**Comments may be submitted to:** *Karen E. Waddell, 1201 Mail Service Center, Raleigh, NC 27699-1201, phone (919)733-4529, fax (919)733-6495, email Karen.waddell@ncdoi.gov*

**Comment period ends:** *December 14, 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  
☐ Substantial Economic Impact (≥\$3,000,000)

☒ None

**CHAPTER 05 – OFFICE OF STATE FIRE MARSHAL**

**SUBCHAPTER 05D – PYROTECHNICS**

**SECTION .0100 - GENERAL PROVISIONS**

**11 NCAC 05D .0101 DEFINITIONS**

As used in this Subchapter:

- (1) "Assistant display operator." -- As described in G.S. 58-82A-1(a)(1).
- (2) "ATF." -- The federal Bureau of Alcohol, Tobacco, Firearms and Explosives
- (3) "Display operator." -- An individual who exhibits, uses, handles, manufactures, or discharges pyrotechnics at a concert or public exhibition in this State.
- (4) "NFPA." -- The National Fire Protection Association.
- (5) "OSFM." -- The Office of State Fire Marshal in the North Carolina Department of Insurance.
- (6) "Permit." -- A display operator permit.
- (7) "Permittee." -- An individual to whom a display operator permit has been issued by OSFM under Article 82A of Chapter 58 of the General Statutes and this Subchapter.
- (8) "Proximate audience display." -- A display of special effects fireworks that occurs within a building or structure or that occurs outside before an audience closer than 75 feet to the pyrotechnics in accordance with NFPA 1126.
- (9) "Pyrotechnics." -- As defined in G.S. 14-414.

*Authority G.S. 58-82A-1.*

**11 NCAC 05D .0102 DISPLAY OPERATORS' IDENTIFICATION BADGES**

OSFM shall issue an identification badge to a display operator and an assistant display operator at the same time it issues a permit to the display operator or assistant display operator. The display operator or assistant display operator shall be in possession of, and display his or her identification badge in a conspicuous location on his or her person, at all times during the delivery, setup, and performance of the display.

*Authority G.S. 58-82A-1.*

**11 NCAC 05D .0103 DISPLAY OPERATOR'S PERMIT**

(a) In addition to the requirements in G.S. 58-82A-3(b), OSFM shall not issue a permit to any individual who has applied for a permit unless the applicant:

- (1) Has an ATF letter of clearance and one of the following:
  - (A) An ATF license or permit.

(B) An affidavit from an ATF license holder by whom the applicant is employed or with whom the applicant has contracted. Notification of a change in employment or contract status is the permittee's and the affidavit signatory's responsibility.

(b) The applicant shall provide proof of successful completion of the training program referenced in G.S. 58-82A-2 or another program that OSFM determines to be substantially equivalent.

(c) The applicant must achieve a passing score of 80 on the written examination required by G.S. 58-82A-3(b)(4).

(d) The applicant shall submit evidence of active participation in the safe performance of six pyrotechnic displays. The applicant shall have performed the duties of a display operator in at least three of these displays, under the supervision of a display operator.

(e) In order to have the authority to operate proximate audience displays as a permittee, the applicant shall submit evidence of active participation in the safe performance of 10 proximate audience displays. The applicant must have performed the duties of a display operator in at least three of these displays, under the supervision of the proximate audience display operator. Only the requirements of this Paragraph and the requirements in Paragraphs (b) and (c) of this Rule apply to persons who will operate proximate audience displays as permittees.

*Authority G.S. 58-82A-1.*

**11 NCAC 05D .0104 ASSISTANT DISPLAY OPERATOR'S PERMIT**

OSFM shall not issue a assistant display operator's permit to any individual who has applied for the permit unless the applicant:

- (1) Is at least 18 years of age.
- (2) Has an ATF letter of clearance and one of the following:
  - (a) An ATF license or permit.
  - (b) Submits or causes to be submitted an affidavit from an ATF license holder by whom the assistant is employed or with whom the applicant has contracted. Notification of a change in employment or contract status is the assistant's and the affidavit signatory's responsibility.
  - (c) Has read and understands OSFM fireworks safety guidelines and correctly answered 80 of the questions contained in the guidelines.

*Authority G.S. 58-82A-1.*

**11 NCAC 05D .0105 ASSISTANT DISPLAY OPERATOR'S CERTIFICATION**

(a) An individual may assist with the set up, safety, firing, and removal of pyrotechnics displays without a permit as long as the assistant does not handle pyrotechnics materials covered under the ATF licensing requirements, provided the individual:

- (1) Is at least 18 years of age.
- (2) Has read and understands OSFM fireworks safety guidelines and correctly answered 80 of the questions contained in the guidelines.
- (3) Signs the OSFM fireworks safety guidelines form and provides a fire code official with the signed form.
- (4) Is certified on the site of the pyrotechnics display by the fire code official at the time of the pre-show site inspection.

(b) As used in this rule, "fire code official" means an individual certified by the North Carolina Code Officials Qualification Board as the primary official responsible for the enforcement of the North Carolina Fire Code within a county or city.

*Authority G.S. 58-82A-1.*

**11 NCAC 05D .0106 APPLICATION FOR PERMIT**

(a) All applications for a permit shall be signed by the applicant and submitted on forms provided by OSFM and must be accompanied by the following additional information:

- (1) A copy of the applicant's driver's license or other government issued identification that includes the date of birth and photograph.
- (2) A photograph, approximately 2" x 2", taken within the preceding two years. The photograph must show the applicant from a front view with his or her full-face and head and shoulders visible. OSFM will reject photographs showing the applicant wearing sunglasses, hats, scarves, or any objects that obscure the applicant's identity.
- (3) A copy of the applicant's ATF letter of clearance and ATF license or permit.
- (4) The applicable permit fee.

(b) Upon receipt and review of the application, OSFM shall issue the appropriate permission letter to take an examination or shall notify the applicant of the reason for the denial of the permit.

(c) OSFM shall issue a temporary permit to an individual until OSFM receives an ATF letter of clearance and the ATF license or permit. Upon receipt of the ATF letter of clearance and the ATF license or permit, the temporary permit shall expire upon issuance of the appropriate permit or notification of denial of the permit.

*Authority G.S. 58-82A-1.*

**11 NCAC 05D .0107 EXAMINATION**

(a) An applicant must complete a written examination designed to demonstrate the applicant's knowledge of Article

54 of Chapter 14 of the General Statutes, this Subchapter, and NFPA 1123, NFPA 1126 standards relating to safe practices for the storage, use, handling, discharge and display of pyrotechnics administered by OSFM and achieve a passing score of at least 80.

(b) The examination shall be approved by OSFM and shall be given at times scheduled by OSFM during each calendar year.

(c) Persons who do not pass the examination may retake the examination after 30 days.

*Authority G.S. 58-82A-1.*

**11 NCAC 05D .0108 APPLICATION FOR RECIPROCITY**

(a) Display operators who are licensed or permitted in other states shall submit:

- (1) the OSFM permit application.
- (2) the state license or state permit for which the applicant is seeking reciprocity.
- (3) a letter from the reciprocal state issuing agency indicating stating that the applicant's license or permit is in good standing.
- (4) A copy of the applicant's ATF letter of clearance and ATF license or permit.

(b) The applicant shall be at least 21 years of age at the time of application.

(c) The applicant must have an ATF letter of clearance and one of the following:

- (1) An ATF license or permit.
- (2) An affidavit from an ATF license holder by whom the applicant is employed or with whom the applicant has contracted. Notification of a change in employment or contract status is the permittee's and the affidavit signatory's responsibility.

*Authority G.S. 58-82A-1.*

**11 NCAC 05D .0109 PERMIT RENEWAL**

(a) A permit is valid for three years from the date of issuance.

(b) Permittees may apply for renewal of their permits during the 60-day period before and 60-day period after the permit expiration date by submitting a renewal application on forms provided by OSFM, together with the required fee.

(c) Any permit that is not renewed within 60 days after its expiration shall be cancelled. Any requests after that date to renew or restore shall be treated as a new application.

(d) During the 60-day period after the permit expiration, no permittee shall engage in any conduct or activities for which a permit is required until the permit is renewed or issued as a new permit.

(e) In addition, a permittee seeking to renew his or her permit shall include with the renewal application evidence that the permittee participated in at least:

- (1) Two pyrotechnic displays as a display operator.
- (2) Three proximate audience displays if the permittee is authorized to operate proximate audience displays.



(f) A permittee who is serving in the armed forces of the United States and to whom G.S. 105-249.2 grants an extension of time to file a tax return shall be granted an extension of time to pay any permit renewal application fee as a condition of renewing a permit. The extension is for the same period that would apply if the fee were a tax.

*Authority G.S. 58-82A-1.*

**11 NCAC 05D .0110 FEES**

Applicants and permittees shall pay the following nonrefundable fees to OSFM for administration of pyrotechnics training and permitting:

- (1) Display operator initial permit application  
\$100.00
- (2) Display operator permit renewal application  
\$100.00

*Authority G.S. 58-82A-1.*

**11 NCAC 05D .0111 NOTIFICATION TO OSFM**

(a) Written communications to OSFM shall be mailed to:

Office of the State Fire Marshal  
Pyrotechnic Permitting  
1202 Mail Service Center  
Raleigh, North Carolina 27603-3400

(b) A permittee shall notify OSFM in writing within seven calendar days after any of the following events:

- (1) Discovery that his/her permit has been lost, stolen, or destroyed.
- (2) The permittee's ATF license has expired or ATF has terminated, suspended, or revoked the permittee's license or letter of clearance. The permittee shall also send a copy of any written notice of termination, suspension, or revocation to OSFM.
- (3) The permittee's reciprocal out-of-state license or permit has been terminated, suspended, or revoked. The permittee shall also send OSFM a copy of any written notice of termination, suspension, or revocation.
- (4) A conviction of any felony in any state.
- (5) A conviction relating to the operation of a motor vehicle while impaired or any conviction or action resulting in a suspension of a commercial drivers license.
- (6) A violation of any requirement of a permit issued under G.S. 14-413.
- (7) A conviction of a crime under Article 54 of Chapter 14 of the General Statutes.
- (8) A change in employment that nullifies the affidavit submitted to obtain the applicant's permit. Until this notification is received from the employer or permittee, the permittee is still considered as working under the ATF license of the signatory of the affidavit.

(c) A permittee shall notify OSFM in writing within 10 days after a change in the permittee's address or name. The permittee shall send OSFM proof that the change in address or name had been done in accordance with the law.

*Authority G.S. 58-82A-1.*

**11 NCAC 05D .0112 REPLACEMENT AND DUPLICATE PERMIT**

(a) If a permit has been lost, stolen, or destroyed, the permittee shall notify OSFM. Upon receipt of the written notification, OSFM will issue a replacement permit.

(b) If a permit becomes worn or damaged to the extent that it is illegible in any respect, or if the permittee changes his or her address or name, the permittee shall return the permit to OSFM. Upon receipt of the original permit and proof of any changes necessary to maintain correct information, OSFM will issue a replacement permit.

*Authority G.S. 58-82A-1.*

**11 NCAC 05D .0113 REPORT OF THEFT OR LOSS OF PYROTECHNICS**

(a) A permittee shall report the theft or loss of pyrotechnics to the county sheriff or city police, to ATF and to OSFM, by telephone, within eight hours after the permittee discovers the theft or loss. OSFM may be reached at 919-661-5880 during normal working hours and at the North Carolina Highway Patrol dispatch number, 919-733-3861, outside normal working hours.

(b) Within 24 hours after discovery of the loss or theft, the permittee shall provide OSFM written notice that includes a complete description of the pyrotechnics, including the manufacturer, brand name, any manufacturer marking and quantity, and a description of the circumstances surrounding the theft or loss. The written notice shall also specifically name the law enforcement agencies contacted by the permittee under Paragraph (a) of this Rule.

*Authority G.S. 58-82A-1.*

**11 NCAC 05D .0114 REPORT OF INJURY OR PROPERTY DAMAGE**

(a) A permittee shall notify OSFM within eight hours after any of the following incidents:

- (1) A fire causing property damage.
- (2) An injury to any person caused by the display resulting in hospitalization.
- (3) Damage to property resulting from the display.

(b) OSFM may be reached at 919-661-5880 during normal working hours and at the North Carolina Highway Patrol dispatch number, 919-733-3861, outside normal working hours.

(c) The permittee shall submit a written report to OSFM within three days after a pyrotechnics display conducted by the permittee if any of the following occurred:

- (1) Any of the incidents identified in Paragraph (a) of this Rule.

- (2) Whenever a defective pyrotechnic product or equipment was used or observed.

*Authority G.S. 58-82A-1.*

**11 NCAC 05D .0115 INSPECTIONS**

- (a) A permittee shall make any records required under Article 54 of Chapter 14 of the General Statutes and Article 82A of Chapter 58 of the General Statutes available to authorized representatives of OSFM or a city or county fire marshal.  
 (b) A permittee shall allow the display site, storage facility, or delivery point to be inspected at all times by authorized representatives of OSFM or a city or county fire marshal.

*Authority G.S. 58-82A-1.*

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Insurance intends to adopt the rule cited as 11 NCAC 12 .0331 and .0461.*

**Proposed Effective Date:** *February 1, 2010*

**Public Hearing:**

**Date:** *November 13, 2009*

**Time:** *10:00 a.m.*

**Location:** *3<sup>rd</sup> Floor, Dobbs Building, 430 N. Salisbury Street, Raleigh, NC 27603*

**Reason for Proposed Action:**

*11 NCAC 12 .0331 – The statute provides that insurers shall inform applicants for individual major medical insurance for whom they make decision to NOT issue coverage or to only issue coverage with exclusionary riders of the existence of the High Risk Pool since those specific adverse underwriting decisions make the applicant eligible for coverage through the risk pool. The new statutes give the COI authority to adopt a rule to specify the content and other specifics of the notice. That is what this proposed rule – 12 .0331 does.*

*11 NCAC 12 .0461 - This model regulation establishes standards for the use of senior-specific certifications and professional designations by insurance producers in the sale of life insurance and annuities to all consumers regardless of age. It makes it an unfair and deceptive act or practice for an insurance producer to use a senior-specific certification or professional designation that indicates or implies in such a way as to mislead a purchaser or prospective purchaser that the insurance producer has special certification or training in advising or servicing seniors in connection with the solicitation, sale or purchase of a life insurance or annuity product.*

**Procedure by which a person can object to the agency on a proposed rule:** *The Department of Insurance will accept written objections to this rule until the expiration of the comment period on December 14, 2009.*

**Comments may be submitted to:** *Karen E. Waddell, 1201 Mail Service Center, Raleigh, NC 27699-1201; phone (919) 733-4529; fax (919) 733-6495; email karen.waddell@ncdoi.gov*

**Comment period ends:** *December 14, 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**  
☐ **Substantial Economic Impact (≥\$3,000,000)**  
☒ **None**

**CHAPTER 12 - LIFE AND HEALTH DIVISION**

**SECTION .0300 - GENERAL PROVISIONS**

**11 NCAC 12 .0331 HEALTH INSURANCE RISK POOL NOTICE LANGUAGE REQUIREMENTS**

(a) The definitions contained in G.S. 58-3-276 are incorporated by reference.

(b) Notices required under G.S. 58-3-276 shall be provided by the insurer by first-class mail to the applicant's current address or, if not known, to the applicant's last known address, whether the application was taken by paper or electronically. The notice shall be in Times New Roman 10-point font or other equivalent font and contain the following wording:

"In response to your application for individual health insurance coverage, you have received from [INSERT INSURER'S NAME] (i) a notice of a denial of coverage or (ii) an offer of coverage with a conditional rider that limits the coverage. We are therefore required to inform you that you may be eligible for health insurance coverage through the North Carolina Health Insurance Risk Pool, known as "Inclusive Health."

Inclusive Health is a state subsidized health insurance coverage option for individuals with pre-existing medical conditions who either are unable to qualify for or cannot find more affordable individual health insurance coverage. Inclusive Health's premiums are not based on specific medical conditions and are capped by law. You cannot be rejected by Inclusive Health because of health conditions. You may contact the North Carolina Health Insurance Risk Pool for

information on specific eligibility criteria and the type of benefit plans available at:

North Carolina Health Insurance Risk Pool, dba Inclusive Health  
P.O. Box 30909  
Raleigh, NC 27622  
(866) 665-2117  
www.inclusivehealth.org

The Consumer Services Division of the North Carolina Department of Insurance is available to assist you with your questions about health insurance. You may contact the Consumer Services Division at:  
North Carolina Department of Insurance – Consumer Services

Division  
1201 Mail Service Center  
Raleigh, NC 27699-1201  
800-546-5664 - in North Carolina only  
919-807-6750 - outside North Carolina"

(c) The notice required under this Rule may be delivered to an applicant along with the notice required by G.S. 58-39-55 relating to the adverse underwriting decision described in G.S. 58-50-195(a)(1) and G.S. 58-50-195(a)(2) when the adverse underwriting decision notice is provided in writing.

*Authority G.S. 58-2-40; 58-3-276.*

#### **SECTION .0400 - LIFE: GENERAL NATURE**

##### **11 NCAC 12 .0461 USE OF SENIOR-SPECIFIC CERTIFICATIONS AND PROFESSIONAL DESIGNATIONS**

(a) This Rule applies to the solicitation, sale, or purchase of, or advice made in connection with a life insurance or annuity product on and after the effective date of this Rule.

(b) The NAIC Model Regulation on the Use of Senior-Specific Certifications and Professional Designations ("Model Regulation"), as adopted by the National Association of Insurance Commissioners at the Fall National Meeting of 2008, including subsequent amendments and editions, is hereby incorporated by reference. Copies of the Model Regulation are available free of charge from the Life and Health Division by email at [l&hinbox@ncdoi.gov](mailto:l&hinbox@ncdoi.gov) or the Department of Insurance Website at [www.ncdoi.com](http://www.ncdoi.com).

(c) As used in the Model Regulation, "reference to State unfair trade practices act" means Article 63 of Chapter 58 of the General Statutes and "insert reference to enabling legislation" means G.S. 58-63-75.

*Authority G.S. 58-2-40; 58-63-75.*

**Proposed Effective Date:** *May 1, 2010*

##### **Public Hearing:**

**Date:** *November 19, 2009*

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

**Location:** *City of High Point Municipal Building, Council Chambers, 211 South Hamilton Street, High Point, NC 27260*

##### **Reason for Proposed Action:**

**15A NCAC 02B .0248** – *The proposed amendment to this rule is intended to remove Item (c) of this Rule due to the updated variance language in the newly proposed amendments to 15A NCAC 02B .0250.*

**15A NCAC 02B .0250** – *The proposed amendments to this rule will make the Randleman buffer program easier to understand and implement.*

**15A NCAC 02B .0252** – *The proposed adoption of this rule is necessary in order to provide an avenue for mitigation that is required for the proposed amendments to 15A NCAC 02B .0250.*

**Procedure by which a person can object to the agency on a proposed rule:** *You may attend the public hearings and make relevant verbal comments, and/or submit written comments, data or other relevant information by December 14, 2009. The Hearing Officer may limit the length of time that you may speak at the public hearings so that all those who wish to speak may have an opportunity to do so.*

*The EMC is very interested in all comments pertaining to the proposed amendments and proposed rules. All persons interested and potentially affected by the proposals are strongly encouraged to read this entire notice and make comments on the proposed new rule and the proposed amendments to the existing rules. The EMC may not adopt a rule that differs substantially from the text of the proposed rule published in this North Carolina Register unless the EMC publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule (G.S. 150B-21.2(g)). Written comments may be submitted to: Adriene Weaver, DENR/Division of Water Quality, Planning Section, 1617 mail Service Center, Raleigh, NC 27699-1617, [adriene.weaver@ncdenr.gov](mailto:adriene.weaver@ncdenr.gov), or by fax at (919) 807-6497.*

**Comments may be submitted to:** *Adriene Weaver, DENR/Division of Water Quality, Planning Section, 1617 Mail Service Center, Raleigh, NC 27699-1617; phone (919) 807-6414; fax (919) 807-6497; email [adriene.weaver@ncdenr.gov](mailto:adriene.weaver@ncdenr.gov)*

**Comment period ends:** *December 14, 2009*

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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rule cited as 15A NCAC 02B .0252 and amend the rules cited as 15A NCAC 02B .0248 and .0250.*

##### **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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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  
☐ Substantial Economic Impact (≥\$3,000,000)  
☐ None

## CHAPTER 02 - ENVIRONMENTAL MANAGEMENT COMMISSION

### SUBCHAPTER 02B - SURFACE WATER AND WETLAND STANDARDS

#### SECTION .0200 - CLASSIFICATIONS AND WATER QUALITY STANDARDS APPLICABLE TO SURFACE WATERS AND WETLANDS OF NORTH CAROLINA

##### **15A NCAC 02B .0248 RANDLEMAN LAKE WATER SUPPLY WATERSHED: NUTRIENT MANAGEMENT STRATEGY**

(a) All waters of the Randleman Lake (Deep River) water supply watershed are classified for water supply uses and designated by the Environmental Management Commission as a Critical Water Supply Watershed pursuant to G.S. 143-214.5(b). The following rules shall be implemented for the entire drainage area upstream of the Randleman Lake Dam:

- (1) Rule .0249 of this Section for Wastewater Discharges,
- (2) Rule .0250 of this Section for Protection and Maintenance of Riparian Areas, and
- (3) Rule .0251 of this Section for Urban Stormwater Management.

(b) Failure to meet the requirements of the Rules in this Section may result in the imposition of enforcement measures as authorized by G.S. 143-215.6A (civil penalties), G.S. 143-215.6B (criminal penalties), and G.S. 143-215.6C (injunctive relief).

(c) ~~Development activities may be granted minor and major variances from the requirements of Rules .0250 and .0251 of this Section based on the process stated in 15A NCAC 2B .0104(r). However, for the purposes of Rules .0250 and .0251 of this Section, minor and major variances shall be defined as a variance from the more stringent Randleman Lake stormwater management requirements for the lower watershed and the more stringent riparian area requirements for the upper and lower watersheds.~~

*Authority G. S. 143-214.1; 143-214.5; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C.*

##### **15A NCAC 02B .0250 RANDLEMAN LAKE WATER SUPPLY WATERSHED: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS**

The following is the management strategy for maintaining and protecting riparian areas in the Randleman Lake watershed:

~~(1) Within 270 days of the effective date of this Rule, all local governments with jurisdictions in the Randleman Lake watershed shall submit to the EMC for approval, local water supply ordinances, or modifications to existing ordinances, which include protection of riparian areas as provided in this Rule. Local governments shall use the following provisions in applying this Rule:~~

~~(a) Riparian areas shall be protected and maintained in accordance with this Rule on all sides of surface waters in the Randleman Lake watershed such as intermittent streams, perennial streams, lakes, and ponds, as indicated on the most recent version of either the United States Geological Survey 1:24,000 scale (7.5 minute quadrangle) topographic maps or the Soil Survey maps developed by USDA-Natural Resource Conservation Service, or other site specific evidence that indicates to the Division of Water Quality (DWQ) the presence of waters not shown on either of these two maps or, as provided in Sub Item (2)(b) of this Rule, evidence that no actual stream or waterbody exists;~~

~~(b) Local governments may, if they choose to do so, develop detailed stream network maps for the watershed based on these USGS and USDA NRCS maps or criteria, approved by the Division of Water Quality, showing the presence or absence of a stream. These maps shall be submitted to the Division for approval by any local government wishing to use this method of implementation of riparian area protection. After these detailed stream network maps are approved by the Division, riparian areas shall be protected and maintained in accordance with this Rule on all sides of surface waters in the Randleman Lake watershed as delineated on these~~

- ~~approved stream network maps; and~~
- (e) ~~Exceptions to the requirements of this Rule for riparian areas are described in Sub Items (2)(a) (h) of this Rule. Maintenance of the riparian areas shall be such that, to the maximum extent possible, sheet flow of surface water is achieved. This Rule specifies requirements that shall be implemented in riparian areas to ensure that the pollutant removal functions of the riparian area are protected and maintained. All local governments that have land use authority within the proposed Randleman Lake water supply watershed shall adopt and enforce this Rule through local water supply and other local ordinances. Ordinances shall require that all riparian protection areas are recorded on new or modified plats. No building permits shall be issued and no new development shall take place in violation of this Rule.~~
- (2) ~~The following waterbodies and land uses are exempt from the riparian area protection requirements:~~
- (a) ~~Ditches and manmade conveyances, other than modified natural streams, which under normal conditions do not receive drainage from any tributary ditches, canals, or streams, unless the ditch or manmade conveyance delivers runoff directly to waters classified in accordance with 15A NCAC 2B .0100;~~
- (b) ~~Areas mapped as intermittent streams, perennial streams, lakes, ponds, or estuaries on the most recent versions of United States Geological Survey 1:24,000 scale (7.5 minute quadrangle) topographic maps or soil survey maps where no perennial waterbody, intermittent waterbody, lake, pond or estuary actually exists on the ground;~~
- (c) ~~Ponds and lakes created for animal watering, irrigation, or other agricultural uses that are not part of a natural drainage way that is classified in accordance with 15A NCAC 2B .0100;~~
- (d) ~~Water dependent structures as defined in 15A NCAC 2B .0202,~~
- ~~provided that they are located, designed, constructed and maintained to provide maximum nutrient removal, to have the least adverse effects on aquatic life and habitat and to protect water quality;~~
- (e) ~~The following uses where no practical alternative exists. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters. Also, these structures shall be located, designed, constructed, and maintained to have minimal disturbance, to provide maximum nutrient removal and erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water quality to the maximum extent practical through the use of best management practices:~~
- (i) ~~Road crossings, railroad crossings, bridges, airport facilities, and utility crossings if conditions specified in Sub Item(2)(e) of this Rule are met.~~
- (ii) ~~Stormwater management facilities and ponds, and utility construction and maintenance corridors for utilities such as water, sewer or gas, in Zone 2 of the riparian area as long as the conditions specified in Sub Item (2)(e) of this Rule are met and they are located at least 30 feet from the top of bank or mean high water line. Additional requirements for utility construction and maintenance corridors are listed in Sub Item (2)(f) of this Rule;~~
- (f) ~~A corridor for the construction and maintenance of utility lines, such as water, sewer or gas, (including access roads and stockpiling of~~

materials) running parallel to the stream and located within Zone 2 of the riparian area, as long as no practical alternative exists, as defined in Sub Item (2) (e) of this Rule, and best management practices are installed to minimize runoff and maximize water quality protection to the maximum extent practicable. Permanent, maintained access corridors shall be restricted to the minimum width practicable and shall not exceed 10 feet in width except at manhole locations. A 10 feet by 10 feet perpendicular vehicle turnaround shall be allowed provided they are spaced at least 500 feet apart along the riparian area;

- (g) Stream restoration projects, scientific studies, stream gauging, water wells, passive recreation facilities such as boardwalks, trails, pathways, historic preservation and archaeological activities, provided that they are located in Zone 2 and are at least 30 feet from the top of bank or mean high water line and are designed, constructed and maintained to provide the maximum nutrient removal and erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water quality to the maximum extent practical through the use of best management practices. Activities that must cross the stream or be located within Zone 1, are allowed as long as all other requirements of this Item are met; and
- (h) Stream crossings associated with timber harvesting, if performed in accordance with the Forest Practices Guidelines Related to Water Quality (15A NCAC 1J .0201-.0209).
- (3) The protected riparian area shall have two zones as follows:
  - (a) Zone 1 is intended to be an undisturbed area of vegetation.
    - (i) Location of Zone 1: Zone 1 begins at the top of bank for intermittent streams and perennial streams and extends landward a distance of 30 feet on all sides of the waterbody, measured horizontally on

a line perpendicular to the waterbody. For all other waterbodies, Zone 1 begins at the top of bank or mean high water line and extends landward a distance of 30 feet, measured horizontally on a line perpendicular to the waterbody.

- (ii) The following practices and activities are allowed in Zone 1:
  - (A) Natural regeneration of forest vegetation and planting vegetation to enhance the riparian area if disturbance is minimized, provided that any plantings shall primarily consist of locally native trees and shrubs;
  - (B) Selective cutting of individual trees in Zone 1, where forest vegetation as defined in Rule .0202 of this Section exists, as long as the following conditions are met every 100 feet on each side of the stream:
    - (I) Of existing trees 12 inches and greater diameter breast height (dbh), a minimum of five trees must remain uncut;
    - (II) Trees 12 inches and greater dbh may be harvested based on the following equation:  
 Number of Trees harvested = (Total number of trees greater than

- ~~12 inches dbh —  
5) / 2;~~
- (III) ~~No trees less than  
12 inches dbh  
may be harvested  
unless exceptions  
provided in this  
Rule are met;~~
- (IV) ~~Trees may not be  
harvested more  
frequently than  
every 10 years;  
and~~
- (V) ~~No tracked or  
wheeled  
equipment are  
allowed;~~
- (C) ~~Horticulture or  
silvicultural  
practices to  
maintain the  
health of  
individual trees;~~
- (D) ~~Removal of  
individual trees  
which are in  
danger of causing  
damage to  
dwellings, other  
structures or the  
stream channel;~~
- (E) ~~Removal of dead  
trees and other  
timber cutting  
techniques  
necessary to  
prevent extensive  
pest or disease  
infestation if  
recommended by  
the Director,  
Division of  
Forest Resources  
and approved by  
the Director,  
Division of  
Water Quality;  
and~~
- (F) ~~Ongoing  
agricultural  
operations  
provided that  
existing forest  
vegetation is  
protected.~~
- (iii) ~~The following practices  
are not allowed in Zone 1:~~
- (A) ~~Land disturbing  
activities and~~
- ~~placement of fill  
and other  
materials, other  
than those  
allowed in Items  
(2) and (3)(a)(ii)  
of this Rule;~~
- (B) ~~New  
development,  
except as  
provided in Sub-  
Items (2)(d);  
(2)(e) and (2)(f)  
of this Rule;~~
- (C) ~~New on-site  
sanitary sewage  
systems which  
use ground  
adsorption;~~
- (D) ~~The application  
of fertilizer; and~~
- (E) ~~Any activity that  
threatens the  
health and  
function of the  
vegetation  
including, but not  
limited to,  
application of  
chemicals in  
amounts  
exceeding the  
manufacturer's  
recommended  
rate, uncontrolled  
sediment sources  
on adjacent lands,  
and the creation  
of any areas with  
bare soil.~~
- (b) ~~Zone 2 is intended to provide  
protection through a vegetated  
riparian zone which provides for  
diffusion and infiltration of runoff  
and filtering of pollutants.~~
- (i) ~~Location of Zone 2: Zone  
2 begins at the outer edge  
of Zone 1 and extends  
landward a minimum of  
20 feet as measured  
horizontally on a line  
perpendicular to the  
waterbody. The combined  
minimum width of Zones  
1 and 2 shall be 50 feet on  
all sides of the waterbody.~~
- (ii) ~~The following practices  
and activities are allowed~~

in Zone 2 in addition to those allowed in Zone 1:

(A) ~~Periodic mowing and removal of plant products such as timber, nuts, and fruit is allowed provided the intended purpose of the riparian area is not compromised by harvesting, disturbance, or loss of forest or herbaceous ground cover; and~~

(B) ~~Grading and timber harvesting provided that vegetated ground cover be established immediately following completion of the land-disturbing activity.~~

(iii) ~~The following practices and activities are not allowed in Zone 2:~~

(A) ~~New development, except as provided in Sub-Items (2)(e) and (2)(f) of this Rule;~~

(B) ~~New on-site sanitary sewage systems which use ground adsorption;~~

(C) ~~Any activity that threatens the health and function of the vegetation including, but not limited to, application of chemicals in amounts exceeding the manufacturer's recommended rate, uncontrolled sediment sources~~

~~on adjacent lands, and the creation of any areas with bare soil.~~

(4) ~~Timber removal and skidding of trees shall be directed away from the water course or water body. Skidding shall be done in a manner to prevent the creation of ephemeral channels perpendicular to the water body. Any tree removal must be performed in a manner that does not compromise the intended purpose of the riparian area and is in accordance with the Forest Practices Guidelines Related to Water Quality (15A NCAC 1J .0201-.0209).~~

(5) ~~Maintenance of sheet flow in Zones 1 and 2 is required in accordance with this Item.~~

(a) ~~Sheet flow must be maintained to the maximum extent practical through dispersing concentrated flow and re-establishment of vegetation to maintain the effectiveness of the riparian area.~~

(b) ~~Concentrated runoff from new ditches or manmade conveyances must be dispersed into sheet flow before the runoff enters Zone 2 of the riparian area. Existing ditches and manmade conveyances, as specified in Sub-Item (2)(a) of this Rule, are exempt from this requirement; however, care shall be taken to minimize pollutant loading through these existing ditches and manmade conveyances from fertilizer application or erosion.~~

(c) ~~Periodic corrective action to restore sheet flow shall be taken by the landowner if necessary to impede the formation of erosion gullies which allow concentrated flow to bypass treatment in the riparian area.~~

(6) ~~Periodic maintenance of modified natural streams such as canals is allowed provided that disturbance is minimized and the structure and function of the riparian area is not compromised. A grassed travelway is allowed on one side of the waterbody when alternative forms of maintenance access are not practical. The width and specifications of the travelway shall be only that needed for equipment access and operation. The travelway shall be located to maximize stream shading.~~

(7) ~~Where the standards and management requirements for riparian areas are in conflict with other laws, regulations, and permits regarding streams, steep slopes,~~



erodible soils, wetlands, floodplains, forest harvesting, surface mining, land disturbance activities, or other environmental protection areas, the more protective shall apply.

- (8) ~~The existing water supply requirement in Rule 2B .0216(3)(b) of this Section that stipulates a 100 foot vegetated buffer, adjacent to perennial streams, for all new development activities which utilize the high density option, applies to the entire Randleman Lake watershed. The first 50 feet of these riparian areas on either side of these waters must also be protected in accordance with all the requirements of this Rule.~~

Protection of the pollutant removal and other water quality services provided by riparian buffers throughout the watershed is an important element of the overall Randleman water supply pollutant strategy. The following is the management strategy for maintaining and protecting riparian areas in the Randleman Lake watershed:

- (1) PURPOSE. The purposes of this Rule shall be for the local governments listed in 15A NCAC 02B .0250, and in certain cases stated in this Rule the Division, to protect and preserve existing riparian buffers throughout the Randleman Lake watershed as generally described in 15A NCAC 02B .0250, in order to maintain their nutrient removal and stream protection functions. Additionally this Rule will help protect the water supply uses of Randleman Lake and of designated water supplies throughout the Randleman Lake water supply watershed. Local programs shall be established to meet or exceed the minimum requirements of this Rule. However, the Division shall assume responsibility for applying the requirements of this Rule to buffer activities by state and federal entities. The requirements of this Rule shall supersede all buffer requirements stated in 15A NCAC 02B .0214 through .0216 as applied to WS-II, WS-III, and WS-IV waters in the Randleman Lake watershed. Parties subject to this Rule may choose to implement more stringent rules, including the one-hundred foot buffer requirement set out in Sub-item (3)(b)(i) of 15A NCAC 02B .0214 through .0216 for high-density developments.
- (2) DEFINITIONS. For the purpose of this Rule, these terms shall be defined as follows:
- (a) 'Access Trails' means pedestrian trails constructed of pervious or impervious surfaces, and related structures to access a surface water including (but not limited to) boardwalks, steps, rails, signage.

- (b) 'Archaeological Activities' means activities conducted by a Registered Professional Archaeologist (RPA).
- (c) 'Airport Facilities' means all properties, facilities, buildings, structures, and activities that satisfy or otherwise fall within the scope of one or more of the definition or uses of the words or phrases 'air navigation facility', 'airport', or 'airport protection privileges' under G.S. 63-1; the definition of 'aeronautical facilities' in G.S. 63-79(1); the phrase 'airport facilities' as used in G.S. 159-48(b)(1); the phrase 'aeronautical facilities' as defined in G.S. 159-81 and G.S. 159-97; and the phrase 'airport facilities and improvements' as used in Article V, Section 13, of the North Carolina Constitution, which shall include, without limitation, any and all of the following: airports, airport maintenance facilities, clear zones, drainage ditches, fields, hangars, landing lighting, airport and airport-related offices, parking facilities, related navigational and signal systems, runways, stormwater outfalls, terminals, terminal shops, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights-of-way; restricted landing areas; any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area; easements through, or interests in, air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas, and the safe and efficient operation of thereof and any combination of any

- or all of such facilities. Notwithstanding the foregoing, the following shall not be included in the definition of 'airport facilities':
- (i) Satellite parking facilities;
  - (ii) Retail and commercial development outside of the terminal area, such as rental car facilities; and
  - (iii) Other secondary development, such as hotels, industrial facilities, free-standing offices and other similar buildings, so long as these facilities are not directly associated with the operation of the airport, and are not operated by a unit of government or special governmental entity such as an airport authority.
- (d) 'Channel' means a natural water-carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water. (Current definition in Forest Practice Guidelines Related to Water Quality, 15A NCAC 01I.0102)
- (e) 'DBH' means diameter at breast height of a tree measured at 4.5 feet above ground surface level.
- (f) Ditch means a man-made, open drainage way in or into which excess surface water or groundwater from land, stormwater runoff, or floodwaters flow either continuously or intermittently drain.
- (g) 'Ephemeral stream' means a feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water.
- (h) 'Forest plantation' means an area of planted trees that may be conifers (pines) or hardwoods. On a plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site.
- (i) 'Greenway/Hiking Trails' means pedestrian trails constructed of pervious and impervious surfaces and related structures including but not limited to boardwalks, steps, rails, and signage, and that generally run parallel to the surface water.
- (j) 'High Value Tree' means a tree that meets or exceeds the following standards: for pine species, 14 inch DBH or greater or 18 inch or greater stump diameter; and, for hardwoods and wetland species, 16 inch DBH or greater or 24 inch or greater stump diameter.
- (k) 'Intermittent stream' means a well-defined channel that contains a continuous flow of water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the continuous conveyance of water.
- (l) 'Modified natural stream' means an on-site channelization or relocation of a stream channel and subsequent relocation of the intermittent or perennial flow as evidenced by topographic alterations in the immediate watershed. A modified natural stream must have the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.
- (m) 'Perennial stream' means a well-defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical

- biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.
- (n) 'Perennial waterbody' means a natural or man-made watershed that stores surface water permanently at depths sufficient to preclude growth of rooted plants, including lakes, ponds, sounds, non-stream estuaries and ocean. For the purpose of the State's riparian buffer protection program, the waterbody must be part of a natural drainage way (i.e., connected by surface flow to a stream).
- (o) 'Shoreline stabilization' is the in-place stabilization of an eroding shoreline. Stabilization techniques which include "soft" methods or natural materials (such as root wads, or rock vanes) may be considered as part of a restoration design. However, stabilization techniques that consist primarily of "hard" engineering, such as concrete lined channels, rip rap, or gabions, while providing bank stabilization, shall not be considered stream restoration.
- (p) 'Stream restoration' is defined as the process of converting an unstable, altered or degraded stream corridor, including adjacent riparian zone and flood-prone areas to its natural or referenced, stable conditions considering recent and future watershed conditions. This process also includes restoring the geomorphic dimension, pattern, and profile as well as biological and chemical integrity, including transport of water and sediment produced by the stream's watershed in order to achieve dynamic equilibrium. 'Referenced' or 'referenced reach' means a stable stream that is in dynamic equilibrium with its valley and contributing watershed. A reference reach can be used to develop natural channel design criteria for stream restoration projects. 'Stream' means a body of concentrated flowing water in a natural low area or natural channel on the land surface.
- (q) 'Stump diameter' means the diameter of a tree measured at six inches above the ground surface level.
- (r) 'Surface waters' means all waters of the state as defined in G.S. 143-212 except underground waters and wetlands.
- (s) 'Temporary road' means a road constructed temporarily for equipment access to build or replace hydraulic conveyance structures such as bridges, culverts, or pipes or water dependent structures, or to maintain public traffic during construction and is restored upon completion of construction.
- (t) 'Tree' means a woody plant with a DBH equal to or exceeding five inches or a stump diameter exceeding six inches.
- (3) APPLICABILITY. This Rule shall apply to all local governments with jurisdictions in the Randleman Lake watershed. Local governments shall apply the requirements of this Rule throughout their jurisdictions within the Randleman Lake watershed with the exception of activities on lands in state and federal ownership. In those areas in the Randleman Lake watershed, the Division shall apply the requirements of this Rule wherever local governments are referenced unless otherwise indicated.
- (4) REQUIREMENTS. All local governments subject to this Rule shall develop riparian buffer protection programs and ordinances for approval by the Commission, incorporating the minimum standards contained in Rule. This Rule shall apply to 50 foot wide riparian buffers directly adjacent to surface waters in the Randleman watershed (intermittent and perennial streams, lakes, reservoirs, and ponds) excluding wetlands. Wetlands adjacent to surface waters or within 50 feet of surface waters, shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H. 0506.
- (a) Surface waters shall be subject to this Rule if the feature is approximately shown on any of the following references, and shall not be subject if it does not appear on any of these references:
- (i) The most recent version of the United States Geological Survey 1:24,000 scale (7.5 minute quadrangle) topographic maps;

- (ii) The most recent version of the hardcopy soil survey maps developed by USDA-Natural Resource Conservation Service; or
- (iii) Other Environmental Management Commission (EMC) approved stream maps. Once approved by the EMC, the stream maps will be made available to the public and will replace the requirement of using the United States Geological Survey 1:24,000 scale (7.5 minute quadrangle) topographic maps and the hardcopy soil survey maps developed by USDA-Natural Resource Conservation Service maps.
- (b) Where the specific origination point of an intermittent or perennial stream is in question, parties subject to this Rule shall use the latest version of the Division publication, *Identification Methods for the Origins of Intermittent and Perennial Streams*, available at: [http://h2o.enr.state.nc.us/ncwetland/s/documents/NC\\_Stream\\_ID\\_Manual.pdf](http://h2o.enr.state.nc.us/ncwetland/s/documents/NC_Stream_ID_Manual.pdf), to establish that point;
- (c) Local governments may, if they choose to do so, develop detailed stream network maps for the watershed based on these USGS and USDA-NRCS maps or criteria, approved by the Director, showing the presence or absence of a stream. These maps shall be submitted to the Director for approval by any local government wishing to use this method of implementation of riparian area protection. After these detailed stream network maps are approved by the Director, riparian areas shall be protected and maintained in accordance with this Rule on all sides of surface waters in the Randleman Lake watershed as delineated on these approved stream network maps;
- (d) Personnel from delegated local governments that are assigned to perform stream determinations, shall successfully complete the
- Division's Surface Water Identification Training and Certification Class within three years of the effective revision date of this Rule;
- (e) All local governments that have land use authority within the proposed Randleman Lake water supply watershed shall adopt and enforce this Rule through local water supply and other local ordinances. Ordinances shall require that all riparian protection areas are recorded on new or modified plats. No new clearing, grading, or development shall take place and no new building permits shall be issued in violation of this Rule; and
- (f) Parties subject to this Rule shall abide by all State rules and laws regarding waters of the state including 15A NCAC 02H .0500, 15A NCAC 02H .1300, and Sections 401 and 404 of the Federal Clean Water Act.
- (5) EXEMPTION TO WHEN AN ON-SITE DETERMINATION SHOWS THAT SURFACE WATERS ARE NOT PRESENT. When a landowner or other affected party believes that the maps have inaccurately depicted surface waters, he or she shall consult the delegated local authority. Upon request, the delegated local authority shall make onsite determinations. Local governments may also accept the results of site assessments made by other parties who have successfully completed the Division's Surface Water Identification Training Certification course and are sanctioned by the Division to make such determinations. Any disputes over on-site determinations shall be referred to the local Board of Adjustment or other local appeals process in writing. For projects proposed for state and federal lands, any disputes shall be referred to the Director in writing. A determination of the Director as to the accuracy or application of the maps is subject to review as provided in Articles 3 and 4 of G.S. 150B. Surface waters that appear on the maps shall not be subject to this Rule if an on-site determination shows that they fall into one of the following categories:
  - (a) Ditches and manmade conveyances, to include manmade stormwater conveyances, other than modified natural streams, which

under normal conditions do not receive drainage from any tributary ditches, canals, or streams, unless the ditch or manmade conveyance delivers runoff directly to waters classified in accordance with 15A NCAC 02B .0100;

(b) Areas mapped as intermittent streams, perennial streams, lakes, ponds, or estuaries on the most recent versions of United States Geological Survey 1:24,000 scale (7.5 minute quadrangle) topographic maps, hard-copy soil survey maps or other EMC approved stream maps where no perennial waterbody, intermittent waterbody, lake, pond or estuary actually exists on the ground;

(c) Ephemeral streams; and

(d) Ponds and lakes created for animal watering, irrigation, or other agricultural uses that are not part of a natural drainage way that is classified in accordance with 15A NCAC 02B .0100. Ponds are part of a natural drainage way when they are hydrologically connected (i.e. the pond is fed by an intermittent or perennial stream) or when they have a direct discharge point to an intermittent or perennial stream.

(6) EXEMPTION TO REQUIREMENTS WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not apply to portions of the riparian buffer where a use is existing and ongoing according to the following:

(a) A use shall be considered existing and ongoing if it was present within the riparian buffer as of the effective date of the local ordinance or local ordinances enforcing this Rule and has continued to exist since that time. For state and federal entities, a use shall be considered existing and ongoing if it was present within the riparian buffer as of the effective date of this Rule and has continued to exist since that time. Existing uses shall include, but not limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems any of which involve either specific,

periodic management of vegetation or displacement of vegetation by structures or regular activity. Only the portion of the riparian buffer that contains the footprint of the existing use is exempt from this Rule. Change of ownership through purchase or inheritance is not a change of use. Activities necessary to maintain uses are allowed provided that the site remains similarly vegetated, no impervious surface is added within 50 feet of the surface water where it did not previously exist as of the effective date of the local ordinance or local ordinances enforcing this Rule, and existing diffuse flow is maintained. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained.

(b) A use shall be considered existing if projects or proposed development are determined by the local government, or the Director for the cases involving state or federal entities, to meet at least one of the following criteria:

(i) Project requires a 401 Certification/404 permit and these were issued prior to the effective date of the local ordinance or local ordinances enforcing this Rule, and prior to the effective date of this Rule for state and federal entities;

(ii) Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, have begun construction or are under contract to begin construction and had received all required state permits and certifications prior to the effective date of the local ordinance or ordinances of this Rule, and prior to the effective date of this Rule

- for state and federal entities.
- (c) This Rule shall apply at the time an existing use is changed to another use. Change of use shall include, but not limited to the initiation of any activity not defined as existing and ongoing in either Sub-Item (6)(a) or (6)(b) of this Rule.
- (7) ZONES OF THE RIPARIAN BUFFER.  
The protected riparian buffer shall have two zones as follows:
- (a) Zone 1 shall consist of a vegetated area that is undisturbed except for uses provided for in Item (9) of this Rule. The location of Zone 1 shall be as follows:
- (i) For intermittent and perennial streams, Zone 1 shall begin at the most landward limit of the top of the bank or the rooted herbaceous vegetation and extend landward a distance of 30 feet on all sides of the surface water, measured horizontally on a line perpendicular to a vertical line marking the edge of the top of the bank.
- (ii) For ponds, lakes and reservoirs located within a natural drainage way, Zone 1 shall begin at the most landward limit of the normal water level or the rooted herbaceous vegetation and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to a vertical line marking the edge of the surface water or rooted herbaceous vegetation.
- (b) Zone 2 shall consist of a stable, vegetated area that is undisturbed
- except for uses provided for in Item (9) of this Rule. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised. Zone 2 shall begin at the outer edge of Zone 1 and extend landward 20 feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones 1 and 2 shall be 50 feet on all sides of the surface water.
- (8) DIFFUSE FLOW REQUIREMENT.  
Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.
- (a) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow at non-erosive velocities before the runoff enters Zone 2 of the riparian buffer.
- (b) Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.
- (c) Corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosional gullies. No new stormwater conveyances are allowed through the buffers except for stormwater management ponds provided for in Item (9) of this Rule.
- (9) TABLE OF USES. The following chart sets out the uses and their designation under this Rule as exempt, allowable, or allowable with mitigation. All uses not designated as exempt, allowable, or allowable with mitigation are considered prohibited and may not proceed within the riparian buffer unless a variance is granted pursuant to Item (12) of this Rule. The requirements for each category are given in Items (10) of this Rule.

<u>Use</u>	<u>Exempt</u>	<u>Potentially Allowable</u>	<u>Potentially Allowable with Mitigation</u>
<u>Access trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities:</u> •Pedestrian access trails that are restricted to the minimum width practicable and do not exceed 4 feet in width of buffer disturbance, and provided that installation and use does not result in removal of trees as defined in this Rule and no impervious surface is added to the riparian buffer •Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation or use results in removal of trees as defined in this Rule or impervious surface is added to the riparian buffer	<u>X</u>	<u>X</u>	
<u>Airport facilities:</u> •Airport facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer •Airport facilities that impact greater than 150 linear feet or one-third of an acre of riparian buffer •Activities necessary to comply with FAA requirements (e.g. radar uses or landing strips) <sup>1</sup>		<u>X</u>  <u>X</u>	<u>X</u>
<u>Archaeological activities:</u> •In Zones 1 and 2 and are designed, constructed and maintained to provide the maximum sediment removal and erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water quality to the maximum extent practical.	<u>X</u>		
<u>Bridges</u>		<u>X</u>	
<u>Canoe access provided that installation and use does not result in removal of trees as defined in the Rule and no impervious surface is added to the buffer.</u>	<u>X</u>		
<u>Dam maintenance activities:</u> •Dam maintenance activities that do not cause additional buffer disturbance beyond the footprint of the existing dam or those covered under a U.S. Army Corps of Engineers Nationwide Permit •Dam maintenance activities that do cause additional buffer disturbance beyond the footprint of the existing dam or those not covered under a U.S. Army Corps of Engineers Nationwide Permit	<u>X</u>	<u>X</u>	
<u>Drainage ditches, roadside ditches and stormwater outfalls through riparian buffers:</u> •Existing drainage ditches, roadside ditches, and stormwater outfalls provided that they are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies •New drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nitrogen and attenuate flow before the conveyance discharges through the riparian buffer	<u>X</u>	<u>X</u>	
<u>Drainage of a pond in a natural drainage way provided that a new riparian buffer that meets the requirements of Items (7) and (8) of this Rule is established adjacent to the new channel.</u>	<u>X</u>		

**PROPOSED RULES**

<u>Use</u>	<u>Exempt</u>	<u>Potentially Allowable</u>	<u>Potentially Allowable with Mitigation</u>
<u>Driveway crossings of streams and other surface waters subject to this Rule:</u> <u>•Driveway crossings on single family residential lots that disturb equal to or less than 40 linear feet or 2,500 square feet of riparian buffer</u> <u>•Driveway crossings on single family residential lots that disturb greater than 40 linear feet or 2,500 square feet of riparian buffer</u> <u>•In a subdivision that cumulatively disturb equal to or less than 150 linear feet or one-third of an acre of riparian buffer</u> <u>•In a subdivision that cumulatively disturb greater than 150 linear feet or one-third of an acre of riparian buffer</u>	<u>X</u>	<u>X</u>  <u>X</u>	<u>X</u>
<u>Driveway impacts other than crossing of a stream or other surface waters subject to this Rule</u>			<u>X</u>
<u>Fences:</u> <u>•Fences provided that disturbance is minimized and installation does not result in removal of trees as defined in this Rule</u> <u>•Fences provided that disturbance is minimized and installation results in removal of trees as defined in this Rule</u>	<u>X</u>	<u>X</u>	
<u>Forest harvesting - see Item (14) of this Rule</u>			
<u>Fertilizer Application:</u> <u>One-time fertilizer application to establish vegetation</u>	<u>X</u>		
<u>Grading and revegetation in Zone 2 provided that diffuse flow and the health of existing vegetation in Zone 1 is not compromised and disturbed areas are revegetated with native vegetation</u>	<u>X</u>		
<u>Greenway / hiking trails:</u> <u>Designed, constructed and maintained to provide the maximum nutrient removal and erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water quality to the maximum extent practical.</u>		<u>X</u>	
<u>Historic preservation:</u> <u>Designed, constructed and maintained to provide the maximum nutrient removal and erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water quality to the maximum extent practical</u>	<u>X</u>		
<u>Maintenance access of modified natural streams: a grassed travel way on one side of the water body when less impacting alternatives are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travel way shall be located to maximize stream shading.</u>		<u>X</u>	



**PROPOSED RULES**

<u>Use</u>	<u>Exempt</u>	<u>Potentially Allowable</u>	<u>Potentially Allowable with Mitigation</u>
<u>Mining activities:</u> •Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Items (7) and (8) of this Rule are established adjacent to the relocated channels •Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements of Items (7) and (8) of this Rule are not established adjacent to the relocated channels •Wastewater or mining dewatering wells with approved NPDES permit	<u>X</u>	<u>X</u>	<u>X</u>
<u>Non-electric utility lines:</u> •Impacts other than perpendicular crossings in Zone 2 only <sup>4,5</sup> •Impacts other than perpendicular crossings in Zone 1 only <sup>4,5</sup>		<u>X</u>	<u>X</u>
<u>Non-electric utility line perpendicular crossings of streams and other surface waters subject to this Rule<sup>4,5</sup>:</u> •Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width •Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width •Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width •Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width •Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer	<u>X</u>	<u>X</u>  <u>X</u>	<u>X</u>  <u>X</u>
<u>Overhead electric utility lines:</u> •Impacts other than perpendicular crossings in Zone 2 only <sup>4,5</sup> •Impacts other than perpendicular crossings in Zone 1 <sup>2,3,4,5</sup>		<u>X</u>	<u>X</u>
<u>Overhead electric utility line perpendicular crossings of streams and other surface waters subject to this Rule<sup>2,3,4,5</sup>:</u> •Perpendicular crossings that disturb equal to or less than 150 linear feet of riparian buffer •Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer	<u>X</u>	<u>X</u>	

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*PROPOSED RULES*

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<u>Use</u>	<u>Exempt</u>	<u>Potentially Allowable</u>	<u>Potentially Allowable with Mitigation</u>
<u>Playground equipment:</u> • <u>Playground equipment on single family lots provided that installation and use does not result in removal of vegetation</u> • <u>Playground equipment installed on lands other than single-family lots or that requires removal of vegetation</u>	<u>X</u>	<u>X</u>	
<u>Ponds in natural drainage ways, excluding dry ponds:</u> • <u>New ponds provided that a riparian buffer that meets the requirements of Items (7) &amp; (8) of this Rule is established adjacent to the pond</u> • <u>New ponds where a riparian buffer that meets the requirements of Items (7) &amp; (8) of this Rule is NOT established adjacent to the pond</u>		<u>X</u>	<u>X</u>
<u>Protection of existing structures, facilities and stream banks when this requires additional disturbance of the riparian buffer or the stream channel</u>		<u>X</u>	
<u>Railroad impacts other than crossings of streams and other surface waters subject to this Rule.</u>			<u>X</u>
<u>Railroad crossings of streams and other surface waters subject to this Rule:</u> • <u>Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer</u> • <u>Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer</u> • <u>Railroad crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Recreational and accessory structures:</u> • <u>Total footprint of gazebos and sheds in Zone 2, provided they are not prohibited under local water supply ordinance less than or equal to 150 square feet per lot</u> • <u>Total footprint gazebos and sheds in Zone 2, provided they are not prohibited under local water supply ordinance of more than 150 square feet per lot</u> • <u>Wooden-slatted decks (and associated steps) that are at least 8 feet in height and vegetation is not removed from Zone 1 for the installation and that it meets the requirements of Items (7) and (8) of this Rule</u> • <u>Wooden-slatted decks (and associated steps) that are not at least 8 feet in height and/or vegetation is removed from Zone 1 for the installation and that it meets the requirements of Items (7) and (8) of this Rule</u>		<u>X</u>       <u>X</u>	<u>X</u>       <u>X</u>
<u>Removal of previous fill or debris provided that diffuse flow is maintained and vegetation is restored</u>	<u>X</u>		

**PROPOSED RULES**

<u>Use</u>	<u>Exempt</u>	<u>Potentially Allowable</u>	<u>Potentially Allowable with Mitigation</u>
<u>Road crossings of streams and other surface waters subject to this Rule:</u> <u>•Road crossings that impact equal to or less than 40 linear feet of riparian buffer</u> <u>•Road crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer</u> <u>•Road crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Road impacts other than crossings of streams and other surface waters subject to this Rule</u>			<u>X</u>
<u>Road relocation of existing private access roads associated with public road projects where necessary for public safety:</u> <u>•Less than or equal to 2,500 square feet of buffer impact</u> <u>•Greater than 2,500 square feet of buffer impact</u>		<u>X</u>	<u>X</u>
<u>Stormwater BMPs:</u> <u>•Wet detention, bioretention, and constructed wetlands in Zone 2 if diffuse flow of discharge is provided into Zone 1</u> <u>•Wet detention, bioretention, and constructed wetlands in Zone 1</u>		<u>X</u>	<u>X</u>
<u>Scientific studies and stream gauging:</u> <u>•In Zones 1 and 2 if they are designed, constructed and maintained to provide the maximum nutrient removal and erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water quality to the maximum extent practical.</u>	<u>X</u>		
<u>Streambank or shoreline stabilization</u>		<u>X</u>	
<u>Temporary roads provided that the area is to be restored to pre-construction conditions immediately after construction is complete and replanted immediately with trees if trees existed at the site prior to construction. At the end of five years the restored buffer shall consist (at a minimum) of two different hardwood species at a density 320 trees per acre, unless otherwise approved by the DWQ. If plantings of trees can not be done immediately upon completion of construction, the buffer shall be stabilized with grass and the plantings of trees shall occur during the growing season. A one time application of fertilizer may be utilized to establish vegetation of restored areas:</u> <u>•Temporary roads that disturb less than 2,500 square feet.</u> <u>•Temporary roads that disturb greater than 2,500 square feet</u> <u>•Temporary roads for culvert installation, bridge construction or replacement</u>	<u>X</u>	<u>X</u>  <u>X</u>	

**PROPOSED RULES**

<u>Use</u>	<u>Exempt</u>	<u>Potentially Allowable</u>	<u>Potentially Allowable with Mitigation</u>
<p>Temporary sediment and erosion control devices provided that temporary impact sites are restored to <u>pre-construction conditions (including topography and vegetation)</u>. Restoration of previously wooded areas shall be conducted as soon as practicable and not later than sixteen (16) months after construction and shall include planting of trees and so that at the end of five years shall consist (at a minimum) of two different hardwood species at a total density of 320 trees per acre unless otherwise approved by the DWQ:</p> <p>•In Zone 2 only provided ground cover is re-established within the timeframe required by the Sedimentation and Erosion Control Act and that the vegetation in Zone 1 is not compromised and that discharge is released as diffuse flow in accordance with Item (8) of this Rule</p> <p>•In Zones 1 and 2 to control impacts associated with uses approved by the local government or that have received a variance provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer</p> <p>•In-stream temporary erosion and sediment control measures for authorized work within a stream channel</p>	<p>X</p> <p>X</p>	<p>X</p>	
<p>Underground electric utility lines:</p> <p>•Impacts other than perpendicular crossings in Zone 2 only<sup>2</sup></p> <p>•Impacts other than perpendicular crossings in Zone 1<sup>1,4</sup></p>	<p>X</p> <p>X</p>		
<p>Underground electric utility line perpendicular crossings of streams and other surface waters subject to this Rule:</p> <p>•Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer<sup>3, 4, 5</sup></p> <p>•Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer<sup>3, 4, 5</sup></p>	<p>X</p>	<p>X</p>	

**PROPOSED RULES**

<u>Use</u>	<u>Exempt</u>	<u>Potentially Allowable</u>	<u>Potentially Allowable with Mitigation</u>
<u>Vegetation management:</u> • <u>Emergency fire control measures provided that topography is restored</u> • <u>Periodic mowing and harvesting of plant products in Zone 2 only</u> • <u>Planting vegetation to enhance the riparian buffer</u> • <u>Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised</u> • <u>Removal of individual trees which are in danger of causing damage to dwellings, other structures or human life</u> • <u>Removal of individual trees that are dead, diseased or damaged.</u> • <u>Removal of poison ivy</u> • <u>Removal of understory nuisance vegetation as defined in:</u> <u>Smith, Cherri L. 1998. Exotic Plant Guidelines. Dept. of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30</u>	<u>X</u>  <u>X</u>  <u>X</u> <u>X</u>  <u>X</u>  <u>X</u> <u>X</u>		
<u>Vehicle access to water dependent structures</u> • <u>Vehicular access roads leading to surface waters for the purpose of accessing water dependent activities as defined in 15A NCAC 02B .0202, that are restricted to the minimum width practicable not exceed eight feet in width</u>		<u>X</u>	
• <u>Water dependent structures as defined in 15A NCAC 02B .0202</u>		<u>X</u>	
<u>Water supply reservoirs:</u> • <u>New reservoirs provided that a riparian buffer that meets the requirements of Items (7) and (8) of this Rule is established adjacent to the reservoir</u> • <u>New reservoirs where a riparian buffer that meets the requirements of Items (7) and (8) of this Rule is NOT established adjacent to the reservoir</u>		<u>X</u>	<u>X</u>
<u>Water wells</u> • <u>Single family water wells</u> • <u>All water wells other than single family water wells</u>	<u>X</u>	<u>X</u>	
<u>Wetland stream and buffer restoration</u> • <u>Wetland, stream and buffer restoration that requires DWQ approval for the use of a 401 Water Quality Certification</u> • <u>Wetland, stream and buffer restoration that does NOT require DWQ approval for the use of a 401 Water Quality Certification</u>	<u>X</u>	<u>X</u>	
<u>Wildlife passage</u>		<u>X</u>	

<sup>1</sup> Provided that:

- Heavy equipment is not used in Zone 1
- Vegetation is not compromised in the portions of Zone 1 and Zone 2 that are not impacted
- Trees that are cut down are removed by chain
- No permanent felling of trees occurs in the protected buffers or in the streams
- Stump removal is only preformed by grinding

•At the completion of the project the disturbed area is stabilized with native vegetation

•Zones 1 & 2 meet the requirements of (7) and (8) of this Rule.

<sup>2</sup> Provided that, in Zone 1, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation by the local government, or the Director for the cases involving state or federal entities, as defined in Item (11) of this Rule

•A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.

•Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.

•Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut. Riprap shall not be used unless it is necessary to stabilize a tower.

•No fertilizer shall be used other than a one-time application to re-establish vegetation.

•Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.

•Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.

•In wetlands, mats shall be utilized to minimize soil disturbance.

<sup>3</sup> Provided that poles or towers shall not be installed within 10 feet of a water body unless the local government, or the Director for the cases involving state or federal entities, completes a no practical alternative evaluation as defined in Item (11) of this Rule.

<sup>4</sup> Provided that, in Zone 1, all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternative evaluation by the local government, or the Director for the cases involving state or federal entities, as defined in Item (11) of this Rule.

•Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.

•Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.

•Underground cables shall be installed by vibratory plow or trenching.

•The trench shall be backfilled with the excavated soil material immediately following cable installation.

•No fertilizer shall be used other than a one-time application to re-establish vegetation.

•Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.

•Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.

•In wetlands, mats shall be utilized to minimize soil disturbance.

<sup>5</sup> Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.

(10) REQUIREMENTS FOR CATEGORIES OF USES. Uses designated as exempt, allowable, and allowable with mitigation in Item (9) of this Rule shall have the following requirements:

(a) EXEMPT. Uses designated as exempt are allowed within the riparian buffer. Exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities.. In addition, exempt uses shall meet requirements listed in Item (9) of this Rule for the specific use.

(b) POTENTIALLY ALLOWABLE. Uses designated as potentially allowable require a written buffer authorization from the local

government, or the Director for the cases involving state or federal entities for impacts within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (11) of this Rule.

(c) POTENTIALLY ALLOWABLE WITH MITIGATION. Uses designated as potentially allowable with mitigation require written authorization from the local government, or the Director for the cases involving state or federal entities for impacts within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (11) of this Rule and an appropriate mitigation strategy has been approved pursuant to Item (13) of this Rule.

- (d) PROHIBITED. Uses that are not designated in Item (9) of this Rule are considered prohibited in the riparian buffers.
- (11) DETERMINATION OF "NO PRACTICAL ALTERNATIVES." Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a "no practical alternatives" determination to the local government or the Director for the cases involving state or federal entities. The applicant shall certify that the criteria identified in Sub-Item (11)(a) of this Rule are met. The local government, or the Director for the cases involving state or federal entities, shall grant an Authorization Certificate upon a "no practical alternatives" determination. The procedure for making an Authorization Certificate shall be as follows:
- (a) For any request for an Authorization Certificate, the local government, or the Director for the cases involving state or federal entities, shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a "no practical alternatives" determination:
- (i) The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality;
  - (ii) The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality; and
  - (iii) Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.
- (b) Requests for an Authorization Certificate shall be reviewed and either approved or denied within 60 days of receipt of a complete submission based on the criteria in Sub-Item (11)(a) of this Rule and the local ordinance or ordinances

enforcing this Rule by the local government, or the Director for the cases involving state or federal entities. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated "no practical alternatives." An Authorization Certificate shall be issued to the applicant, unless:

- (i) The applicant agrees, in writing, to a longer period; and
  - (ii) Applicant fails to furnish requested information necessary to the local government's decision or the Director's decision for the cases involving state or federal entities.
- (c) The local government, or the Director for the cases involving state or federal entities, may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program. Complete submissions shall include the following:
- (i) The name, address and phone number of the applicant;
  - (ii) The nature of the activity to be conducted by the applicant;
  - (iii) The location of the activity, including the jurisdiction;
  - (iv) A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian buffers associated with the activity, and the extent of riparian buffers on the land;
  - (v) An explanation of why this plan for the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality; and

- (vi) Plans for any best management practices proposed to be used to control the impacts associated with the activity.
- (d) Any disputes over determinations regarding Authorization Certificates shall be referred to the local government's appeals process for a decision, or to the Director for determinations involving lands of state and federal entities. The Director's decision is subject to review as provided in G.S. 150B Articles 3 and 4.
- (12) VARIANCES. Persons who wish to undertake prohibited uses may pursue a variance. The local government may only grant minor variances. For major variances, local governments shall prepare preliminary findings and submit them to the Commission for approval. The variance request procedure shall be as follows:
  - (a) There are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements. Practical difficulties or unnecessary hardships shall be evaluated in accordance with the following:
    - (i) If the applicant complies with the provisions of this Rule, he/she can secure no reasonable return from, nor make reasonable use of, his/her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the local government, or the Director for the cases involving state or federal entities, shall consider whether the variance is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible.
    - (ii) The hardship results from application of this Rule to the property rather than from other factors such as deed restrictions or other hardship.
  - (iii) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.
  - (iv) The applicant did not cause the hardship by knowingly or unknowingly violating this Rule.
  - (v) The applicant did not purchase the property after the effective date of this Rule, and then request a variance.
  - (vi) The hardship is unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice.
  - (b) The variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and preserves its spirit; and
  - (c) In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.
- (13) MINOR VARIANCES. A minor variance request pertains to activities that are proposed only to impact any portion of Zone 2 of the riparian buffer. Minor variance requests shall be reviewed and approved based on the criteria in Sub-Item (12)(a) of this Rule by the local government pursuant to G.S. 153A-Article 18, or G.S. 160A-Article 19. The local may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Request for appeals to decisions made by the local government shall be made through the local government's appeals process, or to the Director for determinations involving state and federal entities. The Director's decision



- is subject to review as provided in G.S. 150B Articles 3 and 4.
- (14) MAJOR VARIANCES. A major variance request pertains to activities that are proposed to impact any portion of Zone 1 or any portion of both Zones 1 and 2 of the riparian buffer. If the local government, or the Director for the cases involving state or federal entities, has determined that a major variance request meets the requirements in Sub-Item (12)(a) of this Rule, then it shall prepare a preliminary finding and submit it to the Commission for approval. Within 90 days after receipt by the local government, or the Director for the cases involving state or federal entities, the Commission shall review preliminary findings on major variance requests. The following actions shall be taken depending on the Commission's decision on the major variance request:
- (a) Upon the Commission's approval, the local government shall issue a final decision granting the major variance. The Director shall issue the final decision for the cases involving state or federal entities.
  - (b) Upon the Commission's approval with conditions or stipulations, the local government shall issue a final decision, which includes these conditions or stipulations. The Director shall issue a final decision for the cases involving state or federal entities.
  - (c) Upon the Commission's denial, the local government shall issue a final decision denying the major variance. The Director shall issue a final decision for the cases involving state or federal entities.
- (15) MITIGATION. Persons who wish to undertake uses designated as allowable with mitigation shall meet the following requirements in order to proceed with their proposed use.
- (a) Obtain a determination of "no practical alternatives" to the proposed use pursuant to Item (11) of this Rule; and
  - (b) Obtain approval for a mitigation proposal pursuant to 15A NCAC 02B .0252.
- (16) REQUIREMENTS SPECIFIC TO FOREST HARVESTING. The following requirements shall apply for forest harvesting operations and practices:
- (a) The following measures shall apply in the entire riparian buffer:
    - (i) Logging decks and sawmill sites shall not be placed in the riparian buffer.
    - (ii) Access roads and skid trails shall be prohibited except for temporary and permanent stream crossings established in accordance with 15A NCAC 01I .0203. Temporary stream crossings shall be permanently stabilized after any site disturbing activity is completed.
    - (iii) Timber felling shall be directed away from the stream or water body.
    - (iv) Skidding shall be directed away from the stream or water body and shall be done in a manner to prevent the creation of ephemeral channels perpendicular to the water body.
    - (v) Individual trees may be treated to maintain or improve their health, form or vigor.
    - (vi) Harvesting of dead or infected trees or other timber cutting techniques necessary to prevent or control extensive tree pest and disease infestation shall be allowed. These practices must be approved by the Division of Forest Resources for a specific site pursuant to the rule. The Division of Forest Resources must notify the local government of all approvals.
    - (vii) Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed.
    - (viii) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is

minimized. Plantings shall consist primarily of native species.

- (ix) High-intensity prescribed burns shall not be allowed.
- (x) Application of fertilizer shall not be allowed except as a one-time use that is necessary for permanent stabilization. Broadcast application of fertilizer or herbicides to the adjacent forest stand shall be conducted so that the chemicals are not applied directly to or allowed to drift into the riparian buffer.
- (b) In Zone 1, forest vegetation shall be protected and maintained. Selective harvest as provided for below is allowed on forest lands that have a deferment for use value under forestry in accordance with G.S. 105-277.2 through 277.6 or on forest lands that have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request. For such forest lands, selective harvest is allowed in accordance with the following:
- (i) Tracked or wheeled vehicles are not permitted except at stream crossings designed, constructed and maintained in accordance with 15A NCAC 01I .0203;
- (ii) Soil disturbing site preparation activities are not allowed; and
- (iii) Trees shall be removed with the minimum disturbance to the soil and residual vegetation.
- (c) The following provisions for selective harvesting shall be met every 100 feet on each side of the stream:
- (i) The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed except for the removal of individual

high value trees as defined provided that no trees with exposed primary roots visible in the streambank be cut.

- (ii) In the outer 20 feet of Zone 1, a maximum of 50 percent of the trees greater than five inches DBH may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations where the reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible.
- (iii) In Zone 2, harvesting and regeneration of the forest stand shall be allowed in accordance with 15A NCAC 01I .0100 through .0200 as enforced by the Division of Forest Resources.
- (17) RULE IMPLEMENTATION. This Rule shall be implemented as follows:
- (a) For state and federal entities, the Division shall implement the requirements of this Rule as of its effective date.
- (b) Within six months of the effective revision date of this Rule, local governments shall review, revise as necessary, and submit a local program including all necessary ordinances to the Division for review. The local program shall detail local government buffer program implementation including but not limited to such factors as a method for resolution of disputes involving Authorization Certificate or variance determinations, a plan for record keeping, and a plan for enforcement. Local governments shall use the latest version of the Division's publication, *Identification Methods for the Origins of Intermittent and Perennial Streams*, available at <http://h2o.enr.state.nc.us/ncwetland/s/regcert.html>, to establish the existence of streams.

- (c) Within six months of the Division approval of the revised local ordinance, the local government shall implement their revised buffer program.
- (d) Upon implementation, subject local governments shall submit annual reports to the Division summarizing their activities in implementing each of the requirements in Item (4) of this Rule.
- (e) The Division shall regularly audit local programs to ensure rule implementation.
- (f) If a local government fails to adopt or adequately implement its program as called for in this Rule, the Division may take appropriate enforcement action as authorized by statute, and may choose to assume responsibility for implementing that program until such time as it determines that the local government is prepared to comply with its responsibilities.
- (18) Where the standards and management requirements for riparian areas are in conflict with other laws, regulations, and permits regarding streams, steep slopes, erodible soils, wetlands, floodplains, forest harvesting, surface mining, land disturbance activities, or other environmental protection areas, the more protective shall apply.
- (19) The existing water supply requirement in Rule .0216(3)(b) of this Section that stipulates a 100 foot vegetated buffer, adjacent to perennial streams, for all new development activities which utilize the high density option, applies to the entire Randleman Lake watershed. The first 50 feet of these riparian areas on either side of these waters must also be protected in accordance with all the requirements of this Rule.
- (20) OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does not preclude the requirement to comply with all federal, state and local regulations and laws.

**15A NCAC 02B .0252 RANDLEMAN LAKE WATER SUPPLY WATERSHED: MITIGATION PROGRAM FOR PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS**

The following are the requirements for the Riparian Buffer Mitigation Program for the Randleman Lake Water Supply Watershed.

- (1) PURPOSE. The purpose of this Rule is to set forth the mitigation requirements that apply to the Randleman Lake Water Supply Watershed existing riparian buffer protection program, as described in 15A NCAC 02B .0250.
- (2) APPLICABILITY. This Rule applies to persons who wish to impact a riparian buffer in the Randleman Lake water supply watershed when one of the following applies:
  - (a) A person has received an Authorization Certificate pursuant to 15A NCAC 02B .0250 for a proposed use that is designated as "allowable with mitigation."
  - (b) A person has received a variance pursuant to 15A NCAC 02B .0250 and is required to perform mitigation as a condition of a variance approval.
- (3) THE AREA OF MITIGATION. The required area of mitigation shall be determined by either the Division or the delegated local authority according to the following:
  - (a) The impacts in square feet to each zone of the riparian buffer shall be determined by the Division or the delegated local authority by adding the following:
    - (i) The area of the footprint of the use causing the impact to the riparian buffer.
    - (ii) The area of the boundary of any clearing and grading activities within the riparian buffer necessary to accommodate the use.
    - (iii) The area of any ongoing maintenance corridors within the riparian buffer associated with the use.
  - (b) The required area of mitigation shall be determined by applying the following multipliers to the impacts determined in Sub-item (3)(a) of this Rule to each zone of the riparian buffer:

*Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1).*

- (i) Impacts to Zone 1 of the riparian buffer shall be multiplied by 3.
  - (ii) Impacts to Zone 2 of the riparian buffer shall be multiplied by 1.5.
  - (iii) Impacts to wetlands within Zones 1 and 2 of the riparian buffer that are subject to mitigation under 15A NCAC 02H .0506 shall comply with the mitigation ratios in 15A NCAC 02H .0506.
- (4) THE LOCATION OF MITIGATION. The mitigation effort shall be the same distance from the Cape Fear River and Lake Randleman as the proposed impact, or closer to the Cape Fear River and Lake Randleman than the impact, and as close to the location of the impact as feasible.
- (5) ISSUANCE OF THE MITIGATION DETERMINATION. The Division or the delegated local authority shall issue a mitigation determination that specifies the required area and location of mitigation pursuant to Items (3) and (4) of this Rule.
- (6) OPTIONS FOR MEETING THE MITIGATION DETERMINATION. The mitigation determination made pursuant to Item (5) of this Rule may be met through one of the following options:
  - (a) Payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Item (7) of this Rule.
  - (b) Donation of real property or of an interest in real property pursuant to Item (8) of this Rule.
  - (c) Restoration or enhancement of a non-forested riparian buffer. This shall be accomplished by the applicant after submittal and approval of a restoration plan pursuant to Item (9) of this Rule.
- (7) PAYMENT TO THE RIPARIAN BUFFER RESTORATION FUND. Persons who choose to satisfy their mitigation determination by paying a compensatory mitigation fee to the Riparian Buffer Restoration Fund shall meet the following requirements:
  - (a) SCHEDULE OF FEES: The amount of payment into the Fund shall be determined by multiplying the acres or square feet of mitigation determination made pursuant to Item (5) of this Rule by ninety-six cents (\$ .96) per square foot or forty-one thousand, six hundred and twenty-five dollars (\$41,625) per acre.
- (b) The required fee shall be submitted to the Division of Water Quality, 401 Wetlands Certification Unit, MAIL SERVICE CENTER 1650, RALEIGH, NC 27699-1650 prior to any activity that results in the removal or degradation of the protected riparian buffer for which a "no practical alternatives" determination has been made.
- (c) The payment of a compensatory mitigation fee may be fully or partially satisfied by donation of real property interests pursuant to Item (8) of this Rule.
- (d) The Division shall review the fee outlined in Sub-item (7)(a) of this Rule every two years and compare it to the actual cost of restoration activities conducted by the Department, including site identification, planning, implementation, monitoring and maintenance costs. Based upon this biennial review, the Division shall recommend revisions to Sub-item (7)(a) of this Rule when adjustments to this Schedule of Fees are deemed necessary.
- (8) DONATION OF PROPERTY. Persons who choose to satisfy their mitigation determination by donating real property or an interest in real property shall meet the following requirements:
  - (a) The donation of real property interests may be used to either partially or fully satisfy the payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Item (7) of this Rule. The value of the property interest shall be determined by an appraisal performed in accordance with Sub-item (8)(d)(iv) of this Rule. The donation shall satisfy the mitigation determination if the appraised value of the donated property interest is equal to or greater than the required fee. If the appraised value of the donated property interest is less than the required fee calculated pursuant to Sub-item (7)(a) of this Rule, the applicant shall pay the remaining balance due.

- (b) The donation of conservation easements to satisfy compensatory mitigation requirements shall be accepted only if the conservation easement is granted in perpetuity.
- (c) Donation of real property interests to satisfy the mitigation determination shall be accepted only if such property meets all of the following requirements:
  - (i) The property shall be located within an area that is identified as a priority for restoration in the Basinwide Wetlands and Riparian Restoration Plan developed by the Department pursuant to G.S. 143-214.10 or shall be located at a site that is otherwise consistent with the goals outlined in the Basinwide Wetlands and Riparian Restoration Plan.
  - (ii) The property shall contain riparian buffers not currently protected by the State's riparian buffer protection program that are in need of restoration.
  - (iii) The restorable riparian buffer on the property shall have a minimum length of 1000 linear feet along a surface water and a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water.
  - (iv) The size of the restorable riparian buffer on the property to be donated shall equal or exceed the acreage of riparian buffer required to be mitigated under the mitigation responsibility determined pursuant to Item (3) of this Rule.
  - (v) The property shall not require excessive measures for successful restoration, such as removal of structures or infrastructure. Restoration of the property shall be capable of fully offsetting the adverse impacts of the requested use;
  - (vi) The property shall be suitable to be successfully restored, based on existing hydrology, soils, and vegetation;
  - (vii) The estimated cost of restoring and maintaining the property shall not exceed the value of the property minus site identification and land acquisition costs.
  - (ix) The property shall not contain any building, structure, object, site, or district that is listed in the National Register of Historic Places established pursuant to Public Law 89-665, 16 U.S.C. 470 as amended.
  - (x) The property shall not contain any hazardous substance or solid waste.
  - (xi) The property shall not contain structures or materials that present health or safety problems to the general public. If wells, septic, water or sewer connections exist, they shall be filled, remediated or closed at owner's expense in accordance with state and local health and safety regulations.
  - (xii) The property and adjacent properties shall not have prior, current, and known future land use that would inhibit the function of the restoration effort.
  - (xiii) The property shall not have any encumbrances or conditions on the transfer of the property interests.
- (d) At the expense of the applicant or donor, the following information shall be submitted to the local governments, except state and federal entities shall submit to the Division, with any proposal for donations or dedications of interest in real property:
  - (i) Documentation that the property meets the

- requirements laid out in Sub-Item (8)(c) of this Rule.
- (ii) US Geological Survey 1:24,000 (7.5 minute) scale topographic map, county tax map, USDA Natural Resource Conservation Service County Soil Survey Map, and county road map showing the location of the property to be donated along with information on existing site conditions, vegetation types, presence of existing structures and easements.
  - (iii) A current property survey performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the State Board of Registration for Professional Engineers and Land Surveyors in "Standards of Practice for Land Surveying in North Carolina." Copies may be obtained from the North Carolina State Board of Registration for Professional Engineers and Land Surveyors, 3620 Six Forks Road, Suite 300, Raleigh, North Carolina 27609.
  - (iv) A current appraisal of the value of the property performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the Appraisal Board in the "Uniform Standards of Professional North Carolina Appraisal Practice." Copies may be obtained from the Appraisal Foundation, Publications Department, P.O. Box 96734, Washington, D.C. 20090-6734.
  - (v) A title certificate.
- (9) RIPARIAN BUFFER RESTORATION OR ENHANCEMENT. Persons who choose to meet their mitigation requirement through riparian buffer restoration or enhancement shall meet the following requirements:
- (a) The applicant may restore or enhance a non-forested riparian buffer if either of the following applies:
    - (i) The area of riparian buffer restoration is equal to the required area of mitigation determined pursuant to Item (3) of this Rule.
    - (ii) The area of riparian buffer enhancement is three times larger than the required area of mitigation determined pursuant to Item (3) of this Rule.
  - (b) The location of the riparian buffer restoration or enhancement shall comply with the requirements in Item (4) of this Rule.
  - (c) The riparian buffer restoration or enhancement site shall have a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water.
  - (d) Enhancement and restoration shall both have the objective of establishing a forested riparian buffer according to the requirements of this Item. Enhancement shall be distinguished from the restoration based on existing buffer conditions. Where existing woody vegetation is sparse, that is greater than or equal to 100 trees per acre, but less than 200 trees per acre, a buffer may be enhanced. Where existing woody vegetation is absent, that is less than 100 trees per acre, a buffer may be restored.
  - (e) The applicant shall first receive an Authorization Certificate for the proposed use according to the requirements of 15A NCAC 02B .0250. After receiving this determination, the applicant shall submit a restoration or enhancement plan for approval by the local government, except for state and federal entities that shall submit a restoration or enhancement plan for approval to the Division. The restoration or

enhancement plan shall contain the following.

- (i) A map of the proposed restoration or enhancement site.
- (ii) A vegetation plan. The vegetation plan shall include a minimum of at least two native hardwood tree species planted at a density sufficient to provide 320 trees per acre at maturity.
- (iii) A grading plan. The site shall be graded in a manner to ensure diffuse flow through the riparian buffer.
- (iv) A fertilization plan.
- (v) A schedule for implementation.
- (f) Within one year after the Division has approved the restoration or enhancement plan, the applicant shall present proof to the Division that the riparian buffer has been restored or enhanced. If proof is not presented within this timeframe, then the person shall be in violation of the State's or the delegated local authority's riparian buffer protection program.
- (g) The mitigation area shall be placed under a perpetual conservation easement that will provide for protection of the property's sediment removal functions.
- (h) The applicant shall submit annual reports for a period of five years after the restoration or enhancement showing that the trees planted have survived and that diffuse flow through the riparian buffer has been maintained. The applicant shall replace trees that do not survive and restore diffuse flow if needed during that five-year period.

*Authority 143-214.1; 143-214.7; 143-215.3(a)(1); S.L. 1998, c. 221.*

**TITLE 18 – DEPARTMENT OF THE SECRETARY OF STATE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of the Secretary of State intends to adopt the rule cited as 18 NCAC 06B .0201.*

**Proposed Effective Date:** February 1, 2010

**Public Hearing:**

**Date:** October 30, 2009

**Time:** 10:00 a.m. – 11:00 a.m.

**Location:** Old Revenue Building, 2 S. Salisbury Street, Raleigh, NC 27601

**Reason for Proposed Action:** *The proposed rule is an incorporation by reference of the Model Senior Designation Rule adopted by the North American Security Administrators Association (NASAA) on March 20, 2008. The rule will apply to the natural persons currently registered as securities dealers or salesmen and as investment advisers or investment adviser representatives. In North Carolina, securities and investment registrants are prohibited by law from engaging in dishonest or unethical conduct. The proposed rule merely clarifies the extent of already prohibited conduct as well as what constitutes permissible conduct.*

**Procedure by which a person can object to the agency on a proposed rule:** *Written comments, including objections, may be sent to: Ann B. Wall, General Counsel, Department of the Secretary of State, P.O. Box 29622, Raleigh, NC 27626-0622, phone (919) 807-2230, fax (919) 807-2010, and email rules@sosnc.com.*

**Comments may be submitted to:** *Ann B. Wall, General Counsel, Department of the Secretary of State, P.O. Box 29622, Raleigh, NC 27626-0622; phone (919) 807-2230; fax (919) 807-2010; email rules@sosnc.com*

**Comment period ends:** December 14, 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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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

☐ **Substantial Economic Impact** (≥\$3,000,000)  
☒ **None**

**CHAPTER 06 – SECURITIES DIVISION**

**SUBCHAPTER 06B - GENERAL**

**18 NCAC 06B .0201 SENIOR DESIGNATION AS DISHONEST OR UNETHICAL PRACTICE**

(a) This Rule applies to natural persons registered with the Division as securities dealers, securities salesmen, investment advisers or investment adviser representatives.

(b) The NASAA Model Rule On The Use of Senior-Specific Certifications and Professional Designation, as adopted March 20, 2008, including subsequent amendments and editions, is hereby incorporated by reference. Copies of the NASAA Model Rule On The Use of Senior-Specific Certifications and Professional Designation are available free of charge on the Division's web page at [www.sosnc.com](http://www.sosnc.com) or at the NASAA web site, [www.nasaa.org](http://www.nasaa.org), under "Adopted Model Rules."

(c) As used in the Model Rule, the "appropriate State securities act provisions" are G.S. 78A-39 and 78C-19.

*Authority G.S. 78A-39; 78A-49; 78C-19; 78C-30; 150B-21.6.*

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

**CHAPTER 46 – NORTH CAROLINA BOARD OF PHARMACY**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Pharmacy intends to adopt the rule cited as 21 NCAC 46 .1613.*

**Proposed Effective Date:** February 1, 2010

**Public Hearing:**

**Date:** December 15, 2009

**Time:** 1:00 p.m.

**Location:** North Carolina Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517

**Reason for Proposed Action:** *To provide rules for an extension of time to pay license or registration renewal fees and for a waiver of continuing education requirements for certain members of the Armed Forces, as required by Session Law 2009-458.*

**Procedure by which a person can object to the agency on a proposed rule:** *Any person may object to the proposed adoption by attending the public hearing on December 15, 2009 and/or by submitting a written objection by December 14, 2009 to Jay Campbell, Executive Director, North Carolina Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517, fax (919) 246-1056, email [jcampbell@ncbop.org](mailto:jcampbell@ncbop.org). The North Carolina Board of*

*Pharmacy is interested in all comments pertaining to the proposed rule. All persons interested and potentially affected by the proposal are strongly encouraged to read this entire notice and make comments on the proposed rule.*

**Comments may be submitted to:** Jay Campbell, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517; fax (919) 246-1056; email [jcampbell@ncbop.org](mailto:jcampbell@ncbop.org)

**Comment period ends:** December 15, 2009

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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**  
☐ **Substantial Economic Impact** (≥\$3,000,000)  
☒ **None**

**SECTION .1600 - LICENSES AND PERMITS**

**21 NCAC 46. 1613 EXTENSION PERIOD FOR CERTAIN MEMBERS OF THE ARMED FORCES**

(a) Definitions.

(1) "Eligible licensee" means a pharmacist who holds a license in good standing from the Board of Pharmacy, who serves the armed forces of the United States, and who is eligible for an extension of time in which to file a tax return pursuant to G.S. 105-249.2. "Eligible licensee" includes a pharmacist who holds a Clinical Pharmacist Practitioner credential and/or who is a pharmacist vaccinator.

(2) "Eligible registrant" means a pharmacy technician, dispensing physician, dispensing nurse practitioner or dispensing physician assistant who holds a registration in good standing from the Board of Pharmacy, who serves the armed forces of the United States, and who is eligible for an extension of time in which to file a tax return pursuant to G.S. 105-249.2.



(3) "Extension period" means the time period specified in 26 U.S. Code 7508.

(4) "Good standing" means a license or registration that is not suspended, revoked or subject to a current disciplinary order.

(b) Extension of time to pay license or registration renewal fee and waiver of continuing education requirements.

(1) An eligible licensee or registrant shall, where possible, notify the Board of eligibility for the extension period before his or her current license or registration expires. Upon such notification, the Board will maintain the license or registration in active status through the extension period.

(2) If an eligible licensee or registrant is unable to notify the Board of eligibility for the extension period before his or her current license or registration expires, upon receipt and acceptance of a renewal application within the extension period, the expired license or registration shall be deemed retroactively to have not expired.

(3) Notwithstanding 21 NCAC 46. 1612(a) and 21 NCAC 46. 3301(a), an eligible licensee or registrant who submits a renewal application and pays the renewal fee required by the Board within the extension period shall not be deemed to hold a lapsed license or registration subject to reinstatement fees.

(4) Notwithstanding 21 NCAC 46. 2201, 21 NCAC 46. 3101(d), and 21 NCAC 46. 2507(d), an eligible licensee may renew his or her license within the extension period despite being unable to complete the specified continuing education requirements.

(5) A licensee or registrant shall provide proof of eligibility for the extension period when the licensee or registrant submits the renewal application.

Authority G.S. 90-18.1; 90-18.2; 90-85.6; 90-85.15A; 90-85.17; 90-85.21(b); 90-85.24; 90-85.26A; 93B-15.

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## CHAPTER 57 – NORTH CAROLINA APPRAISAL BOARD

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Appraisal Board intends to amend the rules cited as 21 NCAC 57A .0201, .0204, .0405, .0407; 57B .0101-.0103, .0303-.0304, .0306-.0307, .0603, .0606, .0608, and .0611.*

**Proposed Effective Date:** April 1, 2010

**Public Hearing:**

**Date:** November 10, 2009

**Time:** 9:00 a.m.

**Location:** North Carolina Appraisal Board, 5830 Six Forks Road, Raleigh, NC 27609

**Reason for Proposed Action:** There is a lack of available precertification courses, so on-line courses are now necessary. Changes are required to bring continuing education rules into conformance with federal requirements. Other changes are made for clarification purposes to address confusion in existing rules.

**Procedure by which a person can object to the agency on a proposed rule:** Submit written comments to Roberta Ouellette, Legal Counsel, North Carolina Appraisal Board, 5830 Six Forks Road, Raleigh, NC 27609 or appear at the public hearing on November 10, 2009.

**Comments may be submitted to:** Roberta Ouellette, Legal Counsel, North Carolina Appraisal Board, 5830 Six Forks Road, Raleigh, NC 27609; email Roberta@ncab.org

**Comment period ends:** December 14, 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 of the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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
- ☐ Substantial Economic Impact (≥\$3,000,000)
- ☒ None

## SUBCHAPTER 57A - REGISTRATION LICENSING, CERTIFICATION AND PRACTICE

### SECTION .0200 - TRAINEE REGISTRATION, APPRAISER LICENSING AND CERTIFICATION

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

(a) Applicants for trainee registration and for certification as a certified real estate appraiser must satisfy the qualification

requirements stated in G.S. 93E-1-6 and in this Section. ~~All precertification education required by 21 NCAC 57B .0101, .0102, and .0103 must have been obtained in a classroom setting. No credit will be given for these courses taken by any other method, such as correspondence school courses or computer based courses.~~

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

(c) Applicants for certification as a certified residential real estate appraiser shall have completed, within the five-year period immediately preceding the date application is made, 200 hours of education as set forth in 21 NCAC 57B .0102 or education found by the Board to be equivalent to such courses. In addition, applicants for certification as a certified residential real estate appraiser must hold an Associate's degree, or higher, from an accredited college, junior college, community college, or university. In lieu of the Associate's degree requirements, applicants shall have successfully completed 21 semester credit hours in the following collegiate subject matter courses from an accredited college or university: English composition, principles of economics (macro or micro), finance, algebra, geometry or higher mathematics, statistics, introduction of computers, including word processing and spreadsheets, and business or real estate law. Applicants shall have obtained at least 2,500 hours of appraisal experience acquired within the five-year period immediately preceding the date application is made and over a minimum period of two calendar years. Applicants must have been engaged in real estate appraising for at least two calendar years prior to the date application is made. At least 50 percent of this appraisal experience must have been of one to four family residential properties in which the sales comparison approach was utilized in the appraisal process.

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

the date application is made. At least 50 percent of the non-residential appraisal experience must have been of special use properties such as schools, churches, or hospitals in which the income approach is not applicable or of improved properties in which the income approach was utilized in the appraisal process.

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

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

(g) In the event that the Board asks an applicant to submit updated information or provide further information necessary to complete the application and the applicant fails to submit such information within 90 days following the Board's request, the Board shall cancel the applicant's application and the application fee shall be retained by the Board. An applicant whose application has been cancelled and who wishes to obtain a registration or certificate must start the licensing process over by filing a complete application with the Board and paying all required fees.

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

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

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

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

#### **21 NCAC 57A .0204 CONTINUING EDUCATION**

(a) All registered trainees, real estate appraiser licensees and certificate holders shall, upon the renewal of their registration, license or certificate in every odd-numbered year, present evidence satisfactory to the Board of having obtained continuing education as required by this Section. Trainees and appraisers who initially registered with the Board after January 1 of an odd numbered year are not required to show

continuing education credit for renewal of their registration in that odd numbered year.

(b) Each trainee, licensee and certificate holder who must complete continuing education pursuant to .0204(a) must complete 28 hours of continuing education before June 1 of every odd numbered year. Except as provided in Paragraphs (g) and (h) of this Rule, such education must have been obtained by taking courses approved by the Board for continuing education purposes, at schools approved by the Board to offer such courses. Such education must relate to real estate appraisal and must contribute to the goal of improving the knowledge, skill and competence of trainees, and licensed and certified real estate appraisers. There is no exemption from the continuing education requirement for trainees or appraisers whose registered, licensed or certified status has been upgraded to the level of licensed residential, certified residential or certified general appraiser since the issuance or most recent renewal of their registration, license or certificate, and courses taken to satisfy the requirements of a higher level of certification may not be applied toward the continuing education requirement. Trainees, licensees and certificate holders may not take the same continuing education course more than once during the two year continuing education cycle.

(c) Each appraisal continuing education course must involve a minimum of three and one-half classroom hours of instruction on real estate appraisal or related topics such as the application of appraisal concepts and methodology to the appraisal of various types of property; specialized appraisal techniques; laws, rules or guidelines relating to appraisal; standards of practice and ethics; building construction; financial or investment analysis; land use planning or controls; feasibility analysis; statistics; accounting; or similar topics. The trainee, license or certificate holder must have attended at least 90 percent of the scheduled classroom hours for the course in order to receive credit for the course.

(d) Each trainee, licensee and certificate holder who is required to complete continuing education pursuant to .0204(a) must, as part of the 28 hours of continuing education required in .0204(b) of this section, complete the seven hour National USPAP update course, as required by the Appraiser Qualifications Board of the Appraisal Foundation, or its equivalent, prior to June 1 of every odd numbered year.

(e) A licensee who elects to take approved continuing education courses in excess of the requirement shall not carry over into the subsequent years any continuing education credit.

(f) Course sponsors must provide a certificate of course completion to each trainee, licensee and certificate holder satisfactorily completing a course. In addition, course sponsors must send directly to the Board a certified roster of all who successfully completed the course. This roster must be sent within 15 days of completion of the course, but not later than June 15 of each year. In order to renew a registration, license or certificate in a timely manner, the Board must receive proper proof of satisfaction of the continuing education requirement prior to processing a registration, license or certificate renewal application. If proper proof of having satisfied the continuing education

requirement is not provided, the registration, license or certificate shall expire and the trainee, licensee or certificate holder shall be subject to the provisions of Rules .0203(e) and .0206 of this Section.

(g) A current or former trainee, licensee or certificate holder may request that the Board grant continuing education credit for a course taken by the trainee, licensee or certificate holder that is not approved by the Board, or for appraisal education activity equivalent to a Board-approved course, by making such request and submitting a non-refundable fee as prescribed in G.S. 93E-1-8(d) for each course or type of appraisal education activity to be evaluated. Continuing education credit for a non-approved course shall be granted only if the trainee, licensee or certificate holder provides satisfactory proof of course completion and the Board finds that the course satisfies the requirements for approval of appraisal continuing education courses with regard to subject matter, course length, instructor qualifications, and student attendance. Appraisal education activities for which credit may be awarded include, but are not limited to, teaching appraisal courses, authorship of appraisal textbooks, and development of instructional materials on appraisal subjects.

Up to 14 hours of continuing education credit may be granted in each continuing education cycle for participation in appraisal education activities. Trainees or licensed or certified appraisers who have taught an appraisal course or courses approved by the Board for continuing education credit shall be deemed to have taken an equivalent course and shall not be subject to the fee prescribed in G.S. 93E-1-8 (d), provided they submit verification satisfactory to the Board of having taught the course(s). A trainee, licensee or certificate holder who teaches a Board-approved continuing education course may not receive continuing education credit for the same course more than once every two years, regardless of how often he teaches the course. Requests for equivalent approval for continuing education credit must be received before June 15 of an odd-numbered year to be credited towards the continuing education requirement for that odd-numbered year. Equivalent approval shall be granted only for courses that are 7 hours or longer, and will only be granted in seven hour increments.

(h) A trainee, licensee or certificate holder may receive continuing education credit by taking any of the Board-approved ~~prelicensing or precertification courses~~ courses, other than Basic Appraisal Principles and Basic Appraisal Procedures, or their approved equivalents. These courses cannot be used for both continuing education credit and for credit for licensing purposes. ~~In order to receive continuing education credit for these courses, the examination must be taken.~~ Trainee, licensees and certificate holders who wish to use a ~~prelicensing~~ precertification course for continuing education credit must comply with the provisions of 21 NCAC 57B .0604.

(i) A trainee, licensee or certificate holder who resides in another state and is currently licensed by the appraiser certification board of that state may satisfy the requirements of this section by providing a current letter of good standing from the resident state showing that the licensee has met all continuing education requirements in the resident state. A

trainee, licensee or certificate holder who became licensed in North Carolina by reciprocity and now resides in North Carolina may renew by letter of good standing for his or her first renewal as a resident of North Carolina only if the trainee or appraiser moved to North Carolina on or after January 1 of an odd numbered year. If a trainee or appraiser was a resident of this state before January 1 of an odd-numbered year, the trainee or appraiser must comply with the requirements of this section regardless of how the registration, license or certificate was obtained.

(j) A trainee, licensee or certificate holder who returns from active military duty on or after February 1 of an odd-numbered year will be allowed to renew his or her registration, license or certificate in that odd-numbered year even if the required continuing education is not completed before June 1 of that year. All required continuing education must be completed within ~~180~~ 90 days of when the trainee, licensee or certificate holder returns from active duty. Failure to complete the required continuing education within ~~180~~ 90 days will be grounds for revocation.

*Authority G.S. 93E-1-7(a); 93E-1-10.*

## **SECTION .0400 - GENERAL APPRAISAL PRACTICE**

### **21 NCAC 57A .0405 APPRAISAL REPORTS**

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

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

any other person or entity to affix their seal. Registered trainees are prohibited from using a seal on appraisal reports.

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

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

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

(f) Any appraiser who signs an appraisal report is entitled to make or retain a copy of that appraisal report, as long as the copy is made at the time the report is prepared. Any appraiser who signs an appraisal report must be given a copy of the appraisal report and the work file upon request for the purpose of submission or the report and work file to the Appraisal Board, compliance with due process of law, such as a subpoena, submission to a peer review committee, or in accordance with retrieval arrangements made by the appraiser and the person or entity retaining the report and work file.

(g) Appraisal reports transmitted electronically to clients shall be sent in a secure and unalterable format, such as Adobe PDF.

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

### **21 NCAC 57A .0407 SUPERVISION OF TRAINEES**

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

- (1) has been licensed or certified for at least two years;
- (2) has no more than one trainee working under his or her supervision at any one time, if the supervisor is a licensed real estate appraiser. A certified residential appraiser may have two trainees working under his or her supervision at any one time. Once at least one of those trainees has completed 50 percent of the required appraisal experience to upgrade, a certified residential appraiser may add another trainee. At no time may a certified residential appraiser have more than three trainees working under his or her supervision. A certified general may have three trainees working under his or her supervision. Prior to the date any trainee begins performing appraisals under his or her supervision, the supervisor must inform the Board of the name of the trainee. The supervisor must also inform the Board when a trainee is no longer working under his or her supervision;

- (3) actively and personally supervises the trainee on all appraisal reports and appraisal related activities until the trainee is no longer under his or her supervision;
- (4) reviews all appraisal reports and supporting data used in connection with appraisals in which the services of a trainee is utilized, and assures that research of general and specific data has been adequately conducted and properly reported, application of appraisal principles and methodologies has been properly applied, that the analysis is sound and adequately reported, and that any analysis, opinions, or conclusions are adequately developed and reported so that the appraisal report is not misleading;
- (5) complies with all provisions of Rule .0405 of this Section regarding appraisal reports;
- (6) prepares and furnishes to each trainee, whose services were utilized in connection with the appraisal, a report describing the nature and extent of assistance rendered by the trainee in connection with the appraisal, and places a copy of such report in the supporting file for the appraisal within 30 days of the date the appraisal report was signed. In addition, the supervisor must make available to the trainee a copy of every appraisal report where the trainee performs more than 75 percent of the work on the appraisal; and
- (7) has not received any disciplinary action regarding his or her appraisal license or certificate from the State of North Carolina or any other state within the previous two years. For the purposes of this Section, disciplinary action means an active suspension or a revocation.

(b) Active and personal supervision includes direction, guidance, and support from the supervisor. The supervising appraiser shall have input into and full knowledge of the appraisal report prior to its completion, and shall make any necessary and appropriate changes to the report before it is transmitted to the client. In addition, the supervisor must accompany the trainee on the inspections of the subject property on the first 50 appraisal assignments or the first 180 appraisal experience points, whichever comes first, for which the trainee will perform more than 75 percent of the work. After that point, the trainee may perform the inspections without the presence of the supervisor provided that the trainee is competent to perform those inspections, and provided that the subject property is less than 50 miles from the supervisor's primary business location. The supervisor must accompany the trainee on all inspections of subject properties that are located more than 50 miles from the supervisor's primary business location.

(c) The trainee must maintain a log on a form prescribed by the Board that includes each appraisal performed by the trainee, the type of property appraised, type of appraisal

performed, complete street address of the subject property, the date the report was signed, the points claimed, the name of the supervisor for that appraisal, the supervisor's license or certificate number, and whether the supervisor accompanied the trainee on the inspection of the subject. The log must show all appraisals performed by the trainee and must be updated at least every 30 days.

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

(e) Trainees must assure that the supervisor has completed and sent the Supervisor Declaration Form to the Appraisal Board on or before the day the trainee begins assisting the supervising appraiser. Trainees shall not receive appraisal experience credit for appraisals performed in violation of this Paragraph.

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

(g) If a trainee signs an appraisal report or provides significant professional assistance in the appraisal process and thus is noted in the report as having provided such assistance, all licensed and certified appraisers signing that appraisal report must have notified the Appraisal Board before the appraisal is signed that they are supervisors for the trainee.

*Authority G.S. 93E-1.6.1; 93E-1-10.*

## **SUBCHAPTER 57B - REAL ESTATE APPRAISAL EDUCATION**

### **SECTION .0100 - COURSES REQUIRED FOR REGISTRATION, LICENSURE AND CERTIFICATION**

#### **21 NCAC 57B .0101 REGISTERED TRAINEE COURSE REQUIREMENTS**

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

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

(b) Credit for these courses must be earned from a Board-approved course sponsor or school and all course content shall be approved by the Appraisal Board in accordance with the rules in this Subchapter. These courses must be completed

within the five-year period immediately preceding the date when application for registration is made to the Board.

(c) Basic Appraisal Principles shall be a prerequisite to taking Basic Appraisal Procedures, and Basic Appraisal Procedures shall be a prerequisite to taking Residential Market Analysis and Highest and Best Use. The 15 hour USPAP course may be taken any time after the successful completion of Basic Appraisal Procedures.

(d) These four courses must have been obtained in a classroom setting. No credit will be given for these courses taken by any other method, such as correspondence school courses or on-line courses.

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

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

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

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

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

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

- (1) A minimum of 15 hours in Residential Appraiser Site Valuation and Cost Approach;
- (2) A minimum of 30 Hours in Residential Sales Comparison and Income Approaches;
- (3) A minimum of 15 hours in Residential Report Writing and Case Studies;
- (4) A minimum of 15 hours in Statistics, Modeling and Finance;

(5) A minimum of 15 hours in Advanced Residential Applications and Case Studies; and

(6) A minimum of 20 hours of appraisal subject matter electives.

(c) An applicant who is currently a licensed residential appraiser may satisfy the educational requirements to become a certified residential real estate appraiser by completing the following education:

(1) A minimum of 15 hours in Statistics, Modeling and Finance;

(2) A minimum of 15 hours in Advanced Residential Applications and Case Studies; and

(3) A minimum of 20 hours of appraisal subject matter electives.

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

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

(f) The Basic Appraisal Principles, Basic Appraisal Procedures, Residential Market Analysis, USPAP and Residential Sales Comparison and Income Approach classes must have been obtained in a classroom setting. All other courses in this section may be taken on-line via the Internet.

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

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

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

- (1) A minimum of 30 hours in Basic Appraisal Principles;
- (2) A minimum of 30 hours in Basic Appraisal Procedures;
- (3) A minimum of 30 hours in General Appraiser Market Analysis and Highest and Best Use;
- (4) A minimum of 15 hours in Statistics, Modeling and Finance;
- (5) A minimum of 30 hours in General Appraiser Sales Comparison Approach;
- (6) A minimum of 30 hours in General Appraiser Site Valuation and Cost Approach;
- (7) A minimum of 60 hours in General Appraiser Income Approach;

- (8) A minimum of 30 hours in General Appraiser Report Writing and Case Studies;
- (9) A minimum of 30 hours of appraisal subject matter electives; and
- (10) A minimum of 15 hours in The Uniform Standards of Professional Appraisal Practice (USPAP).

Credit for all courses must be earned from a Board-approved course sponsor or school, and all courses shall comply with the course content standards prescribed in Rule .0302 of this Subchapter.

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

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

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

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

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

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

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

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

(g) The Basic Appraisal Principles, Basic Appraisal Procedures, USPAP, General Appraiser Market Analysis and Highest and Best Use and General Appraiser Income Approach classes must have been obtained in a classroom setting. All other courses in this section may be taken on-line via the Internet.

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

#### **SECTION .0300 - COURSE STANDARDS FOR PRELICENSING AND PRECERTIFICATION EDUCATION**

##### **21 NCAC 57B .0303 COURSE COMPLETION STANDARDS**

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

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

examination shall be different from those used in the initial examination.

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

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

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

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

#### **21 NCAC 57B .0304 COURSE SCHEDULING**

(a) All courses must have fixed beginning and ending dates, and schools and course sponsors may not utilize a scheduling system that allows students to enroll late for a course and then complete their course work in a subsequently scheduled course. Late enrollment is permitted only if the enrolling student can satisfy the minimum attendance requirement set forth in Paragraphs (c) and (d) of Rule .0303 of this Section.

(b) Courses may be scheduled in a manner that provides for class meetings of up to eight classroom hours in any given day; however credit for courses shall be limited to 30 classroom hours per seven-day period.

(c) A classroom hour consists of 50 minutes of classroom instruction and ten minutes of break time. For any class meeting that exceeds 50 minutes in duration, breaks at the rate of 10 minutes per hour must be scheduled and taken at reasonable times.

(d) Instruction must be given for the minimum hours specified in 57B .0101, .0102, and .0103. Instructors shall not accumulate unused break time to end the class early.

(e) All courses, except those taught on-line via the Internet, must have a minimum number of five students enrolled in order for the course to be held.

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

#### **21 NCAC 57B .0306 INSTRUCTOR REQUIREMENTS**

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

shall be met on a continuing basis. The minimum qualifications are as follows:

- (1) Residential appraiser courses: 200 classroom hours of real estate appraisal education equivalent to the residential appraiser education courses prescribed in Rules .0101 and .0102 of this Subchapter and two years' full-time experience as a certified residential or general real estate appraiser within the previous five years. At least one-half of such experience must be in residential property appraising.
- (2) General appraiser courses: 300 classroom hours of real estate appraisal education equivalent to the general appraiser education courses prescribed in Rules .0101, .0102 and .0103 of this Subchapter and three years' full-time experience as a general real estate appraiser within the previous five years. At least one-half of such experience must be in income property appraising. Instructors must also be a certified general real estate appraiser and have been so certified for at least five years.
- (3) USPAP: certification by the Appraiser Qualifications Board of the Appraisal Foundation as an instructor for the National USPAP Course. The instructor must be a certified residential or a certified general appraiser. If a USPAP instructor fails to renew or loses his or her certification by the Appraiser Qualifications Board, the instructor must immediately stop teaching and notify the Appraisal Board of the loss of certification.
- (4) Statistics, modeling and finance: must have previously completed this class, or must have completed 3 semester hours of statistics in an accredited college or university.

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

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

- (1) The ability to communicate effectively through speech, including the ability to speak clearly at an appropriate rate of speed and with appropriate grammar and vocabulary;
- (2) The ability to present instruction in a thorough, accurate, logical, orderly, and understandable manner, to utilize illustrative



examples as appropriate, and to respond appropriately to questions from students;

- (3) The ability to effectively utilize varied instructive techniques other than straight lecture, such as class discussion or other techniques;
- (4) The ability to effectively utilize instructional aids to enhance learning;
- (5) The ability to maintain an effective learning environment and control of a class; and
- (6) The ability to interact with adult students in a manner that encourages students to learn, that demonstrates an understanding of students' backgrounds, that avoids offending the sensibilities of students, and that avoids personal criticism of any other person, agency or organization.

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

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

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

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

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

(i) Current Appraisal Board members shall not be eligible to qualify as instructors for precertification courses.

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

## **21 NCAC 57B .0307 CRITERIA FOR COURSE RECOGNITION**

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

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

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

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

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

(f) Course sponsors may offer classes on-line via the Internet. The Board must be provided access to the course via the internet at a date and time satisfactory to the Board and shall not be charged any fee for such access. To be approved for credit, an on-line precertification education course must meet all of the conditions imposed by the Rules in this Subchapter in advance, except where otherwise noted. The course must be interactive, permitting the participant to communicate, via telephone, electronic mail, or a website bulletin board, with the presenter and other participants. The sponsor of an on-line course must have a reliable method for recording and verifying attendance. A participant may periodically log on and off of an on-line course provided the total time spent participating in the course is equal to or exceeds the credit hours assigned to the program. The course design and delivery mechanism for an on-line course offered on the Internet must have received approval from the International Distance Education Certification Center (IDECC) and by the Course Approval Program of the Appraiser Qualifications Board. A course completion certificate must be forwarded to the student as stated in Rule .0303(e) of this Section.

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

## **SECTION .0600 - CONTINUING EDUCATION COURSES**

### **21 NCAC 57B .0603 CRITERIA FOR COURSE APPROVAL**

The following requirements must be satisfied in order for course sponsors to obtain approval of a course for appraiser continuing education credit:

- (1) The subject matter of the course must comply with the requirements of Rule .0204 of Subchapter 57A and the information to be provided in the course must be both accurate and current.
- (2) The course must involve a minimum of three and one-half classroom hours of instruction on acceptable subject matter. A classroom hour consists of 50 minutes of classroom instruction and 10 minutes of break time. Instruction must be given for the full number of hours for which credit is given. Instructors may not accumulate unused break time to end the class early.
- (3) The course instructor(s) must:
  - (a) possess the fitness for licensure required of applicants for trainee registration, real estate appraiser licensure or certification; and
  - (b) either:
    - (i) two years' full-time experience that is directly related to the subject matter to be taught;
    - (ii) a baccalaureate or higher degree in a field that is directly related to the subject matter to be taught;
    - (iii) two years' full-time experience teaching the subject matter to be taught;
    - (iv) an equivalent combination of such education and experience; or
    - (v) be approved by the Board pursuant to 57B.0606(11).
- (4) If two or more instructors shall be utilized to teach a course during the approval period and the course shall be taught in states other than North Carolina, it is sufficient for the course sponsor to show that it has minimum instructor requirements comparable to these requirements. The inquiry into fitness shall include consideration of whether the instructor has had any disciplinary action taken on his or her appraisal license or any other professional license in North Carolina or any other state, or whether the instructor has been convicted of or pleaded guilty to any criminal act.
- (5) The course must be one involving a qualified instructor who, except as noted in Item (6) of this Rule, shall be physically present in the classroom at all times and who shall personally provide the instruction for the course. The course instructor may utilize videotape instruction, remote television instruction or similar types of instruction by other persons to enhance or supplement his personal instruction; however, such other persons shall not be considered to be the course instructor and the course instructor must be physically present when such indirect instruction by other persons is being utilized. No portion of the course may consist of correspondence instruction. The instructor must comply with Rule .0306(c) of this Subchapter. Instructors for the National USPAP courses must be certified by the Appraiser Qualifications Board of the Appraisal Foundation. No current Appraisal Board member shall be qualified to teach a continuing education course except for the seven hour National USPAP course.
- (6) A trainee or appraiser may receive up to 14 hours of credit every two years in the period ending on June 1 of each odd numbered year for participation in a course ~~on a computer disk or offered~~ on-line via the Internet. A sponsor seeking approval of a computer-based education course ~~must submit a complete copy of the course on the medium that is to be utilized and must make available at the sponsor's expense all hardware and software necessary for the Board to review the submitted course. In the case of an internet based course, the Board must be provided~~ provide the Board access to the course via the internet at a date and time satisfactory to the Board and the Board shall not be charged any fee for such access. To be approved for credit, a ~~computer based continuing education an on-line~~ course must meet all of the conditions imposed by the Rules in this Subchapter in advance, except where otherwise noted. The course must be interactive, permitting the participant to communicate, via telephone, electronic mail, or a website bulletin board, with the presenter and other participants. The sponsor of an on-line course must have a reliable method for recording and verifying attendance. ~~The sponsor of a course on a computer disk must demonstrate that there is a reliable method for the user or the sponsor to record and verify participation in the course.~~ A participant may periodically log on and off of a ~~computer based~~ an on-line continuing education course provided the total time spent participating in the course is equal to or exceeds the credit hours assigned to the program. The course design and delivery mechanism for an on-line course offered on

the Internet must have received approval from the International Distance Education Certification Center (~~IDEC~~) (IDECC) and the Appraiser Qualifications Board. A course completion certificate must be forwarded to the student as stated in Rule .0607 of this Section, and a course roster must be sent to the Appraisal Board in accordance with Rule .0608 of this Section.

- (7) The course must be an educational program intended to improve the knowledge, skill and competence of trainees, and licensed and certified real estate appraisers. Activities not eligible for approval as a continuing education course include in-house training programs of a firm, organization or agency, trade conferences or similar activities.
- (8) The course sponsor must certify that the course shall be conducted in accordance with the operational requirements stated in Rule .0606 of this Section and that the course sponsor will comply with all other applicable rules contained in this Section.
- (9) The course title may not include the words "Uniform Standards of Professional Appraisal Practice" or "USPAP" unless the course is either the 15 hour National USPAP course or the 7 hour National USPAP update course. If the course is the 7 hour National USPAP course, the course title must state which edition of USPAP will be taught in that specific course.
- (10) Each course must utilize a textbook or course materials that have been approved by the Board.
- (11) If the course content is related to technology, such as software, hardware, electronic devices, manuals, or databases, the course shall be developed specifically for utilization in the real estate appraisal business in order to be approved for continuing education credit. Such courses shall not require the student to purchase specific products, and shall not use the course to sell or advertise particular products or software.

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

## **21 NCAC 57B .0606 COURSE OPERATIONAL REQUIREMENTS**

Course sponsors must at all times assure compliance with the criteria for course approval stated in Rule .0603 of this Section and must also comply with the following requirements relating to scheduling, advertising and conducting approved appraisal continuing education courses:

- (1) Courses must be scheduled and conducted in a manner that limits class sessions to a

maximum of eight classroom hours in any given day and that includes appropriate breaks for each class session. A classroom hour consists of 50 minutes of classroom instruction and ten minutes of break time. For any class meeting that exceeds 50 minutes in duration, breaks at the rate of ten minutes per hour must be scheduled and taken at reasonable times.

- (2) Course sponsors must not utilize advertising of any type that is false or misleading in any respect. If the number of continuing education credit hours awarded by the Board for a course is less than the number of scheduled classroom hours for the course, any course advertisement or promotional materials which indicate that the course is approved for appraiser continuing education credit in North Carolina must specify the number of continuing education credit hours awarded by the Board for the course.
- (3) Course sponsors must, upon request, provide any prospective student a description of the course content sufficient to give the prospective student a general understanding of the instruction to be provided in the course.
- (4) Courses must be conducted in a facility that provides an appropriate learning environment. At a minimum, the classroom must be of sufficient size to accommodate comfortably all enrolled students, must contain a student desk or sufficient worktable space for each student, must have adequate light, heat, cooling and ventilation, and must be free of distractions that would disrupt class sessions. Sponsors are required to comply with all applicable local, state and federal laws and regulations regarding safety, health and sanitation. Sponsors shall furnish the Board with inspection reports from appropriate local building, health and fire inspectors upon the request of the Board. Sponsors must supply separate restroom facilities for males and females. Classes may not be held in a personal residence under any circumstances.
- (5) The course sponsor must require students to attend at least 90 percent of the scheduled classroom hours in order to satisfactorily complete the course, even if the number of continuing education credit hours awarded by the Board for the course is less than the number of scheduled classroom hours. Attendance must be monitored during all class sessions to assure compliance with the attendance requirement. Instruction must be given for the number of hours for which credit is given. Instructors may not

- accumulate unused break time to end the class early.
- (6) Instructors must require reasonable student attentiveness during class sessions. Students must not be permitted to engage in activities that are not related to the instruction being provided.
  - (7) Course sponsors for which an application fee is required by Rules .0602(b) and .0611(b) of this Section must fairly administer course cancellation and fee refund policies. In the event a scheduled course is canceled, reasonable efforts must be made to notify preregistered students of the cancellation and all prepaid fees received from such preregistered students must be refunded within 30 days of the date of cancellation or, with the student's permission, applied toward the fees for another course.
  - (8) Upon request of the Board, the course sponsor must submit to the Board a videotape in a manner and format which depicts the instructor teaching portions of any continuing education course specified by the Board and which demonstrates that the instructor possesses the basic teaching skills described in Rule .0306(c) of this Section.
  - (9) Course sponsors shall provide the Board with the dates and locations of all classes the sponsor is or will be offering in the State of North Carolina at least 30 calendar days before such class is offered, unless circumstances beyond the control of the course sponsor require that the course be rescheduled. If the dates or location of the classes change after such information is provided to the Board, the course sponsor must notify the Board of such changes.
  - (10) Course sponsors must participate in the Board's course and instructor evaluation program. Course sponsors must require that students complete a course evaluation form upon completion of the course, and shall tally the results of the evaluations onto one form. Course sponsors must also send the completed course evaluation forms and the tally to the Board together with the roster required pursuant to 21 NCAC 57B .0608.
  - (11) ~~Persons desiring to become instructors for continuing education courses must file an application for approval with the Board. There is no fee for application for instructor approval. Once an instructor has been approved to teach a specific course, that person may teach the course for any course sponsor approved by the Appraisal Board to offer continuing education courses. An~~

~~approved instructor. If an instructor has any disciplinary action taken on his or her appraisal license or any other professional license in North Carolina or any other state, or if the instructor has been convicted of or pleaded guilty to any criminal act, the school or course sponsor must report that fact to the Board within 15 business days. If any disciplinary action has been taken on his or her appraisal license or any other professional license in North Carolina or any other state, or whether the instructor has been convicted of or pleaded guilty to any criminal act.~~

- (12) All courses, except those taught ~~on computer disk or~~ on-line via the Internet, must have a minimum number of five students enrolled in the course. No credit will be given to any student in a continuing education class if there are only one or two students who complete the class.

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

#### **21 NCAC 57B .0608 SPONSOR REPORTING OF CONTINUING EDUCATION CREDIT**

Course sponsors must, within 15 days of course completion but no later than June 15 of each year, submit to the Board a roster of all North Carolina registered trainees, licensed and certified appraisers who satisfactorily completed the course. The roster must be sent by regular mail together with the course evaluation forms required by 21 NCAC 57B .0606(10). ~~Rosters sent by fax or other electronic means shall not be accepted. Rosters from on-line courses only may be sent by fax or by other electronic means.~~

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

#### **21 NCAC 57B .0611 RENEWAL OF APPROVAL AND FEES**

- (a) Board approval of appraisal continuing education courses expires on the next December 31 following the date of issuance. In order to assure continuous approval, applications for renewal of Board approval, accompanied by the prescribed renewal fee, must be filed with the Board annually on or before December 1. All applications for renewal of course approval received on or before December 1, which are incomplete as of that date, as well as all applications for renewal of course approval submitted after December 1, shall be treated as original applications for approval of continuing education courses. Schools and course sponsors must send a copy of all course materials upon the third renewal of a continuing education course.
- (b) The annual fee for renewal of Board approval shall be that specified in G.S. 93E-1-8(d) for each course for which renewal of approval is requested, provided that no fee is required for course sponsors that are exempted from original application fees by Rule .0602(b) of this Section. The fee is non-refundable.

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

**TITLE 23 – STATE BOARD OF COMMUNITY COLLEGES**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Community Colleges intends to amend the rule cited as 23 NCAC 02C .0301.*

**Proposed Effective Date:** April 1, 2010

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): To demand a public hearing please send the written demand to Q. Shanté Martin, NC Community College System, 200 West Jones Street, 5001 Mail Service Center, Raleigh, NC 27699-5001 or by emailing the demand to publiccomments@nccommunitycolleges.edu. Demands must be received within 15 days of the publication of the proposed rule in the North Carolina Register.*

**Reason for Proposed Action:** *The State Board of Community Colleges seeks to establish a policy addressing the admission of undocumented immigrants to community colleges.*

**Procedure by which a person can object to the agency on a proposed rule:** *Written objections shall be addressed to President, NC Community College System Office, 5001 Mail Service Center, Raleigh, NC 27699-5001 within the comment period and must be post marked by 11:59 p.m. on the last day of the comment period.*

**Comments may be submitted to:** *Q. Shanté Martin, 200 W. Jones Street, 5001 Mail Service Center, Raleigh, NC 27699-5001; email publiccomments@nccommunitycolleges.edu*

**Comment period ends:** December 14, 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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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
- ☐ Substantial Economic Impact (≥\$3,000,000)
- ☒ None

**CHAPTER 02 - COMMUNITY COLLEGES**

**SUBCHAPTER 02C - COLLEGES: ORGANIZATION AND OPERATIONS**

**SECTION .0300 - STUDENTS**

**23 NCAC 02C .0301 ADMISSION TO COLLEGES**

(a) Each college shall maintain an open-door admission policy to all applicants who are legal residents of the United States and who are either high school graduates or ~~who~~ are at least 18 years of age. Student admission processing and placement determination shall be performed by the officials of each college. Admission requirements for an emancipated minor shall be the same as for an applicant 18 years old or older. Provisions with respect to admission of minors are set forth in Rule .0305 of this Section.

(b) For the purposes of this Section, "undocumented immigrant" means any immigrant who is not lawfully present in the United States. Community colleges shall admit undocumented immigrants under the following conditions:

- (1) Community colleges shall admit an undocumented immigrant only if he or she attended and graduated from a United States public high school, private high school, or home school that operates in compliance with State or local law.
- (2) When determining who is an undocumented immigrant, community colleges shall use federal immigration classifications.
- (3) Undocumented immigrants admitted under Subparagraph (1) of this Paragraph may not receive state or federal financial aid in the form of a grant or loan.
- (4) An undocumented immigrant admitted under Subparagraph (1) of this Paragraph may not be considered a North Carolina resident for tuition purposes. All undocumented immigrants admitted under Subparagraph (1) of this Paragraph must be charged out of state tuition whether or not they reside in North Carolina.
- (5) When considering whether to admit an undocumented immigrant into a specific program of study, community colleges should take into account that federal law prohibits states from granting professional licenses to undocumented immigrants.
- (6) Students lawfully present in the United States shall have priority over any undocumented immigrant in any class or program of study when capacity limitations exist.

~~(b)(c)~~ Boards of trustees may adopt policies regulating admission and graduation of students enrolled in courses mandated under G.S. 17C, North Carolina Criminal Justice Education and Training Standards Commission, or G.S. 17E, North Carolina Sheriffs' Education and Training Standards Commission. These policies may limit enrollment to law enforcement officers or persons sponsored by law enforcement agencies and may require a student to maintain sponsorship by a law enforcement agency until completion of the program. Policies adopted pursuant to this Paragraph shall be published and made available to students and prospective students.

~~(e)(d)~~ Any college suspending or expelling a student for non-academic disciplinary purposes shall record the suspension or

expulsion in the student's educational record. Upon receipt of a written request signed by the student and subject to all applicable privacy laws, each college shall, in accordance with the student's request, inform other colleges and universities of the term and circumstances of the student's non-academic disciplinary suspension or expulsion, if any. Boards of trustees may adopt policies refusing admission to any applicant during any period of time that the student is suspended or expelled from any other educational entity.

*Authority G.S. 115D-1; 115D-5; 115D-20.*

**Note from the Codifier:** The rules published in this Section of the NC Register are emergency rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code. The agency must subsequently publish a proposed temporary rule on the OAH website ([www.ncoah.com/rules](http://www.ncoah.com/rules)) and submit that adopted temporary rule to the Rules Review Commission within 60 days from publication of the emergency rule or the emergency rule will expire on the 60<sup>th</sup> day from publication. This section of the Register may also include, from time to time, a listing of emergency rules that have expired. See G.S. 150B-21.1A and 26 NCAC 02C .0600 for adoption and filing requirements.

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

**Rule-making Agency:** *North Carolina Commission for the Blind*

**Rule Citation:** *10A NCAC 63F .0402*

**Effective Date:** *September 23, 2009*

**Findings Reviewed and Approved by the Codifier:**  
*September 14, 2009*

**Reason for Action:** *Immediate adoption of this rule is required to enable the expenditure of ARRA funds received from the Federal Government.*

**CHAPTER 63 – SERVICES FOR THE BLIND**

**SUBCHAPTER 63F - VOCATIONAL  
REHABILITATION**

**SECTION .0400 - ECONOMIC NEED**

**10A NCAC 63F .0402 ECONOMIC NEEDS POLICIES**

(a) The Division of Services for the Blind shall establish economic need for each eligible consumer either simultaneously with or prior to the provision of those services for which the Division requires a needs test. The financial need of a consumer shall be determined by the financial needs test specified in Rule .0403 of this Section. If the consumer has been determined eligible for Social Security benefits under Title II or XVI of the Social Security Act, the Division of Services for the Blind shall not apply a financial needs tests or require the financial participation of the consumer. A financial needs test shall be applied for all consumers determined eligible to receive services through the Independent Living Rehabilitation Program regardless of SSA Title II or Title XVI eligibility.

(b) The Division of Services for the Blind shall furnish the following services not conditioned on economic need:

- (1) an assessment for determining eligibility and priority for services except those non-assessed services that are provided during an exploration of the applicant's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences or an extended evaluation and an assessment by personnel skilled in rehabilitation technology;

- (2) assessment for determining rehabilitation needs by a qualified vocational rehabilitation counselor;
- (3) vocational rehabilitation counseling and guidance, including information and support services to assist an applicant or consumer in exercising informed choice;
- (4) tuition and supplies for Community Rehabilitation Program training;
- (5) tuition and fees for:
  - (A) community college/college parallel and vocational programs up to the catalog rate; and
  - (B) post-secondary education up to the maximum rate charged for the North Carolina public university system.

The Division shall require eligible consumers applying for training programs listed in Parts (b)(5)(A) and (B) of this Rule to first apply for all available grants and financial aid. The Division may grant an exception to the rate for tuition and required fees for post-secondary education specified in Part (b)(5)(B) of this Rule when necessary to accommodate the special training needs of severely disabled individuals who must be enrolled in special programs designed for severely physically disabled students;

- (6) interpreter services including sign language and oral interpreter services for applicants or consumers who are deaf or hard of hearing and tactile interpreting services for applicants or consumers who are deaf-blind;
- (7) reader services, rehabilitation teaching services, and orientation and mobility services;
- (8) job-related services, including job search, job placement employment assistance and job retention services;
- (9) DSB Rehabilitation Center or fundamental independent living rehabilitation adjustment services including transportation and training supplies contingent on a consumer's participation in the program;
- (10) diagnostic transportation;
- (11) on-the-job training;

- (12) training and associated maintenance and transportation costs for Business Enterprises Program trainees;
- (13) upward mobility training and associated maintenance and transportation costs for Business Enterprises Program trainees;
- (14) equipment and initial stocks and supplies for state-owned (Randolph-Sheppard) vending stands;
- (15) Supported Employment Services;
- (16) personal assistance services provided while a consumer with a disability is receiving vocational rehabilitation services;
- (17) referral and other services designed to assist applicants or consumers with disabilities in securing needed services from other agencies through agreements developed under Section 101(a)(11) of the Act (P.L. 102-569), if such services are not available under this Act and to advise those individuals about client assistance programs established under the Act;
- (18) transition services for students with disabilities that facilitate the achievement of the employment outcome identified in the student's individualized plan for employment except for those services based on economic need; and
- (19) technical assistance and other consultation services to consumers who are pursuing self-employment or telecommuting or establishing a business operation as an employment outcome.

(c) The following services shall be provided by the Division of Services for the Blind and conditioned on economic need:

- (1) physical and mental restoration services (medical services other than diagnostic);
- (2) maintenance for additional costs incurred while participating in rehabilitation;
- (3) transportation in connection with the rendering of any vocational rehabilitation service except where necessary in connection with determination of eligibility or nature and scope of services;
- (4) services to members of a disabled consumer's family necessary to the adjustment or rehabilitation of the consumer with a disability;
- (5) rehabilitation technology including telecommunications, sensory, and other technological aids and devices;
- (6) post-employment services necessary to assist consumers with visual disabilities to maintain, regain or advance in employment except for those services not conditioned on economic need listed in Paragraph (b) of this Rule;
- (7) fees necessary to obtain occupational licenses;

- (8) tools, equipment, and initial stocks and supplies for items listed in Subparagraphs (1) through (7) of this Paragraph;
- (9) expenditures for short periods not to exceed 30 days of medical care for acute conditions arising during the course of vocational rehabilitation, which if not cared for, will constitute a hazard to the achievement of the vocational rehabilitation objective;
- (10) books and other training materials; and
- (11) other goods and services not prohibited by the Act (P.L. 102-569), which can reasonably be expected to benefit an individual with a disability in terms of his employability or independent living skill development.

(d) Notwithstanding Paragraph (c) of this Rule, the following services are not subject to economic need for individuals being served through the Vocational Rehabilitation Program:

- (1) books and other training materials required for post secondary training; and
- (2) rehabilitation technology including telecommunications, sensory aids, and other technological aids and devices for consumers who have an Individualized Plan for Employment (IPE), who are working toward an employment goal that requires specified technology to attain, regain, or maintain employment and who have the capability to use the equipment.

This Paragraph expires July 31, 2011.

~~(d)~~(e) The Division of Services for the Blind shall publish the standard as determined by the Legislature for measuring the financial need of consumers with respect to normal living requirements and for determining their financial ability to meet the cost of necessary rehabilitation services, and for determining the amount of agency supplementation required to procure the necessary services.

*History Note: Authority G.S. 111-28; 34 C.F.R. 361.48; 34 C.F.R. 361.5; 34 C.F.R. 361.52; 34 C.F.R. 361.54; P.L. 102-569, Section 103; S.L. 2009-475;*

*Eff. February 1, 1976;*

*Amended Eff. August 1, 1976;*

*Readopted Eff. November 16, 1977;*

*Amended Eff. January 1, 1996; June 1, 1993; October 1, 1990; April 1, 1990;*

*Temporary Amendment Eff. August 1, 2001;*

*Amended Eff. August 1, 2002;*

*Emergency Amendment Eff. September 23, 2009.*

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## TITLE 23 – DEPARTMENT OF COMMUNITY COLLEGES

**Rule-making Agency:** *State Board of Community Colleges*

**Rule Citation:** *23 NCAC 02D .0329*



**Effective Date:** *September 30, 2009*

**Findings Reviewed and Approved by the Codifier:**  
*September 21, 2009*

**Reason for Action:** *The General Assembly eliminated the \$787,877 previously available to regional institutions for maintenance of plant. To help the colleges that had previously received these funds manage the elimination of these funds, the General Assembly created a Senate Bill (S202 v3) and enacted Session Law 2009-451 which specifically directs the State Board of Community Colleges to adopt emergency rules for the implementation of this new law. Pursuant to SECTION 8.17.(b): "The State Board of Community Colleges shall adopt emergency rules in accordance with G.S. 150B-21.1A for the 2009-2011 fiscal biennium to grant community colleges the flexibility to transfer funds as necessary to minimize the impact of budget reductions on the education program, including the elimination of State Funding for maintenance of plant."*

## **CHAPTER 02 - COMMUNITY COLLEGES**

### **SUBCHAPTER 02D - COMMUNITY COLLEGES: FISCAL AFFAIRS**

## **SECTION .0300 - BUDGETING: ACCOUNTING: FISCAL MANAGEMENT**

### **23 NCAC 02D .0329 MAINTENANCE OF PLANT FLEXIBILITY**

(a) Notwithstanding any other provision of law, a community college that received State funds for maintenance of plant pursuant to G.S. 115D-31.2 for the 2008-2009 fiscal year may use non-instructional State funds allocated to it through the institutional support allotment for maintenance of plant for the 2009-2010 and 2010-2011 fiscal years.

(b) The amount of these funds used for the 2009-2010 fiscal year for maintenance of plant shall not exceed the total amount of maintenance of plant funds received for the 2008-2009 fiscal year. The amount of these funds used for the 2010-2011 fiscal year for maintenance of plant shall not exceed 50 percent of the amount of maintenance of plant funds received for the 2008-2009 fiscal year. This section shall be effective for the 2009-2011 fiscal biennium.

*History Note: Authority G.S. 115D-5; S.L. 2009-451, s. 8.17(b).*

*Emergency Adoption Eff. September 30, 2009.*

*This Section contains information for the meeting of the Rules Review Commission on Thursday, August 20, 2009 9:00 a.m. at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3100. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2<sup>nd</sup> business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.*

**RULES REVIEW COMMISSION MEMBERS****Appointed by Senate**

Jim R. Funderburke - 1st Vice Chair  
David Twiddy - 2nd Vice Chair  
Ralph A. Walker  
Jerry R. Crisp  
Jeffrey P. Gray

**Appointed by House**

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

**COMMISSION COUNSEL**

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

**RULES REVIEW COMMISSION MEETING DATES**

October 15, 2009                      November 19, 2009  
December 17, 2009                      January 21, 2010

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**RULES REVIEW COMMISSION****September 17, 2009****MINUTES**

The Rules Review Commission met on Thursday, September 17, 2009, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Jerry Crisp, Jeff Gray, Jennie Hayman, Clarence Horton, Curtis Venable, and Ralph Walker.

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

The following people were among those attending the meeting:

Anca Grozav	Office of State Budget and Management
Becky Garrett	Board of Recreational Therapy Licensure
John Randall	Board of Examiners for Speech and Language Pathologists and Audiologists
Nahale Kalfas	Board of Examiners for Speech and Language Pathologists and Audiologists
Nancy Pate	Department of Environment and Natural Resources
Karen Waddell	Department of Insurance
Felicia Gore Hoover	Occupational Safety and Health Review Commission
Debra Watts	Department of Environment and Natural Resources
Eric Smith	Department of Environment and Natural Resources
Dan Hirschman	Attorney General's Office
Delores Joyner	State Personnel Commission
Teresa Townsend	Department of Justice
Ellen Lorscheider	Department of Environment and Natural Resources
Michael Scott	Department of Environment and Natural Resources
Sarah Y. Meacham	Attorney General's Office
Linda F. Raynor	Department of Environment and Natural Resources

**APPROVAL OF MINUTES**

The meeting was called to order at 9:08 a.m. with Ms. Hayman presiding. She reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts as required by NCGS 138A-15(e). Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the August 20, 2009 meeting. There were none and the minutes were approved as distributed.

Joe DeLuca introduced Anca Grozav to the Commission. She is the new economic analyst at the Office of State Budget and Management.

**FOLLOW-UP MATTERS**

Prior to the review of the rule from the Criminal Justice Education and Training Standards Commission, Commissioner Gray recused himself and did not participate in any discussion or vote concerning this rule because he lobbied on behalf of the Fraternal Order of Police for enactment of the law to implement the federal concealed carry law for retired law enforcement officers.

12 NCAC 09B .0301 – Criminal Justice Education and Training Standards Commission. The Commission approved the rule upon receiving information that legislation has been enacted giving the Criminal Justice Commission authority to suspend or revoke the certification of instructors.

15A NCAC 09C .0119 – Environmental Management Commission. The Commission approved the rewritten rule submitted by the agency.

Prior to the review of the rules from the Board of Barber Examiners, Commissioner Gray recused himself and did not participate in any discussion or vote concerning these rules because he is legal counsel to the Board.

21 NCAC 06F .0101 – Board of Barber Examiners. The Commission approved the rewritten rule submitted by the agency.

21 NCAC 06Q .0104 – Board of Barber Examiners. The Commission approved the rewritten rule submitted by the agency.

Prior to the review of the rule from the Board of Dental Examiners, Commissioner Crisp recused himself and did not participate in any discussion or vote concerning this rule because his daughter is a dental hygienist.

21 NCAC 16G .1016 – Board of Dental Examiners. The Commission approved the rewritten rule submitted by the agency.

21 NCAC 64 .0212 – Board of Examiners for Speech and Language Pathologists and Audiologists. The Commission approved the rewritten rule submitted by the agency.

21 NCAC 65 .0602 – Board of Recreational Therapy Licensure. The Commission approved the rewritten rule submitted by the agency.

**LOG OF FILINGS**

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

All permanent rules were approved unanimously with the following exceptions:

Social Services Commission rules – All rules were withdrawn by the agency.

15A NCAC 13A .0102, .0103, .0106 – Commission for Public Health - The Commission approved these rules, however the Commission has received requests from more than 10 persons clearly requesting legislative review of the rule and therefore they are subject to a delayed effective date.

15A NCAC 13B .0833 – Commission for Public Health - The Commission objected to provisions in 15A NCAC 13B .0833 (c) and (d) based on ambiguity. It is unclear why the agency requires a permit to be submitted by January 1 – and it is also unclear whether the agency actually enforces this requirement – as required by (c) and (d). In (j) the rule states that permits "issued after January 1 shall be effective only until December 31 of that calendar year." It seems that it would be sufficient to allow an applicant to decide whether it was worth it to submit an application for whatever period of time it would be valid. The agency has not cited sufficient

authority for the provision in (h) to "refuse to process a permit application" if the applicant has unsettled enforcement actions, especially if that application is unrelated to the enforcement action. If there is a basis for refusing to process the permit independent of the enforcement action, the agency is free to act on that basis. But it is not authorized to refuse to issue the permit merely because there is other action pending against the applicant.

15A NCAC 13B .0835, .0836, .0841, .0842 – Commission for Public Health - The Commission objected to these rules based on lack of authority. There is no authority cited for the various provisions in each of those rules requiring a licensed person to perform certain jobs. Although the various occupational licensing acts may actually require that, the rulemaking agency has not been given the authority to set qualifications for performing this work.

Commissioners Crisp, Walker, and Venable voted for the motion to object to Rules.0833, .0835, .0836, .0841, .0842 and to approve the remainder of the rules from the Commission for Public Health. Commissioners Gray and Horton voted against the motion.

Prior to the review of the rules from the State Personnel Commission, Commissioner Crisp recused himself and did not participate in any discussion or vote concerning these rules because he is a state employee.

Prior to the review of the rules from the Office of Administrative Hearings, Commissioner Gray recused himself and did not participate in any discussion or vote concerning these rules because he served as staff attorney for the review of these rules.

#### **COMMISSION PROCEDURES AND OTHER BUSINESS**

The meeting adjourned at 10:40 a.m.

The next scheduled meeting of the Commission is Thursday, October 15, 2009 at 9:00 a.m.

Respectfully Submitted,

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Dana Vojtko  
Publications Coordinator

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#### **LIST OF APPROVED PERMANENT RULES September 17, 2009 Meeting**

##### **CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION**

Certification of Instructors 12 NCAC 09B .0301

##### **ENVIRONMENTAL MANAGEMENT COMMISSION**

Delegation 15A NCAC 02C .0119

##### **PUBLIC HEALTH, COMMISSION FOR**

Definitions 15A NCAC 13A .0102

Petitions - Part 260 15A NCAC 13A .0103

Identification and Listing of Hazardous Wastes - Part 261 15A NCAC 13A .0106

Incorporation by Reference 15A NCAC 13B .0815

Definitions 15A NCAC 13B .0816

Septage Management Firm Permits 15A NCAC 13B .0817

Permit Fees 15A NCAC 13B .0818

Septage Land Application Site Permits 15A NCAC 13B .0819

Septage Detention and Treatment Facility Permits 15A NCAC 13B .0820

<u>Location of Septage Land Application Sites</u>	15A NCAC 13B .0821
<u>Management of Septage Land Application Sites</u>	15A NCAC 13B .0822
<u>Record Keeping for Septage Management Firms</u>	15A NCAC 13B .0823
<u>Sampling and Analysis</u>	15A NCAC 13B .0824
<u>Standards for Septage Treatment and Detention Facilities</u>	15A NCAC 13B .0825
<u>Land Use and Site Closure</u>	15A NCAC 13B .0826
<u>Transportation of Septage</u>	15A NCAC 13B .0827
<u>Revocation of Permits</u>	15A NCAC 13B .0828
<u>Appeals</u>	15A NCAC 13B .0829
<u>Incorporation by Reference</u>	15A NCAC 13B .0830
<u>Definitions</u>	15A NCAC 13B .0831
<u>General Provisions</u>	15A NCAC 13B .0832
<u>Permit Fees</u>	15A NCAC 13B .0834
<u>Location of Septage Land Application Sites</u>	15A NCAC 13B .0837
<u>Management of Septage Land Application Sites</u>	15A NCAC 13B .0838
<u>Record Keeping for Septage Management Firms</u>	15A NCAC 13B .0839
<u>Sampling and Analysis</u>	15A NCAC 13B .0840
<u>Land Use and Site Closure</u>	15A NCAC 13B .0843
<u>Transportation of Septage</u>	15A NCAC 13B .0844
<u>Revocation of Permits</u>	15A NCAC 13B .0845
<u>Appeals</u>	15A NCAC 13B .0846
<u>Pilot Plant Studies</u>	15A NCAC 18C .0714
<u>General Requirement</u>	15A NCAC 18C .1301
<u>Tests, Forms and Reporting</u>	15A NCAC 18C .1302
<u>Facility Oversight</u>	15A NCAC 18C .1303
<u>Disinfection</u>	15A NCAC 18C .2002
<u>Analytical and Monitoring Requirements</u>	15A NCAC 18C .2004
<u>Reporting and Record Keeping Requirements</u>	15A NCAC 18C .2006
<u>Enhanced Filtration and Disinfection</u>	15A NCAC 18C .2007
<u>Disinfectants and Disinfection Byproducts</u>	15A NCAC 18C .2008
<u>Applicability and Residual Disinfectant Concentrations</u>	15A NCAC 18C .2201
<u>Ground Water Rule</u>	15A NCAC 18C .2202

## **REVENUE, DEPARTMENT OF**

<u>Measure of Tax Due</u>	17 NCAC 07B .0105
<u>Research Services</u>	17 NCAC 07B .0115
<u>Taxability of Gross Receipts</u>	17 NCAC 07B .1201
<u>Governmental Sale and Purchases</u>	17 NCAC 07B .1701
<u>Sales to Tire Recappers</u>	17 NCAC 07B .1905
<u>Electricity and Other Fuel</u>	17 NCAC 07B .2101
<u>Contractors, Subcontractors, and Retailer-Contractors</u>	17 NCAC 07B .2602
<u>Pre-Fabricated Buildings: Contractors</u>	17 NCAC 07B .2606
<u>Plumbing: Heating Contractors: Purchases</u>	17 NCAC 07B .2608
<u>Broadcasting Equipment</u>	17 NCAC 07B .3102
<u>Motion Picture Production Firms</u>	17 NCAC 07B .3107
<u>Exempt Prosthetic Devices</u>	17 NCAC 07B .3301

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**RULES REVIEW COMMISSION**

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<u>Exempt Durable Medical Equipment</u>	17	NCAC 07B .3302
<u>Commercial Printers and Publishers</u>	17	NCAC 07B .4701
<u>Taxable Optical Supplies</u>	17	NCAC 07B .5004
<b>BARBER EXAMINERS, BOARD OF</b>		
<u>Physical Structure</u>	21	NCAC 06F .0101
<u>Effect of Notice of Violation on License or Certificate</u>	21	NCAC 06Q .0104
<b>CHIROPRACTIC EXAMINERS, BOARD OF</b>		
<u>Drug Testing</u>	21	NCAC 10 .0504
<b>DENTAL EXAMINERS, BOARD OF</b>		
<u>Dental Hygiene School Extension Facilities and Off Campus...</u>	21	NCAC 16G .0106
<b>SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS, BOARD OF EXAMINERS FOR</b>		
<u>Hearing Screening</u>	21	NCAC 64 .0212
<b>RECREATIONAL THERAPY LICENSURE, BOARD OF</b>		
<u>Renewal Requirements for Licensed Recreational Therapist</u>	21	NCAC 65 .0602
<b>STATE PERSONNEL COMMISSION</b>		
<u>Reduction in Force</u>	25	NCAC 01C .1004
<b>ADMINISTRATIVE HEARINGS, OFFICE OF</b>		
<u>Emergency Waiver</u>	26	NCAC 01 .0105
<u>Order for Mediated Settlement Conference</u>	26	NCAC 03 .0201
<u>Selection of Mediator</u>	26	NCAC 03 .0202
<u>Duties of Parties, Representatives, and Attorneys</u>	26	NCAC 03 .0204
<u>Sanctions for Failure to Attend</u>	26	NCAC 03 .0205
<u>Authority and Duties of Mediators</u>	26	NCAC 03 .0206
<u>Compensation of the Mediator</u>	26	NCAC 03 .0207

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**AGENDA**  
**RULES REVIEW COMMISSION**  
**Thursday, October 15, 2009, 9:00 A.M.**

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-Up Matters:
  - A. Commission for Public Health – 15A NCAC 13B .0833, .0835, .0836, .0841, .0842 (DeLuca)
- IV. Review of Log of Permanent Rule filings for rules filed between August 21, 2009 and September 21, 2009 (attached)
- V. Review of Temporary Rules
  - Department of Labor – 13 NCAC 14 .0303, .0309, .0508, .0901

VI. Commission Business

- Next meeting: November 19, 2009
- 

**Commission Review  
Log of Permanent Rule Filings  
August 21, 2009 through September 21, 2009**

**HHS - HEALTH SERVICE REGULATION, DIVISION OF**

The rules in Chapter 14 concern services provided by the Division of Health Service Regulation.

The rules in Subchapter 14C are Certificate of Need regulations including general provisions (.0100); applications and review process (.0200); exemptions (.0300); appeal process (.0400); enforcement and sanctions (.0500); and criteria and standards for nursing facility or adult care home services (.1100); intensive care services (.1200); pediatric intensive care services (.1300); neonatal services (.1400); hospices, hospice inpatient facilities, and hospice residential care facilities (.1500); cardiac catheterization equipment and cardiac angioplasty equipment (.1600); open heart surgery services and heart-lung bypass machines (.1700); diagnostic centers (.1800); radiation therapy equipment (.1900); home health services (.2000); surgical services and operating rooms (.2100); and stage renal disease services (.2200); computed tomography equipment (.2300); immediate care facility/mentally retarded (ICF/MR) (.2400); substance abuse/chemical dependency treatment beds (.2500); psychiatric beds (.2600); magnetic resonance imaging scanner (.2700); rehabilitation services (.2800); bone marrow transplantation services (.2900); solid organ transplantation services (.3000); major medical equipment (.3100); lithotripter equipment (.3200); air ambulance (.3300); burn intensive care services (.3400); oncology treatment centers (.3500); gamma knife (.3600); positron emission tomography scanner (.3700); acute care beds (.3800); criteria and standards for gastrointestinal endoscopy procedure rooms in licensed health service facilities (.3900); and criteria and standards for hospice inpatient facilities and hospice residential care facilities (.4000).

<u>Performance Standards</u>	10A NCAC	14C	.1403
Amend/*			
<u>Information Required of Applicant</u>	10A NCAC	14C	.1902
Amend/*			
<u>Performance Standards</u>	10A NCAC	14C	.1903
Amend/*			
<u>Support Services</u>	10A NCAC	14C	.1904
Amend/*			
<u>Staffing and Staff Training</u>	10A NCAC	14C	.1905
Amend/*			
<u>Information Required of Applicant</u>	10A NCAC	14C	.2002
Amend/*			
<u>Performance Standards</u>	10A NCAC	14C	.2103
Amend/*			
<u>Definitions</u>	10A NCAC	14C	.2701
Amend/*			

**HHS - DEAF AND HARD OF HEARING, DIVISION OF SERVICES FOR THE**

The rules in Chapter 17 concern the Deaf and Hard of Hearing.

The rules in Subchapter 17D concern interpreter directory and development including interpreter services (.0100); and communications services programs (.0200).

<u>Application Information and Procedures</u>	10A NCAC	17D	.0205
Amend/**			
<u>Eligibility</u>	10A NCAC	17D	.0206
Amend/**			
<u>Certification of Impairment</u>	10A NCAC	17D	.0207
Amend/*			

Financial Eligibility  
Amend/\*

10A NCAC 17D .0210

**HHS - MENTAL HEALTH, DIVISION OF**

The rules in Chapter 27 concern mental health community facilities and services.

The rules in Subchapter 27G are from either the department or the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services including general information (.0100); operation and management rules (.0200); physical plant rules (.0300); facility licensing procedures (.0400); area program requirements (.0500); area authority or county program monitoring of facilities and services (.0600); accreditation of area programs and services (.0700); waivers and appeals (.0800); general rules for infants and toddlers (.0900); partial hospitalization for individuals who are mentally ill (.1100); psychological rehabilitation facilities for individuals with severe and persistent mental illness (.1200); residential treatment for children and adolescents who are emotionally disturbed or who have a mental illness (.1300); day treatment for children and adolescents with emotional or behavioral disturbances (.1400); intensive residential treatment for children and adolescents who are emotionally disturbed or who have a mental illness (.1500); residential treatment staff secure facilities for children or adolescents (.1700); psychiatric residential treatment facilities for children and adolescents (.1900); specialized community residential centers for individuals with developmental disabilities (.2100); before/after school and summer developmental day services for children with or at risk for developmental delays or disabilities, or atypical development (.2200); adult developmental and vocational programs for individuals with developmental disabilities (.2300); developmental day services for children with or at risk for developmental delays or disabilities, or atypical development (.2400); early childhood intervention services (ECIS) for children with an at risk for developmental delays or disabilities, or atypical development and their families (.2500); nonhospital medical detoxification for individuals who are substance abusers (.3100); social setting detoxification for substance abuse (.3200); outpatient detoxification for substance abuse (.3300); residential treatment/rehabilitation for individuals with substance abuse disorders (.3400); outpatient facilities for individuals with substance abuse disorders (.3500); outpatient opioid treatment (.3600); day treatment facilities for individuals with substance abuse disorders (.3700); substance abuse services for DWI offenders (.3800); drug education schools (DES) (.3900); treatment alternatives to street crimes (TASC) (.4000); substance abuse primary prevention services (.4200); therapeutic community (.4300); facility based crises services for individual of all disability groups (.5000); community respite services for individuals of all disability groups (.5100); residential therapeutic (habilitative) camps for children and adolescents of all disability groups (.5200); day activity for individuals of all disability groups (.5400); sheltered workshops for individuals of all disability groups (.5500); supervised living for individuals of all disability groups (.5600); assertive community treatment service (.5700); supportive employment for individuals of all disability groups (.5800); case management for individuals of all disability groups (.5900); inpatient hospital treatment for individuals who have mental illness or substance abuse disorders (.6000); emergency services for individuals of all disability groups (.6100); outpatient services for individuals of all disability groups (.6200); companion respite services for individuals of all disability groups (.6300); personal assistants for individuals of all disabilities groups (.6400); employment assistance programs (.6500); specialized foster care services (.6600); forensic screening and evaluation services for individuals of all disability groups (.6700); prevention services (.6800); consultation and education services (.6900); local management entity response to complaints (.7000); and target population (.7100).

State MH/DD/SA Appeals Panel Administrative Review Proced...  
Amend/\*\*

10A NCAC 27G .0810

State MH/DD/SA Appeals Panel Hearing Procedures  
Amend/\*\*

10A NCAC 27G .0811

State MH/DD/SA Appeals Panel Hearing Decisions  
Amend/\*\*

10A NCAC 27G .0812

**PUBLIC HEALTH, COMMISSION FOR**

The rules in Chapter 41 concern epidemiology health.

The rules in Subchapter 41A deal with communicable disease control and include reporting of communicable diseases (.0100); control measures for communicable diseases including special control measures (.0200-.0300); immunization (.0400); purchase and distribution of vaccine (.0500); special program/project funding (.0600); licensed nursing home services (.0700); communicable disease grants and contracts (.0800); and biological agent registry (.0900).

Infection Prevention - Health Care Settings  
Amend/\*

10A NCAC 41A .0206



## **SOCIAL SERVICES COMMISSION**

The rules in Chapter 70 concern children's services.

The rules in Subchapter 70E concern licensing of family foster homes including foster mutual home assessment (.0100); forms (.0200); definitions (.0300); standards for licensing (.0400); licensing regulations and procedures (.0500); general (.0600); licensing regulations and procedures (.0700); mutual home assessment (.0800); forms (.0900); capacity (.1000); and standards for licensing (.1100).

<u>Responsibility</u>	10A NCAC 70E .0702
Amend/*	
<u>New Licenses</u>	10A NCAC 70E .0703
Amend/*	
<u>Relicensure and Renewal</u>	10A NCAC 70E .0704
Amend/*	
<u>Termination</u>	10A NCAC 70E .0707
Amend/*	
<u>Revocation and Denial</u>	10A NCAC 70E .0708
Amend/**	
<u>Foster Home</u>	10A NCAC 70E .1001
Amend/*	
<u>Medication</u>	10A NCAC 70E .1102
Amend/*	
<u>Criteria for the Family</u>	10A NCAC 70E .1104
Amend/*	
<u>Conflict of Interest</u>	10A NCAC 70E .1105
Amend/*	
<u>Relationship to Supervising Agency</u>	10A NCAC 70E .1107
Amend/*	
<u>Fire and Building Safety</u>	10A NCAC 70E .1108
Amend/*	
<u>Training Requirements</u>	10A NCAC 70E .1117
Amend/*	

The rules in Subchapter 70F concern child placing agencies: maternity homes and children's camps including general provisions (.0100); and organization and administration (.0200).

<u>Governance</u>	10A NCAC 70F .0201
Amend/*	
<u>Responsibilities of the Governing Body</u>	10A NCAC 70F .0202
Amend/*	
<u>Personnel Policies</u>	10A NCAC 70F .0206
Amend/*	

The rules in Subchapter 70G concern child placing agencies and foster care including general provisions (.0400); minimum licensing standards (.0500); and best practice standards (.0300).

<u>Placement Services</u>	10A NCAC 70G .0503
Amend/*	
<u>Out-of-Home Family Services Agreement for Children Receiv...</u>	10A NCAC 70G .0504
Amend/*	
<u>Physical Restraint Holds, Behavior Management and Discipline</u>	10A NCAC 70G .0512
Amend/*	

<u>Critical Incidents</u>	10A	NCAC	70G	.0513
Amend/*				

The rules in Subchapter 70H concern child-placing agencies: adoption including scope (.0200); applicability (.0300); and minimum licensing standards (.0400).

<u>Preplacement Assessment</u>	10A	NCAC	70H	.0405
Amend/*				

<u>Services to Adoptive Applicants and Families</u>	10A	NCAC	70H	.0407
Amend/*				

The rules in Subchapter 70I concern the minimum licensing standards for residential child-care including general licensing requirements (.0100); minimum licensure standards (.0200); organization and administration (.0300); personnel (.0400); service planning (.0500); service delivery (.0600); buildings, grounds and equipment (.0700); best practice standards (.0800); and physical plant (.0900).

<u>Governance</u>	10A	NCAC	70I	.0301
Amend/*				

<u>Discipline and Behavior Management</u>	10A	NCAC	70I	.0613
Amend/*				

<u>Application of Physical Plant Requirements</u>	10A	NCAC	70I	.0901
Amend/*				

<u>Design and Construction</u>	10A	NCAC	70I	.0902
Amend/*				

<u>Vehicles Used for Transportation of Children</u>	10A	NCAC	70I	.0918
Amend/*				

The rules in Subchapter 70J concern minimum licensing standards for specialized residential child care programs including children's foster care camps (.0100); and emergency shelter care program (.0200).

<u>Applicability</u>	10A	NCAC	70J	.0101
Amend/*				

The rules in Subchapter 70K concern residential maternity homes including general provisions (.0100); minimum licensure standards (.0200); and physical plant (.0300).

<u>Personnel</u>	10A	NCAC	70K	.0201
Amend/*				

<u>Program of Care</u>	10A	NCAC	70K	.0204
Amend/*				

<u>Design and Construction</u>	10A	NCAC	70K	.0302
Amend/*				

<u>Kitchen</u>	10A	NCAC	70K	.0307
Amend/*				

<u>Vehicles Used for Transportation of Residents</u>	10A	NCAC	70K	.0318
Adopt/*				

The rules in Chapter 71 concern adult and family support.

The rules in Subchapter 71L concern the maternity home funds.

<u>Approval Criteria</u>	10A	NCAC	71L	.0102
Amend/*				

## ENVIRONMENTAL MANAGEMENT COMMISSION

The rules in Chapter 2 concern environmental management and are promulgated by the Environmental Management Commission or the Department of Environment and Natural Resources.

The rules in Subchapter 2D are air pollution control requirements including definitions and references (.0100); air pollution sources (.0200); air pollution emergencies (.0300); ambient air quality standards (.0400); emission control standards (.0500); air pollutants monitoring and reporting (.0600); complex sources (.0800); volatile organic compounds (.0900); motor vehicle emission control standards (.1000); control of toxic air pollutants (.1100); control of emissions from incinerators (.1200); oxygenated gasoline standard (.1300); nitrogen oxide standards (.1400); transportation conformity (.1500); general conformity for federal actions (.1600); emissions at existing municipal solid waste landfills (.1700); control of odors (.1800); open burning (.1900); transportation conformity (.2000); risk management program (.2100); special orders (.2200); emission reduction credits (.2300); clean air interstate rules (.2400); mercury rules for electric generators (.2500); and source testing (.2600).

<u>Ozone</u>	15A NCAC	02D	.0405
Amend/*			
<u>PM10 Particulate Matter</u>	15A NCAC	02D	.0409
Amend/*			
<u>PM2.5 Particulate Matter</u>	15A NCAC	02D	.0410
Amend/*			

The rules in Subchapter 2L cover groundwater classifications and standards including general considerations (.0100); classifications and groundwater quality standards (.0200); the assignments of underground water classifications (.0300); and risk-based assessment and corrective action for petroleum underground storage tanks (.0400).

<u>Groundwater Quality Standards</u>	15A NCAC	02L	.0202
Amend/*			

The rules in Subchapter 2Q are from the EMC and relate to applying for and obtaining air quality permits and include general information (.0100); fees (.0200); application requirements (.0300); acid rain program requirements (.0400); establishment of an air quality permitting program (.0500); transportation facility requirements (.0600); toxic air pollutant procedures (.0700); exempt categories (.0800); and permit exemptions (.0900).

<u>Final Action</u>	15A NCAC	02Q	.0518
Amend/*			
<u>Public Participation</u>	15A NCAC	02Q	.0521
Amend/**			

## COASTAL RESOURCES COMMISSION

The rules in Chapter 7 are coastal management rules.

The rules in Subchapter 7B are land use planning guidelines including introduction (.0600); land use planning (.0700); CAMA land use plan review and CRC certification (.0800); and CAMA land use plan amendments (.0900).

<u>Cama Land Use Plan Amendments</u>	15A NCAC	07B	.0901
Amend/*			

The rules in Subchapter 7H are from the CRC and are the state guidelines for areas of environmental concern including introduction and general comments (.0100); the estuarine system (.0200); ocean hazard areas (.0300); public water supplies (.0400); natural and cultural resource areas (.0500); development standards (.0600); general permits for construction or maintenance of bulkheads and the placement of riprap for shoreline protection in estuarine and public trust waters (.1100); piers, docks and boat houses in estuarine and public trust waters (.1200); boat ramps along estuarine shorelines and into estuarine and public trust waters (.1300); wooden groins in estuarine and public trust waters (.1400); excavation within or connecting to existing canals, channels, basins, or ditches in estuarine waters, public trust waters, and estuarine shoreline AECs (.1500); aerial and subaqueous utility lines with attendant structures in coastal wetlands, estuarine waters, public trust waters and estuarine shorelines (.1600); emergency work

requiring a CAMA or a dredge and fill permit (.1700); beach bulldozing landward of the mean high-water mark in the ocean hazard AEC (.1800); temporary structures within the estuarine and ocean hazard AECs (.1900); general permit for authorizing minor modifications and repair to existing pier/mooring facilities in estuarine and public trust waters and ocean hazard areas (.2000); marsh enhancement breakwaters for shoreline protection in estuarine and public trust waters (.2100); general permits for construction of freestanding moorings in established waters and public trust areas (.2200); general permits for replacement of existing bridges and culverts in estuarine waters, estuarine shorelines, public trust areas and coastal wetlands (.2300); general permit for placement of riprap for wetland protection in estuarine and public trust waters (.2400); emergency general permit, to be initiated at the discretion of the secretary of the Department of Environment and Natural Resources for replacement of structures, the reconstruction of primary or frontal dune systems, and the maintenance excavation of existing canals, basins, channels, or ditches, damaged, destroyed, or filled in by hurricanes or tropical storms, provided all replacement, reconstruction and maintenance excavation activities conform to all current standards (.2500); general permit for construction of wetland, stream and buffer mitigation sites by the North Carolina Ecosystem Enhancement Program or the North Carolina Wetlands Restoration Program (.2600); and general permit for the construction of riprap sills for wetland enhancement in estuarine and public trust waters (.2700).

Coastal Wetlands

15A NCAC 07H .0205

Amend/\*

**ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF**

The rules in Chapter 9 are from the Division of Forest Resources.

The rules in 9C concern division programs including administration (.0100); forest fire control (.0200); pest control (.0300); forest management (.0400); forest tree seedlings (.0500); custom forestry services (.0600); Bladen Lakes State Forest (.0700); educational state forests (.0800); forest development program (.0900); urban and community forestry (.1000); NC prescribed burning act (.1100); and Dupont State Forest (.1200).

Purpose

15A NCAC 09C .0701

Repeal/\*

Construction

15A NCAC 09C .0703

Repeal/\*

Permits

15A NCAC 09C .0705

Repeal/\*

Hunting

15A NCAC 09C .0707

Repeal/\*

Fishing

15A NCAC 09C .0708

Repeal/\*

Trespass

15A NCAC 09C .0709

Repeal/\*

Firearms

15A NCAC 09C .0710

Repeal/\*

Explosives

15A NCAC 09C .0711

Repeal/\*

Disposal of Refuse, Garbage, Etc.

15A NCAC 09C .0712

Repeal/\*

Flowers, Plants, Minerals, Etc.

15A NCAC 09C .0713

Repeal/\*

Warming Fires

15A NCAC 09C .0721

Repeal/\*

Enforcement

15A NCAC 09C .0726

Repeal/\*

Criminal Penalty

15A NCAC 09C .0727

Repeal/\*

Definitions

15A NCAC 09C .0802

Repeal/\*

<u>Construction</u>	15A NCAC 09C .0803
Repeal/*	
<u>Territorial Scope</u>	15A NCAC 09C .0804
Repeal/*	
<u>Permits</u>	15A NCAC 09C .0805
Repeal/*	
<u>Animals at Large</u>	15A NCAC 09C .0814
Repeal/*	
<u>Boating</u>	15A NCAC 09C .0815
Repeal/*	
<u>Camping</u>	15A NCAC 09C .0816
Repeal/*	
<u>Sporting and Game</u>	15A NCAC 09C .0817
Repeal/*	
<u>Horses</u>	15A NCAC 09C .0818
Repeal/*	
<u>Bicycles</u>	15A NCAC 09C .0819
Repeal/*	
<u>Hunting and Fishing</u>	15A NCAC 09C .0820
Repeal/*	
<u>Explosives</u>	15A NCAC 09C .0821
Repeal/*	
<u>Firearms</u>	15A NCAC 09C .0822
Repeal/*	
<u>Fires</u>	15A NCAC 09C .0823
Repeal/*	
<u>Disorderly Conduct</u>	15A NCAC 09C .0825
Repeal/*	
<u>Intoxicating Beverages and Drugs</u>	15A NCAC 09C .0827
Repeal/*	
<u>Commercial Enterprises</u>	15A NCAC 09C .0828
Repeal/*	
<u>Purpose</u>	15A NCAC 09C .1201
Repeal/*	
<u>Definitions of Terms</u>	15A NCAC 09C .1202
Repeal/*	
<u>Permits</u>	15A NCAC 09C .1203
Repeal/*	
<u>Rock or Cliff Climbing and Rappelling</u>	15A NCAC 09C .1204
Repeal/*	
<u>Bathing or Swimming</u>	15A NCAC 09C .1205
Repeal/*	
<u>Hunting</u>	15A NCAC 09C .1206
Repeal/*	
<u>Fishing</u>	15A NCAC 09C .1207
Repeal/*	
<u>Animals at Large</u>	15A NCAC 09C .1208
Repeal/*	
<u>Boating</u>	15A NCAC 09C .1209
Repeal/*	
<u>Camping</u>	15A NCAC 09C .1210
Repeal/*	

<u>Sporting and Games</u>	15A NCAC 09C .1211
Repeal/*	
<u>Horses</u>	15A NCAC 09C .1212
Repeal/*	
<u>Bicycles</u>	15A NCAC 09C .1213
Repeal/*	
<u>Explosives</u>	15A NCAC 09C .1214
Repeal/*	
<u>Firearms</u>	15A NCAC 09C .1215
Repeal/*	
<u>Fires</u>	15A NCAC 09C .1216
Repeal/*	
<u>Disorderly Conduct</u>	15A NCAC 09C .1217
Repeal/*	
<u>Intoxicating Beverages</u>	15A NCAC 09C .1218
Repeal/*	
<u>Commercial Enterprises</u>	15A NCAC 09C .1219
Repeal/*	
<u>Noise Regulations</u>	15A NCAC 09C .1220
Repeal/*	
<u>Meetings and Exhibitions</u>	15A NCAC 09C .1221
Repeal/*	
<u>ALMS and Contributions</u>	15A NCAC 09C .1222
Repeal/*	
<u>Aviation</u>	15A NCAC 09C .1223
Repeal/*	
<u>Expulsion</u>	15A NCAC 09C .1224
Repeal/*	
<u>Motorized Vehicles: Where Prohibited</u>	15A NCAC 09C .1225
Repeal/*	
<u>Flowers, Plants, Minerals, Etc.</u>	15A NCAC 09C .1226
Repeal/*	
<u>Fees and Charges</u>	15A NCAC 09C .1227
Repeal/*	
<u>Scope</u>	15A NCAC 09C .1228
Adopt/*	
<u>Definitions of Terms</u>	15A NCAC 09C .1229
Adopt/*	
<u>Permits</u>	15A NCAC 09C .1230
Adopt/*	
<u>Rock or Cliff Climbing and Repelling</u>	15A NCAC 09C .1231
Adopt/*	
<u>Bathing or Swimming</u>	15A NCAC 09C .1232
Adopt/*	
<u>Hunting</u>	15A NCAC 09C .1233
Adopt/*	
<u>Fishing</u>	15A NCAC 09C .1234
Adopt/*	
<u>Animals at Large</u>	15A NCAC 09C .1235
Adopt/*	
<u>Boating</u>	15A NCAC 09C .1236
Adopt/*	

<u>Camping</u>	15A NCAC 09C .1237
Adopt/*	
<u>Sports and Games</u>	15A NCAC 09C .1238
Adopt/*	
<u>Horses</u>	15A NCAC 09C .1239
Adopt/*	
<u>Bicycles</u>	15A NCAC 09C .1240
Adopt/*	
<u>Skates, Blades and Boards</u>	15A NCAC 09C .1241
Adopt/*	
<u>Explosives</u>	15A NCAC 09C .1242
Adopt/*	
<u>Firearms</u>	15A NCAC 09C .1243
Adopt/*	
<u>Fires</u>	15A NCAC 09C .1244
Adopt/*	
<u>Disorderly Conduct</u>	15A NCAC 09C .1245
Adopt/*	
<u>Intoxicating Beverages and Drugs</u>	15A NCAC 09C .1246
Adopt/*	
<u>Damage to Buildings, Structures and Signs</u>	15A NCAC 09C .1247
Adopt/*	
<u>Commercial Enterprises</u>	15A NCAC 09C .1248
Adopt/*	
<u>Noise Regulations</u>	15A NCAC 09C .1249
Adopt/**	
<u>Meetings and Exhibitions</u>	15A NCAC 09C .1250
Adopt/*	
<u>ALMS and Contributions</u>	15A NCAC 09C .1251
Adopt/*	
<u>Aviation</u>	15A NCAC 09C .1252
Adopt/*	
<u>Expulsion</u>	15A NCAC 09C .1253
Adopt/**	
<u>Motorized Vehicles</u>	15A NCAC 09C .1254
Adopt/*	
<u>Flowers, Plants, Minerals, Etc.</u>	15A NCAC 09C .1255
Adopt/*	
<u>Trash and Debris</u>	15A NCAC 09C .1256
Adopt/*	
<u>Fees and Charges</u>	15A NCAC 09C .1257
Adopt/**	
<u>Hours of Operation</u>	15A NCAC 09C .1258
Adopt/*	
<u>Enforcement</u>	15A NCAC 09C .1259
Adopt/*	
<u>Construction</u>	15A NCAC 09C .1260
Adopt/**	

**PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS, BOARD OF EXAMINERS FOR**

The rules in Chapter 50 are from the Plumbing, Heating and Fire Sprinkler Contractors including rules about organization (.0100);

forms (.0200); examinations (.0300); general procedures (.0400); policy statements and interpretative rules (.0500); contested cases (.1000); fees (.1100); petitions for rules (.1200); declaratory rulings (.1300); and continuing education (.1400).

<u>Obtaining Forms</u>	21	NCAC	50	.0202
Amend/*				
<u>Qualifications Determined by Examination</u>	21	NCAC	50	.0301
Amend/*				
<u>Applications: Issuance of License</u>	21	NCAC	50	.0306
Amend/*				
<u>Refund of Deposit</u>	21	NCAC	50	.0307
Amend/*				
<u>Review of Examinations</u>	21	NCAC	50	.0308
Amend/*				
<u>Expanding Scope of License</u>	21	NCAC	50	.0309
Amend/*				
<u>Application for Licensure by Reciprocity</u>	21	NCAC	50	.0310
Amend/*				
<u>Permits</u>	21	NCAC	50	.0402
Amend/*				
<u>Active Employment</u>	21	NCAC	50	.0404
Amend/*				
<u>Multiple Licenses</u>	21	NCAC	50	.0405
Amend/*				
<u>Change of Trade Name</u>	21	NCAC	50	.0408
Amend/*				
<u>Air Conditioning Further Defined</u>	21	NCAC	50	.0501
Amend/*				
<u>General Supervision and Standard of Competence</u>	21	NCAC	50	.0505
Amend/**				
<u>Minor Repairs and Alterations</u>	21	NCAC	50	.0506
Amend/*				
<u>Heating: Group 3 License Required</u>	21	NCAC	50	.0508
Amend/*				
<u>Fire Sprinkler Inspection Technician License</u>	21	NCAC	50	.0513
Amend/*				
<u>Fire Sprinkler Inspection Contractor License</u>	21	NCAC	50	.0514
Amend/*				
<u>Fire Sprinkler Maintenance Technician License</u>	21	NCAC	50	.0515
Amend/*				
<u>Residential Fire Sprinkler Installation License</u>	21	NCAC	50	.0516
Adopt/*				
<u>Informal Procedures</u>	21	NCAC	50	.1006
Amend/*				
<u>License Fees</u>	21	NCAC	50	.1102
Amend/*				
<u>Fees for Copies or Records and Returned Checks</u>	21	NCAC	50	.1104
Amend/*				
<u>Continuing Education Requirements</u>	21	NCAC	50	.1401
Amend/*				
<u>Exemptions and Credits</u>	21	NCAC	50	.1402
Amend/*				
<u>Course Requirements and Limitations</u>	21	NCAC	50	.1404



<u>Approval of Courses</u> Amend/*	21	NCAC	50	.1405
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**Commission Review**  
***Log of Temporary Rule Filings***  
***October 6, 2009***

**LABOR, DEPARTMENT OF**

The rules in Chapter 14 are from the apprenticeship and training division including general provisions (.0100); requirements and qualifications for apprenticeship (.0200); apprenticeship registration (.0300); approval/veterans' training allowances (.0400); de-registration or withdrawal of approval (.0500); complaints (.0600); emergency procedures (.0700); equal opportunity in apprenticeship (.0800); and apprenticeship fees (.0900).

<u>Registration of Apprentice and Agreement</u> Amend/*	13	NCAC	14	.0303
<u>Certificate of Completion</u> Amend/*	13	NCAC	14	.0309
<u>De-Registration or Cancellation of Agreement</u> Amend/*	13	NCAC	14	.0508
<u>Apprenticeship Registration and Annual Fees</u> Adopt/*	13	NCAC	14	.0901

*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.*

**OFFICE OF ADMINISTRATIVE HEARINGS**

**Chief Administrative Law Judge**  
**JULIAN MANN, III**

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

**ADMINISTRATIVE LAW JUDGES**

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

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<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>ALCOHOL BEVERAGE CONTROL COMMISSION</u></b>				
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	
N.C. Alcoholic Beverage Control Commission v. Roberta White Bridges T/A Christina Restaurant and Catering	09 ABC 1899	May	07/28/09	
<b><u>CRIME VICTIMS COMPENSATION</u></b>				
Mary D. Malone v. State of North Carolina, Department of Crime Control., Victims Compensations Services	08 CPS 2463	Gray	07/09/09	
Ricky F. Smith v. Crime Control and Public Safety	08 CPS 2582	May	08/06/09	
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	07 DHR 0302	Lassiter	07/14/09
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## CONTESTED CASE DECISIONS

### Personnel Registry Sec

Envisions of Life LLC v. Hearing Office – 05 Division of Medical Assistance	08 DHR 0967	Lassiter	07/01/09	
Cynthia Curtis v. Department of Health and Human Services, Division of Health Service Regulation	08 DHR 1485	Brooks	05/07/09	24:07 NCR 408
Choices Group Home Inc., Victor Vega v. N.C. Department of Health and Human Service Regulation	08 DHR 2404	Gray	07/16/09	
Choices Group Home Inc, Victor Vega v. Office of Administrative Hearings, Department of Health and Human Services	08 DHR 2512	Gray	07/16/09	
Pepper Dawn Kirk-McLendon Peppermint Daycare v. N.C. Department of Health and Human Services, Division of Child Development	08 DHR 2571	Mann	07/07/09	24:07 NCR 416
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	
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### **DEPARTMENT OF CORRECTION**

Tamika Richardson v. North Carolina Sheriff's Education and Training Standards Commission	08 DOJ 2403	Elkins	05/07/09	24:07 NCR 437
Rufus Thomas Blackwell, III, v. (N.C. Department of Correction) Department of Payroll & Overpayment Manager	09 DOC 1296	Overby	07/08/09	

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## CONTESTED CASE DECISIONS

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Robert Allen Sartori v. K Dufault, C. Bray WCI Mail, Staff Department of Correction	09 DOC 3121	Gray	07/01/09	
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### **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	

### **DEPARTMENT OF TRANSPORTATION**

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

Old Mill Forestry, LLC v. N.C. Department of Environment and Natural Resources, Division of Water Quality	08 EHR 1806	Lassiter	05/08/09	
Cherokee County Health Department James Pann(managing member, Creek Ridge Holdings, LLC) v. N.C. Department of Environment and Natural Resources	08 EHR 2986	Gray	05/27/09	
John 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	
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### **MISCELLANEOUS**

Rodney Dale v. Judge Angela Hoyle	09 MIS 2704	May	06/09/09	
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### **OFFICE OF STATE PERSONNEL**

Alvita C. Byers v. Elizabeth Cox, The office of Human Resources and The North Carolina School of the Arts	07 OSP 1514	Brooks	05/20/09	24:07 NCR 396
Julie Norris Watson v. NC DPI	08 OSP 0541	Brooks	05/22/09	
Sharon Annette Mercer v. N.C. Division of Motor Vehicles	08 OSP 2293	Webster	08/14/09	24:07 NCR 447
Jody Lynn Hinson v. N.C. Department of Crime Control and Public Safety, N.C. Highway Patrol	08 OSP 2409	Overby	06/03/09	
Denise Vee v. Cumberland County Department of Public Health	08 OSP 2955	Elkins	07/22/09	24:07 NCR 465
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**

Sarah D. Larson v. N.C. Department of the Secretary of State	08 SOS 1200	Overby	06/04/09	24:07 NCR 478
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**

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**CONTESTED CASE DECISIONS**

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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