

NORTH CAROLINA REGISTER

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November 2, 2009

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Contact List for Rulemaking Questions or Concerns

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

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

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NC Association of County Commissioners
215 North Dawson Street (919) 715-2893
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Legislative Process Concerning Rule-making

Joint Legislative Administrative Procedure Oversight Committee
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NORTH CAROLINA REGISTER
Publication Schedule for January 2009 – December 2009

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 th day from publication in the Register
23:13	01/02/09	12/08/08	01/17/09	03/03/09	03/20/09	05/01/09	05/2010	09/29/09
23:14	01/15/09	12/19/08	01/30/09	03/16/09	03/20/09	05/01/09	05/2010	10/12/09
23:15	02/02/09	01/09/09	02/17/09	04/03/09	04/20/09	06/01/09	05/2010	10/30/09
23:16	02/16/09	01/26/09	03/03/09	04/17/09	04/20/09	06/01/09	05/2010	11/13/09
23:17	03/02/09	02/09/09	03/17/09	05/01/09	05/20/09	07/01/09	05/2010	11/27/09
23:18	03/16/09	02/23/09	03/31/09	05/15/09	05/20/09	07/01/09	05/2010	12/11/09
23:19	04/01/09	03/11/09	04/16/09	06/01/09	06/22/09	08/01/09	05/2010	12/27/09
23:20	04/15/09	03/24/09	04/30/09	06/15/09	06/22/09	08/01/09	05/2010	01/10/10
23:21	05/01/09	04/09/09	05/16/09	06/30/09	07/20/09	09/01/09	05/2010	01/26/10
23:22	05/15/09	04/24/09	05/30/09	07/14/09	07/20/09	09/01/09	05/2010	02/09/10
23:23	06/01/09	05/08/09	06/16/09	07/31/09	08/20/09	10/01/09	05/2010	02/26/10
23:24	06/15/09	05/22/09	06/30/09	08/14/09	08/20/09	10/01/09	05/2010	03/12/10
24:01	07/01/09	06/10/09	07/16/09	08/31/09	09/21/09	11/01/09	05/2010	03/28/10
24:02	07/15/09	06/23/09	07/30/09	09/14/09	09/21/09	11/01/09	05/2010	04/11/10
24:03	08/03/09	07/13/09	08/18/09	10/02/09	10/20/09	12/01/09	05/2010	04/30/10
24:04	08/17/09	07/27/09	09/01/09	10/16/09	10/20/09	12/01/09	05/2010	05/14/10
24:05	09/01/09	08/11/09	09/16/09	11/02/09	11/20/09	01/01/10	05/2010	05/29/10
24:06	09/15/09	08/24/09	09/30/09	11/16/09	11/20/09	01/01/10	05/2010	06/12/10
24:07	10/01/09	09/10/09	10/16/09	11/30/09	12/21/09	02/01/10	05/2010	06/28/10
24:08	10/15/09	09/24/09	10/30/09	12/14/09	12/21/09	02/01/10	05/2010	07/12/10
24:09	11/02/09	10/12/09	11/17/09	01/02/10	01/20/10	03/01/10	05/2010	07/30/10
24:10	11/16/09	10/23/09	12/01/09	01/15/10	01/20/10	03/01/10	05/2010	08/13/10
24:11	12/01/09	11/05/09	12/16/09	02/01/10	02/22/10	04/01/10	05/2010	08/28/10
24:12	12/15/09	11/20/09	12/30/09	02/15/10	02/22/10	04/01/10	05/2010	09/11/10

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY: This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.



**EXECUTIVE ORDER NO. 24
REGARDING GIFTS TO STATE EMPLOYEES**

WHEREAS, those in State government who do the work of the public must continuously ensure that their actions reflect the ethical standards that are essential to maintaining the public's trust; and

WHEREAS, N.C. Gen. Stat. 133-32 makes it unlawful for a State employee to willfully receive or accept any gift or favor from a contractor, subcontractor, or supplier of the State agency if the State employee is involved in (1) preparing plans, specifications, or estimates for public contracts; (2) awarding or administering public contracts; or (3) inspecting or supervising construction; and

WHEREAS, N.C. Gen. Stat. 133-32 applies to a limited group of State employees; and

WHEREAS, no State employee should be permitted to accept gifts or favors from contractors working or seeking to work with the employee's agency; and

WHEREAS, as State employees continue to work to provide excellent service to the State, it is imperative that they understand the legal restrictions to accepting gifts and favors and the consequences for such actions.

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

1. North Carolina General Statute 133-32 shall apply to all employees in the Cabinet agencies and the Office of the Governor.
2. Within the next 30 days, the secretary of each executive branch agency shall do the following:
 - a. Review this Executive Order with the employees in their respective agency and inform all employees that violation of this Order may subject the employees to disciplinary action.

- b. Review N.C. Gen. Stat. 133-32 with all employees in their respective agency and inform all employees that violation of N.C. Gen. Stat. 133-32 is a Class 1 misdemeanor and may subject the employees to disciplinary action.
 - c. Review with all employees in their respective agency any additional policies or rules that the agency may have regarding the acceptance of gifts, meals, or favors by employees in the agency.
 - d. Distribute this Executive Order, N.C. Gen. Stat. 133-32, and any relevant agency policies to all employees in the agency and require employees to certify, in writing, that they have received a copy of and are responsible for complying with this Executive Order, N.C. Gen. Stat. 133-32, and any internal policies.
 - e. As a part of new employee orientation for their respective agency and in conjunction with the Office of State Personnel, establish a process to provide a copy of all documents specified in Section 2d above to new employees and require new employees to certify, in writing, that they have received a copy of and are responsible for complying with the provisions of this Executive Order, N.C. Gen. Stat. 133-32, and any internal policies.
 - f. Provide a report to the Governor's Ethics Officer concerning compliance with the directives of this Executive Order and any recommendations for changes to policies or state law regarding acceptance of gifts by State employees.
3. The Office of State Personnel shall assist the secretaries of the executive agencies to ensure that the documents specified in Section 2d above are provided to employees through the new employee orientation process and that new employees certify that they have received a copy of such documents as provided in Section 2e above.
4. The State Ethics Commission shall discuss this Executive Order and N.C. Gen. Stat. 133-32 in their training for State employees who are covered by the Ethics Act.
5. The Department of Administration shall include a provision regarding this Executive Order and N.C. Gen. Stat. 133-32 in all new RFPs, the North Carolina General Contract Terms and Conditions, and all other contracts under the authority of the Department of Administration, the Department of Transportation, the Office of Information Technology Services, and all other cabinet agencies to inform contractors of the requirements of this Order and the statute. The department shall also notify current contractors regarding the provisions of this Order and N.C. Gen. Stat. 133-32.
6. The Board of Governors of the University of North Carolina System, the State Board of Community Colleges, and each head of the Council of State agencies are encouraged and invited to participate in this Executive Order.

This Executive Order shall be effective immediately and shall remain in effect until rescinded. This Executive Order shall supplement, but shall not supersede, existing agency policies regarding the acceptance of gifts and favors by agency employees.

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 first day of October 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

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 25 AMENDING EXECUTIVE ORDER NO. 12, STREETSAFE TASK FORCE

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

Section 1 of Executive Order 12, StreetSafe Task Force, issued by Governor Beverly Eaves Perdue on May 1, 2009, is hereby amended as follows:

Section 1. Establishment

The Governor's Task Force on StreetSafe: Stop Repeat Offenders (hereinafter the "Task Force" or "StreetSafe Task Force") is hereby established. Task Force members shall be appointed by the Governor and shall serve at the pleasure of the Governor. The StreetSafe Task Force shall consist of at least 15 members, but no more than 40 members, including ex-officio members.

1. The following shall serve as ex-officio members of the Task Force:
2. The following additional members shall be appointed by the Governor from the following public and private agencies and categories of qualification. They shall serve for a term of two (2) years.
 - n. A large business owner or representative of a large business.
 - s. Five members shall serve at-large.

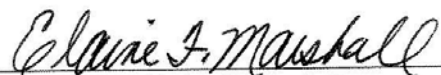
Except as amended herein, Executive Order No. 12, remains in full force and is effective until May 1, 2011, pursuant to N.C. Gen. Stat. § 147-16.2, or until rescinded.

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 fifth day of October 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



EXECUTIVE ORDER NO. 26
REESTABLISHING THE GOVERNOR'S TASK FORCE
FOR HEALTHY CAROLINIANS

WHEREAS, North Carolina is blessed with some of the finest medical facilities and medical care found anywhere in the world; and

WHEREAS, despite these resources, many North Carolinians die or are disabled prematurely every year due to preventable causes, exacting an enormous economic, social, and personal toll upon our state; and

WHEREAS, most premature deaths and disabilities are preventable by relatively simple changes in behavior that would reduce the causes of these deaths and disabilities, including diabetes, stroke, and obesity; and

WHEREAS, in order to provide to the citizens of our State a way to prevent these tragic losses, a realistic plan needs to be developed that communities and individual citizens may implement to improve their health status and avoid premature death and disability; and

WHEREAS, this plan must promote the advantages of healthy living and disease prevention.

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

Section 1. **Establishment**

The Governor's Task Force for Healthy Carolinians ("Task Force") is hereby established.

Section 2. **Membership**

The Task Force shall have no more than 44 members. The Governor shall appoint 40 members, including the Chair. The Vice Chair shall be elected by the Task Force. The President Pro Tempore of the Senate shall be invited to appoint two members of the Senate, one of whom serves on the Public Health Study Commission. The Speaker of the House of Representatives shall be invited to appoint two members of the House, one of whom serves on the Public Health Study Commission.

Each member of the Task Force shall be appointed for terms of four years, and will serve until appointment of a successor. Members on the Task Force shall serve at the pleasure of the appointing authority. A vacancy on the Task Force shall be filled by the original appointing authority.

The Governor shall appoint members of the Task Force as follows:

- a. The Secretary of the Department of Health and Human Services (DHHS), or designee;
- b. The State Health Director, DHHS Division of Public Health, or designee;
- c. The Director of the DHHS Office of Research, Demonstrations, and Rural Health Development, or designee;
- d. The Commissioner of the North Carolina Department of Agriculture and Consumer Services, or designee;
- e. The Superintendent of Public Instruction, or designee;
- f. The Dean of the School of Public Health, University of North Carolina at Chapel Hill, or designee;
- g. The Chair of the Department of Public Health, East Carolina School of Medicine, or designee;
- h. A representative of the Association of North Carolina Boards of Health;
- i. A representative of the North Carolina Hospital Association;
- j. A representative of the North Carolina Medical Society;
- k. A representative of the North Carolina Academy of Family Physicians;
- l. A representative of the North Carolina Association of Local Health Directors;
- m. A representative of the North Carolina Chamber;
- n. A representative of the North Carolina Commission on Indian Affairs;
- o. A representative of the North Carolina Association of County Commissioners;
- p. A representative of the National Association for the Advancement of Colored People;
- q. A representative of the DHHS Mental Health, Developmental Disabilities, and Substance Abuse Services Division;
- r. A representative of the North Carolina Dental Society;
- s. A representative of the North Carolina Nurses Association;
- t. A representative of the Old North State Medical Society;
- u. A representative of the North Carolina Public Health Association;
- v. A representative of the DHHS Office of Minority Health;
- w. A representative of the North Carolina Health and Wellness Trust Fund;
- x. A representative of the North Carolina Institute of Medicine;
- y. A representative of the North Carolina Alliance for Health;
- z. A representative of North Carolina Prevention Partners;
- aa. A representative of a statewide organization whose primary goal is to promote physical activity;
- bb. A representative of a local Healthy Carolinians partnership; and
- cc. Twelve at-large members, including a representative of local education, religious, older adults, and non-profit organizations.

Section 3. Duties

- a. The Task Force shall advise the Secretary of the Department of Health and Human Services and the State Health Director on policies, programs, and resources needed to improve the population health in North Carolina.
- b. The Task Force shall develop and deliver to the Governor no later than December 31, 2010, a list of health objectives for the year 2020 for the citizens of the State. The health objectives shall be designed to do the following:
 - 1. Increase the span of healthy life of the citizens of North Carolina;
 - 2. Eliminate health disparities and achieve health equity;
 - 3. Promote access to preventive health services;
 - 4. Protect the public's health;
 - 5. Foster positive and supportive living and working conditions in our communities;
and
 - 6. Support individuals to develop the capacities and skills to achieve healthy living.

Such health objectives must be measurable, include measures to benefit the State's disparate populations, emphasize individual and community intervention, emphasize the value of health promotion and disease prevention in our society, and be achievable by the year 2020.

- c. The Task Force shall periodically review the state health objectives, make amendments as necessary, and report progress toward achieving the objectives to the Governor, Secretary of DHHS, and the State Health Director.
- d. The Task Force shall have the power to designate local Healthy Carolinians partnerships, comprised of representatives of public and private organizations, and community members and leaders, that support the goals of the Task Force.
- e. The Task Force shall provide encouragement and guidance to communities establishing their own local groups to accomplish the objectives developed by the Task Force.
- f. The Task Force shall review the Preventative Health and Health Services Block Grant annually and carry out the necessary functions of the advisory committee as required by federal law.

Section 4. Meetings

- a. The Task Force shall meet regularly at the call of the Chair or the Governor.
- b. A simple majority of the Task Force members shall constitute a quorum for the purpose of transacting the business of the Task Force.

Section 5. Administration


- a. Administrative support and meeting-related expenses for the Task Force shall be provided by the Department of Health and Human Services.
- b. Each Cabinet department shall make every reasonable effort to cooperate with the Task Force in carrying out the provisions of this Order.

Section 6. Effect and Duration


This Executive Order shall be effective immediately. It shall remain in effect until October 7, 2013, pursuant to N.C. Gen. Stat. § 147-16.2, or until rescinded. This Order replaces Executive Order No. 91 dated September 27, 2005, and Executive Order No. 115 dated January 5, 2007.

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 eighth day of October 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

NOTICE OF RULE MAKING PROCEEDINGS AND PUBLIC HEARING

NORTH CAROLINA BUILDING CODE COUNCIL

Notice of Rule-making Proceedings is hereby given by NC Building Code Council in accordance with G.S. 150B-21.5(d).

Citation to Existing Rule Affected by this Rule-Making: *North Carolina Administrative, Building, Fuel Gas, Plumbing and Residential Codes.*

Authority for Rule-making: *G.S. 143-136; 143-138.*

Reason for Proposed Action: *To incorporate changes in the NC State Building Codes as a result of rulemaking petitions filed with the NC Building Code Council and to incorporate changes proposed by the Council.*

Public Hearing: *December 7, 2009, 1:00PM, NC Department of Insurance, First Floor Classroom, 322 Chapanoke Road, Raleigh, NC 27603*

Comment Procedures: *Written comments may be sent to Chris Noles, Secretary, NC Building Code Council, NC Department of Insurance, 322 Chapanoke Road, Suite 200, Raleigh, NC 27603. Comment period expires on January 2, 2010.*

Statement of Subject Matter:

1. Request by Jeff Griffin, Mecklenburg County, to amend the 2009 NC Building Code. The proposed amendment is as follows:

Section 3103 Temporary Structures

3103.1 General. The provisions of this section apply to structures erected for a period of less than 180 days. ~~Tents and other membrane structures erected for a period of less than 180 days shall comply with the International Fire Code.~~ Those erected for a longer period of time shall comply with ~~the~~ all applicable sections of ~~this~~ the Building Code.

Exception: Tents, canopies and membrane structures erected for a period of less than 180 days shall comply with Chapter 24 of the International Fire Code.

2. Request by Victor Hines, Jr., to amend the 2009 NC Plumbing Code. The proposed amendment is as follows:

608.8.2 Delete “~~All other non-potable water systems~~” from Chart and substitute the following as free text: “The color purple shall be used to identify reclaimed, rain and gray water distribution systems”

The following substitute modification was introduced to amend the 2009 NC Plumbing Code with the 2009 IPC language.

608.8 Identification of potable and nonpotable water. In all buildings where ~~two or more water distribution systems, one potable water and the other nonpotable water systems~~ are installed, ~~each system~~ the piping conveying the nonpotable water shall be identified either by color marking or metal tags in accordance with Sections 608.8.1 through 608.8.3. All nonpotable water outlets such as hose connections, open ended pipes, and faucets shall be identified at the point of use for each outlet with the words, “Nonpotable – not safe for drinking.” The words shall be indelibly printed on a tag or sign constructed of corrosion-resistant waterproof material or shall be indelibly printed on the fixture. The letters of the words shall be not less than 0.5 inches in height and color in contrast with the background on which they are applied.

608.8.1 Information. Pipe identification shall include the contents of the piping system and an arrow indicating the direction of flow. Hazardous piping systems shall also contain information addressing the nature of the hazard. Pipe identification shall be repeated at maximum intervals of 25 feet (7620 mm) and at each point where the piping passes through a wall, floor or roof. Lettering shall be readily observable within the room or space where the piping is located.

608.8.2 Color. The color of the pipe identification shall be discernable and consistent throughout the building. See Table 608.8.2 for color identification. The color purple shall be used to identify reclaimed, rain and gray water distribution systems.

Table 608.8.2 Identification Color – Deleted.

3. Request by Victor Hines, Jr., to amend the 2009 NC Plumbing Code. The proposed amendment is as follows:

701.10 Plastic Pipe in High-Rise Buildings: Plastic Pipe and Fittings may be used for drain, waste and vent in buildings in which the top most occupied floor does not exceed 75 feet in height.

1101.10 Plastic Pipe in High-Rise Buildings: Plastic Pipe and Fittings may be used for storm drainage in buildings in which the top most occupied floor does not exceed 75 feet in height.

The following substitute modification was introduced to amend the 2009 NC Plumbing Code with the 2009 IPC language.

702.1 Above-ground sanitary drainage and vent pipe. Above-ground soil, waste and vent pipe shall conform to one of the standards listed in Table 702.1.

Exception: Plastic pipe shall not be used for drain, waste and vents in buildings in which the top occupied floor exceeds 75 feet in height.

702.4 Fittings. Pipe fittings shall be approved for installation with the piping material installed and shall conform to the respective pipe standards or one of the standards listed in Table 702.4.

Exception: Plastic pipe shall not be used for drain, waste and vents in buildings in which the top occupied floor exceeds 75 feet in height.

1102.2 Inside storm drainage conductors. Inside storm drainage conductors installed above ground shall conform to one of the standards listed in Table 702.1.

Exception: Plastic pipe shall not be used for storm drainage conductors in buildings in which the top occupied floor exceeds 75 feet in height.

1102.7 Fittings. Pipe fittings shall be approved for installation with the piping material installed, and shall conform to the respective pipe standards or one of the standards listed in Table 1102.7. The fittings shall not have ledges, shoulders or reductions capable of retarding or obstructing flow in the piping. Threaded drainage pipe fittings shall be of the recessed drainage type.

Exception: Plastic pipe shall not be used for storm drainage conductors in buildings in which the top occupied floor exceeds 75 feet in height.

4. Request by Jeff Griffin, Mecklenburg County, to amend the 2009 NC Residential Code. The proposed amendment is as follows:

Section R404.1 Concrete and Masonry Foundation Walls. Concrete and masonry foundation walls shall be selected and constructed in accordance with the provisions of Section R404 or in accordance with ACI 318, ACI 332, NCMA TR68-A or ACI 530/ASCE 5/TMS 402 or other approved structural standards. When ACI 318, ACI 332 or ACI 530/ASCE 5/TMS 402 or the provisions of Section R404 are used to design concrete or masonry foundation walls, project drawings, typical details and specifications are not required to bear the seal of the architect or engineer responsible for design, unless otherwise required by the state law of the jurisdiction having authority.

Delete the second paragraph without substitution:

~~Foundation walls that meet all of the following shall be considered laterally supported:~~

- ~~1. Full basement floor shall be 3.5 inches (89mm) thick concrete slab poured tight against the bottom of the foundation wall.~~
- ~~2. Deleted.~~
- ~~3. Bolt spacing for the sill plate shall be no greater than 36 inches (914mm).~~
- ~~4. Deleted.~~
- ~~5. Where foundation walls support unbalanced load on opposite sides of the building, such as a daylight basement, the building aspect ratio, L/W, shall not exceed the value specified in Table R404.1(3). For such foundation walls, the rim board shall be attached to the sill with a 20-gage metal angle clip at 24" on center, with five 8d nails per leg, or an approved connector supplying 230 pounds per linear foot (3.336kN/m) capacity.~~

Also Delete Table R404.1(3) referenced above.

5. Request by Robert Wydra, with A Safe Child, to amend the 2009 NC Residential Code. The proposed amendment is as follows:

Add a new AG105.2 Item 9.3:

9.3 Mesh pool fencing that complies with ASTM F2286-05.

Change current 9.3 to 9.4 and last line to “9.1, 9.2 or 9.3 described above”.

6. Request by Alan Perdue, Building Code Council to amend the 2009 NC Fuel Gas Code, Section 406.7 as follows:

406.7 Purging. Purging of piping shall comply with Sections 406.7.1 through 406.7.4.

406.7.1 Removal from service. Where gas piping is to be opened for servicing, addition, or modification, the section to be worked on shall be turned off from the gas supply at the nearest convenient point, and the line pressure vented to the outdoors, ~~or to ventilated areas of sufficient size to prevent accumulation of flammable mixtures.~~ The remaining gas in this section of pipe shall be displaced with an inert gas as required by Table 406.7.1.

Exception: If the line pressure cannot be vented to the outdoors; the building and all effected spaces shall be evacuated of personnel not purging the gas lines, quantities of flammable gas shall not exceed 25% of the lower explosive limit as measured by a combustible gas detector, eliminate all ignition sources and provide adequate ventilation to prevent accumulation of flammable gases.

TABLE 406.7.1
LENGTH OF PIPING REQUIRING PURGING WITH
INERT GAS FOR SERVICING OR MODIFICATION

NOMINAL PIPE SIZE (Inches)	LENGTH OF PIPING REQUIRING PURGING
2½	> 50 feet
3	> 30 feet
4	> 15 feet
6	> 10 feet
8 or larger	Any length

For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm.

406.7.2 Placing in operation. Where piping full of air is placed in operation, the air in the piping shall be displaced with fuel gas, except where such piping is required by Table 406.7.2 to be purged with an inert gas prior to introduction of fuel gas. The fuel gas flow shall be continued without interruption until the vented gas is free of air. After purging, the vent shall then be closed. Where required by Table 406.7.2, the air in the piping shall first be displaced with an inert gas, and the inert gas shall then be displaced with fuel gas.

TABLE 406.7.2
LENGTH OF PIPING REQUIRING PURGING WITH
INERT GAS BEFORE PLACING IN OPERATION

NOMINAL PIPE SIZE (Inches)	LENGTH OF PIPING REQUIRING PURGING
3	> 30 feet
4	> 15 feet
6	> 10 feet
8 or larger	Any length

For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm.

406.7.3 Discharge of purged gases. The open end of piping systems being purged shall not discharge into confined spaces or areas where quantities of flammable gas can exceed 25% of the lower explosive limit as measured by a combustible gas detector. All potential sources of ignition shall be identified and eliminated or controlled. Precautions shall be taken to maintain the concentration of the flammable gas below 25% of the lower explosive limits, such as adequate ventilation, control of the purging rate and other measures, as appropriate.

406.7.4 Placing appliances and equipment in operation. After the piping system has been placed in operation, all appliances and equipment shall be purged and then placed in operation, as necessary.

406.7.5 Personnel Training. Personnel performing purging operation shall be trained to the hazards associated with purging and shall not rely on odor when monitoring the concentration of combustible gas.

This Petition for Rulemaking was adopted as an Emergency Rule to be effective 10/15/09. The notice and text has been posted on the NCDOI website at the following link.

http://www.ncdoi.com/OSFM/Engineering/BCC/engineering_bcc_temp_rules.asp

7. Request by Kim Reitterer and Al Bass, Building Code Council to add Appendix H, Rainwater Harvesting to the 2009 NC Plumbing Code.

The text has been posted on the NCDOI website at the following link.

September 15, 2009 (Item B-7, Rainwater Harvesting)

http://www.ncdoi.com/OSFM/Engineering/BCC/engineering_bcc_minutes.asp

8. Request by Tom Turner, Building Code Council to amend the 2009 NC Administrative Code, Section 107.2 as follows:

107.2 Inspection requests. It shall be the duty of the permit holder or his or her agent to notify the code enforcement official when work is ready for inspection and to provide access to and means for inspection of the work for any inspections that are required by this code.

9. Request by Tom Turner, Building Code Council to amend the 2009 NC Administrative Code, Section 107.3 as follows:

107.3 Approval required. Work shall not be done beyond the point indicated in each successive inspection without first obtaining the approval of the code enforcement official. The code enforcement official, upon notification, shall make the requested inspections and shall either indicate the portion of the construction that is satisfactory as completed, or shall notify the permit holder or an agent of the permit holder that the work fails to comply with the technical codes. In the event code violations exist the CEO shall specifically identify the provisions of the technical code found to be inconsistent with the inspection. Any work that does not comply shall be corrected and shall not be covered or concealed until authorized by the code enforcement official.

10. Request by Laurel Wright, on behalf of the Residential Committee to amend the 2009 NC Residential Code, Section R311.6.1 as follows:

R311.6.1 Maximum Slope. Ramps shall have a maximum slope of one unit vertical in ~~eight units horizontal (12.5 percent slope)~~ twelve units horizontal (8.3-percent slope).

Exception: Where it is technically infeasible to comply because of site constraints, ramps may have a maximum slope of one unit vertical in eight horizontal (12.5-percent slope).

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 Structural Pest Control Committee intends to adopt the rule cited as 02 NCAC 34 .0331 and amend the rules cited as 02 NCAC 34 .0503, .1103.

Proposed Effective Date: March 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 November 17th, 2009, to James W. Burnette, Jr., Secretary, NC Structural Pest Control Committee, 1090 Mail Service Center, Raleigh, NC 27699-1090.

Reason for Proposed Action: Creates a consultant sub-category for pest control licenses; clarifies requirements for termite bait treatments; increases re-inspection fee from \$10.00 to \$25.00.

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 Structural Pest Control Committee, 1090 Mail Service Center, Raleigh, NC 27699-1090.

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

Comment period ends: January 2, 2010

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 34 - STRUCTURAL PEST CONTROL DIVISION

SECTION .0300 - LICENSING AND CERTIFICATION

02 NCAC 34 .0331 SUBPHASE P, W AND F CONSULTANTS' LICENSURE

(a) Licensing Requirements. A consultant shall meet the same licensing requirements as licensees holding P, W or F phase licenses. However, a consultant shall not be required to maintain insurance coverage required under 02 NCAC 34 .0902.

(b) Authorized Scope of Consultant's Practice. A consultant may perform any task a P, W or F licensee is permitted to do except for:

- (1) application of pesticides or use of mechanical control measures for pest control;
- (2) selling pesticide application and mechanical control services; or
- (3) performance of inspections or issuance of Wood-Destroying Insect or Wood-Destroying Organism Reports for the purpose of facilitating a real estate transaction; and
- (4) supervising registered technicians.

(c) Permissible Employment. Consultants may be employed or retained as independent contractors by structural pest control licensees, companies employing structural pest control licensees, structural pest control organizations, consumers, or consumer's agents, employees or independent contractors.

Authority G.S. 106-65.29.

SECTION .0500 - WOOD-DESTROYING ORGANISMS

02 NCAC 34 .0503 SUBTERRANEAN TERMITE CONTROL: BUILDINGS AFTER CONSTRUCTED

(a) The following standards and requirements shall apply to the treatment of a building for subterranean termite control after construction if the building has a basement or crawl space:

- (1) Access openings shall be provided to permit inspection of all basement and crawl space areas of a building and all open porches.
- (2) Clean up and remove all wood debris and cellulose material, such as wood, paper, cloth, etc., contacting soil in all crawl space areas. This excludes shavings or other cellulose material too small to be raked with the tines of an ordinary garden rake. Remove all visible stumps from all crawl space areas. Remove all visible form boards in contact with soil.
- (3) Remove all earth which is within 12 inches of the bottom edges of floor joists or within eight inches of the bottom edges of subsills or supporting girders, but not below footings of foundation walls. If foundation footings are less than 12 inches below the bottom edges of joists or subsills or supporting girders, a bank of soil 12 inches to 18 inches wide shall be left adjacent to footings for the purpose of support. Clearance shall be adequate to provide passage of a person to all crawl space areas of a building.
- (4) All visible termite tubes or tunnels on pillars, pilasters, foundation walls, chimneys, step buttresses, sills, pipes, and other structures below the sill line shall be removed.
- (5) Eliminate all wooden parts making contact with the building and soil, either outside or inside.
 - (A) No wood of any access opening shall be in contact with the soil.
 - (B) Where wood parts such as door frames, partition walls, posts, stair carriages, or other wood parts can be reasonably ascertained to be making direct soil contact through concrete or where there is evidence of termite activity or damage they shall be cut off above the ground or floor level and the wood removed from the concrete; and the hole shall be filled with concrete or covered with a metal plate, after the point of contact has been treated with a termiticide.
 - (C) Where wood parts such as vertical wood supports or other wood parts under a building or steps outside a building are not resting on solid masonry or concrete bases

extending at least two inches above the soil surface or are in direct soil contact and such supports or steps are not removed, the supports and steps shall be cut off and set on a solid masonry or concrete footing extending at least two inches above the ground after the point of contact has been treated with a termiticide.

- (D) When wood skirting and lattice work are suspended, there shall be at least a two-inch clearance between the top of the soil and the bottom edges of the wood skirting or lattice work. If the two-inch clearance is not acceptable to the property owner, it may be closed with solid masonry or concrete but a minimum clearance of one-fourth of one inch shall be provided between the masonry and wood.
- (E) Where houses or decks are built on pressure treated wood pilings, pillars, or all-weather wood foundations, such pilings, pillars, and wood foundation members, including wood step supports, shall not be subject to Parts (a)(5)(A), (B), or (C) of this Rule.
- (6) Where evidence of either past or present subterranean termite infestation exists, drill and treat all voids in multiple masonry foundation and bearing walls and all voids created by their placement at and a minimum distance of four feet in all directions from such evidence. Porch foundation walls shall be drilled to a distance of three feet from the main foundation wall and the point of contact with any wooden members.
 - (A) The distance between drill holes shall not exceed 16 lineal inches and holes shall be no more than 16 inches above the footing or for footings deeper than 16 inches, immediately above the lowest soil level.
 - (B) Test drill the main foundation wall behind any porch or slab area to determine if the porch or slab is supported by a wall whose placement creates a void between itself and the main foundation wall. If test reveals that a void exists, drill and treat all voids therein as specified in this Rule.
- (7) Where evidence of either past or present subterranean termite infestation exists, drill and treat all voids in all multiple masonry

- pillars, pilasters, chimneys, and step buttresses associated or in contact with such evidence, and any void created by their placement:
- (A) The distance between drill holes shall not exceed 16 lineal inches and shall be no more than 16 inches above the footing or for footings deeper than 16 inches, immediately above the lowest soil level.
 - (B) Drilling shall not be required if solid concrete masonry footings of pillars, pilasters, chimneys, or step buttresses extend eight inches or more above top of soil surface.
- (8) Where concrete slabs over dirt-filled areas are at the level of, above the level of, or in contact with, wood foundation members treat dirt-filled areas with a termiticide as follows:
- (A) Drill vertically three-eighths of one inch or larger holes in the slab, no more than six inches from the building foundation, at no more than 12-inch intervals and treat soil below slab from the bottom of the slab to the top of the footing; or
 - (B) Drill horizontally three-eighths of one inch or larger holes in the foundation wall of the concrete slab, no more than six inches from the building foundation, every 16 vertical inches starting immediately below the bottom of the slab and rod treat all soil adjacent to building foundation from the bottom of the slab to the lowest outside grade.
- (9) Trench or trench and rod treat soil to establish a continuous termiticide barrier in the soil adjacent to, but not more than six inches from, all pillars, pilasters, chimneys, pressure treated wood supports, and step buttresses; inside of foundation walls; outside of foundation walls; the outside of foundation walls of concrete slabs over dirt-filled areas and the entire perimeter of a slab foundation wall from the top of the grade to the top of the footing or to a minimum depth of 30 inches, whichever is less. Where footings are exposed, treatment shall be performed adjacent to the footing but not below the bottom of the footing. The trench shall be no less than six inches in depth or to the bottom of the footing, whichever is less. Where outside concrete slabs adjacent to the foundation prevent trenching of soil, drill three-eighths of one inch or larger holes, not more than 12 inches apart and within six inches of the foundation wall, through slabs or through adjoining foundation wall, and rod treat soil below slabs as indicated above to establish a continuous termiticide barrier at all known points of entry. The soil immediately around pipes and other utility conduits making contact with the structure shall be treated.
- (10) Where stucco on wood or similar type materials, including extruded or expanded rigid foam insulation or similar materials, extend to or below grade, trench soil to a depth below and under the edge of the stucco or similar type materials and treat soil to establish a continuous termiticide barrier in the soil. After the soil has been treated, a masonry barrier wall may be erected to hold back the soil from making direct contact with the stucco or similar type materials. Where outside slabs on grade adjacent to foundation prevent trenching of soil, drill three-eighths of one inch or larger holes through slabs within six inches of the foundation wall, or through adjoining foundation wall, not more than 12 inches apart and rod treat soil below slabs. Where drain tile, french drains, or other foundation drainage systems present a hazard of contamination outside the treatment zone, treatment shall be performed in a manner that will not introduce termiticide into the drainage system.
- (11) Paragraph (b) of this Rule shall be followed if applicable to basement or crawl space construction.
- (b) The following standards and requirements shall apply to the treatment of a building for subterranean termite control after construction if the building has a slab-on-ground construction:
- (1) Treat soil to establish a continuous termiticide barrier in, under, and around, all traps and openings in the slab.
 - (2) Drill vertically three-eighths inch or larger holes, at all visible or known expansion and construction joints, cracks, and crevices in slab and around all utility conduits in the slab at no more than 12-inch intervals and rod treat soil below slab to establish a continuous termiticide barrier from the bottom of the slab to a depth of 30 inches or to the top of the footing, whichever is less, at all known points of entry. Where wooden structural members are in contact with concrete or masonry floors which have joints or cracks beneath the wooden structural members, including wall plates in utility or storage rooms adjoining the main building, the concrete or masonry shall be

drilled and treated in order to achieve treatment of the soil beneath them. As an exception, expansion and construction joints at the perimeter of the exterior wall may be rod treated by drilling through the foundation wall at no more than 12-inch intervals directly below the bottom of the slab.

- (3) Paragraph (a) of this Rule shall also be followed, where applicable.

(c) Reapplication of Pesticide(s) to a Structure Previously Treated for Subterranean Termite Control:

- (1) A reapplication of termiticide shall be required if soil test by the Division reveals that the soil is deficient in the termiticide which was applied to the soil.
- (2) Any reapplication of pesticides under this Rule shall be in accordance with the label of the pesticide used.

(d) A licensee may enter into a written agreement for the control or prevention of subterranean termites in a building after it has been constructed without having to abide by Paragraphs (a) and (b) of this Rule provided that:

- (1) The licensee has written proof that he or his authorized agent treated the entire building for subterranean termites at the time of its construction as required in 02 NCAC 34 .0505 or 02 NCAC 34 .0506 (or comparable rules in effect at the time of treatment); and
- (2) A written agreement is issued in compliance with 02 NCAC 34 .0605.

(e) ~~Paragraphs (a) and (b)~~ Subparagraphs (a)(3), (a)(6) through (a)(11) and Paragraph (b) of this Rule shall not apply to subterranean termite treatment performed using termite bait(s) labeled for protection of the entire structure when the licensee provides a warranty for the control of subterranean termites on the entire structure.

Authority G.S. 106-65.29.

02 NCAC 34 .1103 RE-INSPECTIONS

(a) If a primary deviation, as defined by the committee, is found by the Division, the licensee or certified applicator responsible for said deviation shall be notified, in writing, as specified in Rule .1102 (b) of this Section of the deviation. At the end of 30 days from the date of notification a reinspection shall be made by the Division to determine if the deviation has been corrected. The licensee or certified applicator responsible for the deviation shall be charged a fee of ~~ten dollars (\$10.00)~~ twenty-five dollars (\$25.00) for the reinspection. The disclosure of a primary deviation by the Division shall require a reinspection and correction of the primary deviation before the date of reinspection shall not relieve the licensee or certified applicator of the responsibility to pay the reinspection fee as heretofore set forth. If the primary deviation is not corrected on the first reinspection date, the licensee or certified applicator shall be notified, in writing, and a second reinspection shall be made at the end of 30 days from the date of notification. A fee of fifty dollars

(\$50.00) shall be charged the licensee or certified applicator for the second reinspection. If the primary deviation is not corrected on the second reinspection date, the licensee or certified applicator shall be notified, in writing, and a third reinspection shall be made at the end of 30 days from the date of notification. A fee of one hundred dollars (\$100.00) shall be charged the licensee or certified applicator for the third reinspection. This reinspection procedure shall be repeated at 30-day intervals thereafter until all primary deviations have been corrected. A fee of one hundred dollars (\$100.00) shall be charged the licensee or certified applicator for each reinspection made after the date of the third reinspection. If more than one primary deviation is found on a job at any time by the Division or committee, the licensee or certified applicator shall be charged only one reinspection fee for each reinspection of the job. All such reinspection fees, as set forth herein, shall be paid within 30 days of written notice from the Division or the committee. Failure of the licensee or certified applicator to pay all such fees, within the time specified herein, is a ground for disciplinary action by the committee.

(b) If a secondary deviation, as defined by the committee, is found by the Division, the licensee or certified applicator responsible for said deviation shall be notified, in writing, as specified in Rule .1102 (b) of this Section, of the deviation. At the end of 30 days from the date of notification, a reinspection shall be made by the Division to determine if the deviation has been corrected. If all secondary deviations are not corrected on the first reinspection date, the deviations shall become primary deviations and handled thereafter as specified in Rule .1103 (a) of this Section.

(c) If the validity of the results of tests, conducted by the committee or its authorized representatives, on soil samples taken from jobs treated by the licensee or certified applicator are questioned by that licensee or certified applicator, analyses of the soil samples shall be made by a chemist agreeable to the licensee or certified applicator and the committee. The chemists' analyses shall be accepted as the basis for disposition of the case. The cost of the analyses by the chemist shall be borne by the certified applicator or licensee, if the results of the analyses verify the committee's prior analyses or, by the committee if the results do not verify the committee's prior analyses.

Authority G.S. 106-65.29.

TITLE 04 – DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of the Commissioner of Banks intends to adopt the rules cited as 04 NCAC 03M .0503, .0601-.0604, .0701-.0703, amend the rules cited as 04 NCAC 03M .0101-.0102, .0201-.0202, .0204-.0206, .0301, .0401-.0403, .0501-.0502 and repeal the rules cited as 04 NCAC 03M .0302-.0303.

Proposed Effective Date: April 1, 2010

Public Hearing:

Date: December 8, 2009

Time: 9:00 a.m.

Location: NC Office of the Commissioner of Banks, 2nd Floor Hearing Room, 316 W. Edenton Street, Raleigh, NC 27603

Reason for Proposed Action:

Proposed adoptions:

04 NCAC 03M .0503-requires compliance with government programs;

04 NCAC 03M .0601-prohibits any basis for compensation to mortgage brokers and loan originators based on the terms of the loan;

04 NCAC 03M .0602-prohibits origination of a loan with conditions for the borrower to receive discount or things of value by a seller affiliated with a mortgage lender or broker;

04 NCAC 03M .0603-requires mortgage lenders to offer standard mortgages;

04 NCAC 03M .0604-prohibits deceptive solicitations for refinancing;

04 NCAC 03M .0701-prohibits the transfer of servicing rights to a person not holding a current mortgage servicing license;

04 NCAC 03M .0702-requires mortgage servicers to communicate with borrowers regarding loss mitigation;

04 NCAC 03M .0703-bars foreclosure activity during pendency of a loss mitigation request.

Proposed amendments: Amendments relate to Article 19B which replaces Article 19A in order to comply with the federal S.A.F.E. Act Mortgage Loan Originator Registration Requirements;

04 NCAC 03M .0101-is amended to update definitions;

04 NCAC 03M .0102-amends the way reports are submitted to the Commissioner;

04 NCAC 03M .0201-amends the way applications are submitted through the NMLS&R;

04 NCAC 03M .0202-amends the non-transferability of a license;

04 NCAC 03M .0204-amends experience requirements;

04 NCAC 03M .0205-amends requirements to show financial responsibility;

04 NCAC 03M .0206-amends authority references for the rule;

04 NCAC 03M .0301-amends the education provider requirements;

04 NCAC 03M .0401-amends the annual reporting requirements;

04 NCAC 03M .0402-amends the requirements concerning information on file with the Commissioner;

04 NCAC 03M .0403-amends the requirements to notify the Commissioner of cessation of business;

04 NCAC 03M .0501-amends the required records to be maintained by a licensee;

04 NCAC 03M .0502-amends the form and location of records requirement and authorizes the Commissioner to revoke a license for failure to secure documents against unauthorized access or damage.

Proposed repeals:

04 NCAC 03M .0302-.0303-no longer necessary

Procedure by which a person can object to the agency on a proposed rule: Comments in writing on the proposed rule adoptions, changes, and repeals are welcomed via letter, fax, or e-mail to the Rule-making Coordinator at the address shown in this notice. Also, written and in-person comments will be solicited at the public hearing, the time and location of which is set forth in this notice. Comments received may be reproduced and made available, as submitted, to interested parties.

Comments may be submitted to: Daniel E. Garner, 4309 Mail Service Center, Raleigh, NC 27699-4309, phone (919)733-4662, (919)733-6918, email dgarner@nccob.gov

Comment period ends: January 2, 2010

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 03 - BANKING COMMISSION

SUBCHAPTER 03M – MORTGAGE LENDING

SECTION .0100 – GENERAL

04 NCAC 03M .0101 DEFINITIONS

As used in this Subchapter, unless a contrary definition is provided or required by the context:

- (1) Terms used in this Subchapter which are defined in the Act have the same meaning as set forth in the Act.
- (2) When any term in this Subchapter is defined by reference to or incorporation of a regulation or rule of a federal or state agency, board, commission or other regulatory body other than the Commissioner, the reference shall be deemed to be to the regulation or rule as it is

- in effect and interpreted on the effective date of this Subchapter.
- (3) "Act" means Article ~~19A~~ 19B of Chapter 53 of the North Carolina General Statutes, commonly known as the "~~Mortgage Lending Act~~", "North Carolina Secure and Fair Enforcement (S.A.F.E.) Mortgage Licensing Act," or "NC SAFE Act," as codified and as amended.
- (4) "Advertisement" means material used or intended to be used to induce the public to apply for a mortgage loan. The term includes any printed or published material, or descriptive literature concerning a mortgage loan to be solicited, processed, negotiated or funded by a licensee or exempt entity whether disseminated by direct mail, newspaper, magazine, radio or television broadcast, electronic mail or other electronic means, billboard or similar display. The term does not include any disclosures, program descriptions, or other materials prepared or authorized by any state or federal government agency, nor does the term include any material or communication which has been excluded for purposes of any regulation of the Board of Governors of the Federal Reserve System regulating consumer credit disclosures.
- ~~(5) "Audited statement of financial condition" means a statement of financial condition prepared in accordance with generally accepted accounting principles and certified by a certified public accountant as fairly and accurately reflecting the financial condition of the licensee as of the date specified therein.~~
- ~~(6) "Certified statement of financial condition" means a statement of financial condition prepared in accordance with generally accepted accounting principles and certified by the preparer as fairly and accurately reflecting the financial condition of the licensee as of the date specified therein.~~
- (5) "Call Report" means a report of condition on a company and its operations which includes, but is not limited to, financial and loan activity information.
- ~~(7)(6)~~ "Commission" means the North Carolina Banking Commission. For purposes of complying with these Rules by credit unions, Banking Commission means the North Carolina Credit Union Commission.
- ~~(8) "Continuing education program" means a classroom education program approved pursuant to Rule .0301 of this Subchapter.~~
- ~~(9)(7)~~ "Controlling person" means a person who, with regard to a licensee:
- (a) has the ability to exercise "control", as the term is defined in ~~G.S. 53-243.01(6)~~; G.S. 53-244.030(7), or
- (b) otherwise has the power to direct the management and policy of the licensee.
- ~~(10) "Fundamentals Examination" means the mortgage lending fundamentals examination required by G.S. 243.05(b)(2).~~
- ~~(11) "Fundamentals program" means a classroom education program approved pursuant to Rule .0301 of this Subchapter.~~
- ~~(12)(8)~~ "Instructor" means an individual who is employed by a provider and who is responsible for teaching a program.
- ~~(13)(9)~~ "License" means a mortgage lender, mortgage servicer, mortgage broker or loan officer exclusive mortgage broker, or mortgage loan originator license issued pursuant to the Act and this Subchapter.
- ~~(14)(10) "Material": "Material" facts or "Material" information are facts or information, or changes in such facts or information, that, if known, would be likely to influence a decision to grant or revoke a license or to take other disciplinary action against a licensee or exempt person.~~
- (a) when used in connection with facts or information provided to the Commissioner, means such facts or information that, if known, would be likely to influence a decision to grant, suspend, condition, limit, or revoke a license or to take other disciplinary action against a licensee or exempt person. Material facts requiring disclosure under this subsection, including,
- (i) notice of a pending administrative action by any state or federal authority to which the licensee is subject;
- (ii) the issuance of an administrative order by any state or federal authority to which the licensee is subject;
- (iii) notice of a pending criminal charge against a person licensed under this statute for actions related to financial services or moral turpitude;
- (iv) the entry of a conviction or other plea agreement on a criminal charge against a person licensed under this

- statute for actions related to financial services or moral turpitude;
- (v) a change in status to the licensee's bond, including, but not limited to the reduction or cancellation of such bond; and
- (vi) significant adverse changes to an individual licensee's credit report, including, but not limited to, significant reduction in the licensee's credit score or the reporting of liens, judgments, foreclosures, repossessions, or other derogatory trade lines.
- (b) when used in connection with facts or information regarding provided to the Commissioner, shall also mean such facts and information regarding the licensee's identity and contact information, Material facts requiring disclosure under this subsection, including, but are not limited to:
- (i) the licensee's primary phone number, mailing address, and principal office address;
- (ii) any assumed name, trade name, or d/b/a under which the licensee may be operating;
- (iii) the address at which files and/or documents retained pursuant to the Act or these Rules are stored;
- (iv) the identity of the licensee's bonding company or carrier, and bond number;
- (v) for corporate licensees, the identity of the any affiliated mortgage lender, mortgage broker, mortgage servicer, and/or provider of settlement services; and.
- (vi) For corporate licensees, the identity of the licensee's owners, officers, directors, qualifying individual, branch manager(s), and/or control persons.
- (c) when used in connection with facts or information provided to a
- borrower, means such facts and/or information that, if known, would reasonably be expected to influence a borrower's decision with regard to one or more loans. Material facts requiring disclosure under this subsection, include, but not limited to:
- (i) the total compensation the mortgage broker expects to receive from any and all sources in connection with each loan option presented to the borrower;
- (ii) the terms of each loan option presented to the borrower;
- (iii) the anticipated monthly payment (including property tax and insurance payments) for each loan option presented to the borrower;
- (iv) if the loan contains a variable rate feature or other terms which may result in a change to the borrower's monthly payments over the life of the loan, the circumstances upon which the terms and/or payments will change and the impact of such changes upon the borrower's required monthly payments; and
- (v) any affiliate relationships that may exist between the licensee and any party or parties to the sale or financing of the subject property, or any provider of settlement services.
- (d) when used in connection with the word "change" or "changes", means a change to any material facts and/or information.
- (11) "Nationwide Mortgage Licensing System and Registry" or "NMLS&R" shall have the same meaning as in the NC SAFE Act.
- (12) "Prelicensing Education" means a classroom or classroom equivalent education program approved pursuant to G.S. 53-244.070.
- ~~(15)~~(13) "Program" means either a fundamentals prelicensing or continuing education program.
- ~~(16)~~(14) "Provider" means any person who provides a program.

- (15) "Qualified Written Test" means the mortgage prelicensing qualified written test required by G.S. 53-244.080.
- (16) "Settlement Services" shall have the same meaning as defined in federal Real Estate Procedures Act (RESPA) 12 U.S.C. Sec. 2601 et. seq. Regulation X, 24 C.F.R. Part 3500 et. seq.
- (17) "Standard Mortgage" means a mortgage loan that has the following characteristics:
- (a) a fixed interest rate;
 - (b) a term of 30 years;
 - (c) substantially equivalent monthly payments which will fully amortize the loan amount over the term of the loan;
 - (d) includes an escrow for taxes and insurance; and
 - (e) does not include a payment of discount points.
- (17)(18) "Testing Service" Provider" means an organization selected approved by the Commissioner NMLS&R to develop and administer the examination; prelicensing qualified written test.

Authority G.S. 53-244.118.

04 NCAC 03M .0102 NOTICES

- (a) Except as may be provided in G.S. 150B or the rules of the North Carolina Office of Administrative Hearings, any notice, pleading, decision or other communication required or permitted to be given by the Commissioner to a licensee, an applicant for a license or an exempt person shall be considered given when deposited in the United States mail with sufficient first class postage affixed, addressed to the most recent principal office address provided by the addressee.
- (b) Any application for licensure, report, annual statement, amendment to application, notice or other document which is required or permitted by law or rule to be filed with the Commissioner shall be in writing, signed by the sender or a principal officer and shall be effective upon actual receipt at the following address: Ordinary mail: North Carolina Commissioner of Banks, 4309 Mail Service Center, Raleigh, NC 27699-4309; Overnight mail service or hand delivery: North Carolina Commissioner of Banks, 316 W. Edenton Street, Raleigh, NC 27603, submitted in an electronic format through the NMLS&R or other means approved by the Commissioner.

Authority G.S. 53-244.118.

SECTION .0200 – LICENSING

04 NCAC 03M .0201 APPLICATION

- (a) All fees required by ~~G.S. 53-243.05~~ G.S. 53-244.090 or 53-244.101 shall be submitted with an application for licensure or renewal of license as a mortgage banker mortgage lender, mortgage broker-broker, mortgage servicer, exclusive

mortgage broker or loan officer, mortgage loan originator. Such fees are nonrefundable.

- (b) Each type of application shall be in writing filed through the NMLS&R on a form provided by the Commissioner, acceptable to the Commissioner as, shall be accompanied by all information required by these Rules or statute the Act and shall be verified by the oath or affirmation of the applicant or a principal officer thereof.

- (c) In addition to the documents and information required by these ~~rules~~ Rules the Commissioner or his or her staff may require additional information according to the rules in order to enable the Commissioner to make the determinations required by ~~G.S. 53-243(i),~~ G.S. 53-244.040, 53-244.050, 53-244.060, 53-244.070, 53-244.080, 53-244.100, 53-244.101, 53-244.102, 53-244.103 and 53-244.104.

- (d) Applications submitted without the required fees or which are missing material information shall be held in ~~inactive~~ pending status for a period of 30 calendar days after written notice to the applicant specifying the nature of the deficiency. If any such deficiency remains outstanding for more than 30 days, the application shall automatically be considered ~~denied~~ withdrawn without further action by the Commissioner, and the applicant shall be required to submit a new application and pay all fees associated therewith.

Authority G.S. 53-244.040, 53-244.050; 53-244.060; 53-244.070, 53-244.080, 53-244.100; 53-244.101; 53-244.102; 53-244.103; 53-244.104; 53-244.118.

04 NCAC 03M .0202 NONTRANSFERABILITY

- (a) Any attempt to transfer or assign a license through a change of control without the prior consent of the Commissioner shall:

- (1) be ineffective;
- (2) be grounds for ~~immediate revocation of such license; summary suspension, revocation, or other remedies available to the Commissioner of such license; and~~
- (3) render the assignor licensee ~~responsible for any and all actions or omissions of its the assignee which occur while acting under the apparent authority of such license. jointly and severally liable with the assignee for any and all actions or omissions of its assignee which occur while acting under the apparent authority of such license.~~

- (b) A change in the identity of a licensee's controlling person or any material change in the licensee's organizational structure shall be considered a transfer or assignment of the license. However, the Commissioner shall permit such change without requiring the licensee to apply for a new license, provided:

- (1) the licensee gives notice to the Commissioner at least 60 days in advance of the effective date of the proposed change; and
- (2) the Commissioner determines that permitting the licensee to continue to

operate under its existing license would not be inconsistent with the purposes of the Act.

(c) A notice pursuant to Subparagraph (b)(1) of this Rule shall include sufficient detail to enable the Commissioner to make the determination described in that Subparagraph (b)(2) of this Rule.

(d) The Commissioner may waive or reduce the advance notice requirement of Subparagraph (b)(1) of this Rule if circumstances beyond the licensee's reasonable control would make strict compliance therewith unduly burdensome to the licensee.

Authority G.S. 53-244.050; 53-244.060; 53-244.118.

04 NCAC 03M .0204 EXPERIENCE

As used in ~~G.S. 243.05(e)(1);~~ G.S. 53-244.050(b)(2), a person is considered to have acquired "experience in residential mortgage lending" during any documented period in which:

- (1) that person's employment income was principally derived from employment in the mortgage ~~banking, lending, mortgage servicing,~~ or mortgage brokerage industry; and
- (2) ~~he or she had~~ that person's actual responsibility for job functions in each area of study included in a ~~fundamentals~~ prelicensing education program approved by the Commissioner, pursuant to ~~4 NCAC 03M .0301(e);~~ G.S. 53-244.070.

Authority G.S. 53-244.118.

04 NCAC 03M .0205 FINANCIAL RESPONSIBILITY

(a) In order for applicants to be deemed to have the financial responsibility such as to command the confidence of the community and to warrant belief that the business will be operated honestly and fairly under ~~G.S. 53-243.05(i);~~ G.S. 53-244.60(4), the applicant shall:

- (1) ~~If a mortgage banker;~~ mortgage lender:
 - (A) provide an audited statement of financial condition that demonstrates a net worth of at least one hundred thousand dollars (\$100,000);
 - (B) provide evidence of warehouse line of credit of \$1,000,000 or other evidence of funding capacity to conduct mortgage originations;
 - (C) demonstrate a history of satisfying debt obligations, as indicated by a trade or personal credit report(s) that does not contain evidence of current outstanding judgments or tax liens against applicant, its officers or directors, by creditors within the past seven years; and
 - (D) provide an explanation of the corporate or ownership structure of

the applicant, including information regarding any required distributions to investors or owners.

- (2) If a mortgage broker:
 - (A) provide a certified statement of financial condition that demonstrates a net worth of at least \$25,000;
 - (B) demonstrate a history of satisfying debt obligations, as indicated by a trade or personal credit report(s) that does not contain evidence of current outstanding judgments or tax liens against applicant, its officers or directors, by creditors within the past seven years; and
 - (C) provide evidence (in the form of a copy of a bank statement or other verifiable document) that the broker owns and holds on a continual basis cash or other liquid assets in a demand deposit account under the firm's name of at least ten thousand dollars (\$10,000.00) in an FDIC-insured financial institution.
- (3) ~~If a loan officer or limited loan officer;~~ mortgage loan originator:
 - (A) have a credit score of 600 or greater; ~~and~~
 - (B) demonstrate a history of satisfying debt obligations, as indicated by an absence of current outstanding ~~judgments by creditors or tax liens~~ liens, other government liens or filings, outstanding judgments, except judgments resulting solely from medical expenses, by creditors within the past seven (7) ~~years; years; and~~
 - (C) not have any foreclosures or serious delinquent accounts within the past three years.
- (4) ~~If a mortgage services:~~
 - (A) provide an audited statement of financial condition that demonstrates a net worth of at least one hundred thousand dollars (\$100,000);
 - (B) demonstrate a history of satisfying debt obligations, as indicated by a trade or personal credit report(s) that does not contain evidence of current outstanding judgments or tax liens against applicant, its officers or directors, by creditors within the past seven years; and
 - (C) provide an explanation of the corporate or ownership structure of the applicant, including information

regarding any required distributions to investors or owners;

(b) The Commissioner may, waive any requirement listed in Paragraph (a) of this Rule if he believes the predominant weight of the evidence supports a determination that the applicant has the financial responsibility necessary to command the confidence of the community and to warrant belief that the business will be operated honestly and fairly.

(c) Financial Responsibility is an ongoing requirement.

Authority G.S. 53-92; 53-104; 53-244.060(4); 53-244.118.

04 NCAC 03M .0206 SURETY BOND

(a) All licensees with surety bonds under ~~G.S. 53-243.05(f)~~ G.S. 53-244.103 must ensure that full amount of the surety bond is in effect at all times. In the event of a claim against the bond, the licensee shall have 30 days to reinstate the bond to the level required in ~~G.S. 53-243.05(f)~~ G.S. 53-244.103. Failure to maintain the surety bond at the level required in ~~G.S. 53-243.05(f)~~ G.S. 53-244.103 is grounds for immediate suspension of licensure.

(b) All licensees with surety bonds under ~~G.S. 53-243.05(f)~~ G.S. 53-244.103 must report any claims made against the surety bond to the Commissioner within ten (10) business days upon receipt of notice of any claim.

(c) All surety bonds under ~~G.S. 53-243.05(f)~~ G.S. 53-244.103 shall:

- (1) require the bonding company to report all claims and any claims paid on the bond to the Commissioner within ten (10) days of such claim or payment;
- (2) require the bonding company to pay within thirty (30) days any amount which the Commissioner orders the bonding company to pay upon a determination by the Commissioner that the licensee has failed to faithfully perform the licensee's obligations; and
- (3) remain in effect for a minimum of five (5) years after lapse or termination of the bond in order to satisfy possible claims for failure to faithfully fulfill obligations during the term of the bond.

Authority G.S. 53-103.

SECTION .0300 - EDUCATION AND EXAMINATIONS

04 NCAC 03M .0301 APPROVAL OF PROVIDERS AND COURSES OF STUDY; PROVIDER REQUIREMENTS; QUALIFIED WRITTEN TEST

(a) A licensee or prospective licensee shall receive credit for participation in a program if it is presented by a provider approved by the Commissioner ~~and the Commissioner has approved the program pursuant to this Rule.~~ NMLS&R, subject to the Commissioner's approval of any course of study required by G.S. 53-244.070(a)(4). The Commissioner shall make available to the public a current listing of approved ~~providers.~~ providers courses of study, and times and locations

at which the qualified written test will be administered. ~~The list shall indicate whether a provider is approved to present fundamentals programs, continuing education programs, or both.~~

~~(b) Any provider desiring to conduct a fundamentals or continuing education program shall, at least 30 days prior to any advertisement, promotion or solicitation of prospective attendees of the program, request that the Commissioner approve the provider's qualifications and approve one or more specific programs. The application shall be upon a form provided by the Commissioner and shall include the following information:~~

- ~~(1) the name and address of the provider and date(s) on and locations at which the program is to be offered;~~
- ~~(2) the qualifications and experience of the provider's principal officers, staff, and instructor(s);~~
- ~~(3) the costs of all programs for which approval is sought; and~~
- ~~(4) a description of each program for which approval is sought.~~

~~A prospective provider shall be approved if the Commissioner determines that its general business experience, its knowledge of and experience in the mortgage lending and brokerage industries, its experience in the provision of professional educational presentations and the quality of such presentations warrant belief that its fundamentals or continuing education programs will meet the standards set forth in Paragraphs (c) and (d) of this Rule.~~

~~(e) Fundamentals programs must provide prospective loan officer licensees with a basic knowledge of and competency in basics of home purchase and ownership, the mortgage industry generally, loan evaluation and documentation, the operation of a mortgage firm, features of various loan products, state and federally required disclosures, and ethical considerations. Fundamentals programs shall consist of a total of at least 24 hours of classroom instruction.~~

~~(d) Continuing education programs must enhance the existing professional competence of the target group of licensees by providing updated information or more detailed or narrowly focused information than the fundamentals program.~~

~~(e) The Commissioner's approval of any provider or program shall expire one year from the date of issuance and thereafter on each subsequent anniversary of the renewal date. Application for renewal of provider or program approval must be filed by not later than 60 days prior to each such expiration date.~~

~~(b) The Commissioner's approval of any course of study required by G.S. 53-244.070(a)(4) shall expire in accordance with NMLS&R's rules regarding expiration of approval.~~

~~(f)(c) The Commissioner may deny, revoke, suspend, condition, limit, or terminate approval of any provider or any individual program course of study upon a finding that:~~

- ~~(1) the provider has refused or failed to comply with any applicable provision of this Subchapter or of any contractual agreement with the Commissioner or has refused or failed to submit in a timely manner~~

~~information or properly completed forms prescribed by the Commissioner; Subchapter:~~

- (2) any provider officer or employee has obtained or used, or has attempted to obtain or use, in any manner or form, the examination qualified written test questions;
- (3) ~~during any six month period fewer than 50 percent of the provider's fundamentals program students taking the examination for the first time achieve a passing score;~~
- (4) ~~the provider has not conducted at least one fundamentals or continuing education program (as applicable) during the preceding 12-month period;~~
- (3) ~~the provider has not conducted at least one prelicensing education course (as applicable) during the preceding 12-month period; and~~
- (5)(4) the provider has knowingly employed in connection with any program any person who has been convicted of any crime described in G.S. 53-243.05(a)(4)(ii) or (iii); G.S. 53-244.060(2)(3).
- (6) ~~the provider of an on-line or video course fails to provide evidence of a control system sufficient to certify that licensees participating in the on-line course have personally accessed the course and have met the number of hours required for continuing education requirements.~~

(d) Providers shall:

- (1) Designate one person as a contact person who shall be available to the Commissioner during ordinary business hours and shall be knowledgeable and have authority to act with regard to all administrative matters concerning instructors, scheduling, advertising, recordkeeping, and supervising all programs offered by the provider.
- (2) Retain the following material from each program on file at one location for a minimum of three years: class schedules; advertisements; bulletins, catalogues, and other publications distributed to students; a list of student names, with unique identifier, for each program; and the name of the instructor. All files shall be made available to the Commissioner upon request.
- (3) Refrain from the use of any words, symbols or other means which to indicate that either the provider or a program has received the NMLS&R approval unless such approval has been issued and remains in effect.

Authority G.S. 53-244.060; 53-244.070; 53-244.080; 53-244.118.

04 NCAC 03M .0302 MORTGAGE LOAN ORIGINATOR QUALIFIED WRITTEN TEST

~~Examinations shall be administered by the testing service no less frequently than quarterly throughout North Carolina. The testing service shall maintain and publish a current schedule of times and locations at which the examination will be administered.~~

Authority G.S. 53-243.05; 53-243.13.

04 NCAC 03M .0303 REQUIREMENTS FOR PROVIDERS

- (a) ~~A provider shall designate one person as its contact person who shall be available to the Commissioner during ordinary business hours and shall be knowledgeable and have authority to act with regard to all administrative matters concerning instructors, scheduling, advertising, recordkeeping, and supervising all programs offered by the provider.~~
- (b) ~~Providers shall retain the following material from each program on file at one location for a minimum of three years: class schedules; advertisements; bulletins, catalogues, and other publications distributed to students; a list of student names, with social security numbers, for each program; and the name of the instructor. All files shall be made available to the Commissioner upon request.~~
- (c) ~~A provider shall not use any words, symbols or other means to indicate that either the provider or a program has received the Commissioner's approval unless such approval has been issued and remains in effect.~~
- (d) ~~A provider shall publish and provide to all prospective students prior to or simultaneous with their enrollment a writing which contains the information described in 4 NCAC 03M .0301(b)(1)(4).~~

Authority G.S. 53-243.05; 53-243.07; 53-243.13.

SECTION .0400 - REPORTING AND NOTIFICATION REQUIREMENTS

04 NCAC 03M .0401 REPORTING REQUIREMENTS

- (a) No later than 90 days after the end of the calendar year, ~~mortgage bankers~~ mortgage lenders, mortgage services and mortgage brokers shall file an annual report in a format required by the National Mortgage Licensing System, NMLS&R unless the Commissioner determines that the report is not in the public interest. In addition, the Commissioner shall require the annual report to be supplemented with additional information about operations, characteristics of loans made, or other similar composite data if the Commissioner determines that this additional information is necessary in order to safeguard the interests of the borrowing public (See N.C. Gen. Stat. 53-243.04; 53-244.118). Mortgage brokers shall as a part of the annual report provide certification from the insured financial institution holding the account required under ~~04 NCAC 03M.0205(a)~~ 04 NCAC 03M .0205 (a)(2)(C) that the account exists and that the account has contained an average daily balance, for the previous year covered by the annual report of ten thousand

dollars \$10,000 or more. The Commissioner may summarily suspend the license of a mortgage lender, mortgage servicer, or mortgage broker license until such time as the licensee submits a completed annual report, as required by this Paragraph.

(b) Mortgage ~~bankers~~ lenders, mortgage servicers, and mortgage brokers shall provide an audited statement of financial condition or a certified statement of financial condition as required by 04 NCAC 03M.0205(a) within 90 days of the end of the licensee's fiscal year. If not shown in the audited statement of financial condition, mortgage ~~bankers~~ lenders shall provide evidence of available warehouse lines of credit or other funding facilities.

(c) Mortgage ~~bankers~~ lenders and mortgage brokers shall provide information on the characteristics of loan originations in an electronic format prescribed by the Commissioner on a quarterly basis within forty-five (45) days after the close of the calendar quarter. Mortgage lenders shall, at a minimum, be able to provide:

- (1) information sufficient to identify the mortgage loan and the unique identifier of the mortgage loan originator, mortgage broker (if applicable), and mortgage lender for the loan;
- (2) information sufficient to enable a computations of key items in the federal Truth in Lending disclosures, including the annual percentage rate, finance charge, and a schedule of payments, and any deviations between initial and final disclosures;
- (3) Information included in the Good Faith Estimate (GFE) disclosure, including the rate, the date of any interest rate lock, the itemization of amount financed and all broker compensation,
- (4) Information included in the final HUD-1 Settlement Statement;
- (5) Information related to the terms of the loans, including adjustable rate loan features (including timing of adjustments, indices used in setting rates, maximum and minimum adjustments, floors and ceilings of adjustments), the undiscounted interest rate, penalties for late payments, and penalties for prepayment (including computation of the penalty amount, duration of prepayment penalty, the maximum amount of penalty)
- (6) Information typically used in underwriting, including the appraised value of the property, sales price of the property (if a purchase loan), borrowers' income, monthly payment amount, housing debt-to-income ratio, total debt-to-income ratio, and credit score(s) of borrowers; and
- (7) Information included in a Loan Application Register for mortgage lenders required to be submit such information pursuant to the federal Home Mortgage Disclosure Act,

Mortgage brokers shall be able to provide information identified above unless such information is not prepared or known by the mortgage broker and the mortgage broker does not reasonably have access to the information in an electronic format. The Commissioner shall permit mortgage lenders and mortgage brokers to utilize compatible third-party software to provide information required under this provision.

(d) Mortgage ~~bankers, lenders and mortgage brokers, and loan officers~~ shall report within thirty (30) days the name of any person suspected of making a material misstatement in connection with the mortgage lending process. ~~Mortgage bankers and mortgage brokers shall report within 30 days any loan repurchased due to a material misstatement made in connection with the mortgage lending process. brokers shall provide periodic call reports containing financial and loan activity information in an electronic format through the NMLS&R as required by the Commissioner.~~

(e) Mortgage lenders, mortgage servicers, mortgage brokers, exclusive mortgage broker, and mortgage loan originators shall report within 30 days the name of any person suspected of making a material misstatement in connection with the mortgage lending or servicing process to the Commissioner. Mortgage lenders and mortgage brokers shall report within 30 days any loan repurchased due to a material misstatement made in connection with the mortgage lending process.

(f) Mortgage lenders, mortgage servicers, mortgage brokers, exclusive mortgage broker, and mortgage loan originators shall report within 30 days the name of any person suspected of making a material misstatement in connection with a general or specific inquiry, investigation, or examination to the Commissioner.

Authority G.S. 53-244.108; 53-244.118.

04 NCAC 03M .0402 AMENDMENTS TO INFORMATION ON FILE WITH THE COMMISSIONER

(a) A licensee shall notify the Commissioner within 30 days of any material change in any document or information previously submitted to the Commissioner during the application process, upon renewal, upon filing of the annual statement, during a general or specific inquiry, investigation, examination or otherwise filed with the Commissioner. ~~For purposes above, a material change includes:~~

- (1) ~~notice of a pending administrative action by any state or federal authority to which the licensee is subject;~~
- (2) ~~an administrative order by any state or federal authority to which the licensee is subject;~~
- (3) ~~notice of a pending criminal charge against a person licensed under this statute for actions related to financial services or moral turpitude; or~~
- (4) ~~a conviction or other plea agreement on a criminal charge against a person licensed under this statute for actions related to financial services or moral turpitude.~~

(b) Upon a licensee's discovery of an information security breach as defined in G.S. 75-61(14), the licensee shall immediately provide to the Commissioner a copy of any notification which the licensee is required to give under G.S. 75-65.

(c) Notification shall be ~~accomplished by letter or by submission of revised pages of the application or annual report filed pursuant to Rule .0201 and .0401, of this Subchapter. in the form of an amendment filed through the NMLS&R or other means approved by the Commissioner.~~

Authority G.S. 53-244.105(b); 53-244.118.

04 NCAC 03M .0403 TERMINATION OF OPERATIONS

(a) A licensee shall notify the Commissioner in writing of its decision to cease operations as a ~~mortgage banker mortgage lender, mortgage servicer, or mortgage broker~~ in this State, and the anticipated effective date of the cessation of operations, ~~within seven~~ at least 15 days of before such ~~decision.~~ cessation.

(b) A ~~mortgage lender, mortgage services, or mortgage broker or mortgage banker~~ that has not originated or serviced a mortgage loan ~~in the prior calendar year~~ within a 12 month period is considered to have ceased operations. The Commissioner ~~shall~~ may suspend the license of any such mortgage ~~broker lender, mortgage servicer, or mortgage banker, mortgage broker,~~ until such time as the mortgage ~~broker lender, mortgage servicer, or mortgage banker mortgage broker~~ provides reasonable evidence of intent to restart its operations and the Commissioner determines the mortgage ~~broker lender, mortgage servicer, or mortgage banker mortgage broker~~ satisfies the requirements for licensure under the ~~Act.~~ Act; provided, however, that such suspension for inactivity shall not extend or revive any license that would otherwise terminate on December 31st based on the licensee's failure to renew its license or the Commissioner's refusal to renew the licensee's license.

Authority G.S. 53-244.118.

SECTION .0500 - RECORD AND BOOKKEEPING REQUIREMENTS

04 NCAC 03M .0501 RECORDS TO BE MAINTAINED

(a) A licensee shall maintain or cause to be maintained a record of all cash, checks or other monetary instruments received in connection with each mortgage loan application showing the identity of the payor, date received, amount, and purpose.

(b) A licensee shall maintain a record showing a sequential listing of checks written for each bank account relating to the licensee's business as a mortgage broker or mortgage lender, showing at least the payee, amount, date, and purpose of payment, including identification of the loan to which it relates, if any. The licensee shall reconcile the bank accounts monthly. Financial records must be kept in a manner to permit efficient review by examiners.

(c) A licensed mortgage banker lender or mortgage broker shall maintain a current listing of all mortgage loan applications. ~~The list shall contain all essential information about each application, including the customer's name; current address; telephone number; all prepaid loan fees submitted by the customer; amount of loan; brief description of the proposed loan (including the term, rate, type, and priority); address of the mortgage property; application status; and the expected closing date. The licensee shall create and retain a file for each mortgage loan application which shall contain, as applicable, the applicant's name, date, name of person taking the application, the application itself, and if closed, the HUD-1 Settlement Statement, copies of the loan note, deed of trust, and all agreements or contracts with the applicant, including any commitment and lock-in agreements, and all disclosures required by State and Federal law. applications, in a format prescribed by the Commissioner.~~

(d) A licensed mortgage lender or mortgage broker shall create and retain a file for each mortgage loan application which shall contain, as applicable, the applicant's name, date, name of person taking the application, the application itself, and if closed, the HUD-1 Settlement Statement, copies of the loan note, deed of trust, and all agreements or contracts with the applicant, including any commitment and lock-in agreements, other information utilized in the origination of the mortgage loan, and all disclosures required by State or Federal law.

(e) A licensed mortgage servicer shall create and retain a file for each mortgage loan which it services, which shall contain, as applicable:

- (1) the borrower or borrowers names;
- (2) a copy of the original note and Deed of Trust;
- (3) a copy of any disclosures or notifications provided to the borrower required by State or Federal law;
- (4) a copy of all written requests for information received from the borrower and the servicer's response to such requests as required by State or Federal law;
- (5) a record of all payments received from the borrower which contains all information required to be provided to a borrower upon request under G.S. 45-92(2)b;
- (6) a copy of any bankruptcy plan approved in a proceeding filed by the borrower or a co-owner of the property subject to the mortgage;
- (7) a communications log, if maintained by the servicer, which documents all verbal communication with the borrower or the borrower's representative;
- (8) a record of all efforts by the servicer to comply with the duties required under G.S. 53-244.110(7) including all information utilized in the servicer's determination regarding loss mitigation proposals offered to the borrower;

- (9) a copy of all notices sent to the borrower related to any foreclosure proceeding filed against the encumbered property; and
- (10) records regarding the final disposition of the loan including, but not limited to, a copy of any collateral release document, records of servicing transfers, charge-off information, or REO disposition.

~~(d)(f)~~ A licensee shall maintain a record of samples of each piece of advertising relating to the licensee's business of mortgage ~~brokerage~~ lending or mortgage ~~banking~~ brokerage in North Carolina for a period of 12 months.

~~(e)(g)~~ A licensee shall maintain copies of all contracts, agreements and escrow instructions to or with any depository institution, any mortgage ~~lender~~ lender, mortgage ~~servicer~~, or mortgage broker, any warehouse lender or other funding facility, any servicer of mortgage loans, and any investor, for a period of not less than three years after expiration of any such contract or agreement.

Authority G.S. 53-244.105; 53-244.115; 53-244.118.

04 NCAC 03M .0502 FORM AND LOCATION OF RECORDS

(a) Except for samples of advertising materials retained pursuant to 4 NCAC 03M .0501(d), all records required by this Section shall be kept for a period of at least three years, and shall be available for inspection and copying upon request by the Commissioner.

(b) Such records may be maintained in the form of magnetic tape, magnetic disk or other form of computer, electronic or microfilm media available for examination on the basis of computer printed reproduction, video display or other medium that is easily convertible by the Commissioner into legible, tangible documents.

(c) All records required by this Rule shall be prepared in accordance with generally accepted accounting principles, where applicable.

(d) All records required to be maintained shall be secured against unauthorized access and damage in an accessible location within the State of North Carolina. However, a mortgage banking licensee which maintains a centralized out-of-state storage facility for such records from multiple states may request the Commissioner to approve its storage of such records in such out-of-state location. Such requests will be approved provided that:

- (1) The Commissioner determines that the proposed storage will ensure that the records are secured against unauthorized access and damage; and
- (2) The licensee agrees in writing to make available at its expense for inspection and copying upon request by the Commissioner copies of all requested records in a form which satisfies the requirements of Subsection (b) of this Rule.

(e) If the Commissioner subsequently has reason to believe that records are not or will not be adequately secured against unauthorized access or damage, the Commissioner may

summarily revoke any approval previously granted under Paragraph (d) of this Rule.

~~(e)(f)~~ A licensee shall notify the Commissioner of any change in the location of its books and records within 10 days following such change.

Authority G.S. 53-244.105; 53-244.115; 53-244.118.

04 NCAC 03M .0503 COMPLIANCE WITH GOVERNMENT PROGRAMS

No mortgage lender, mortgage broker, or mortgage servicer shall fail to comply with applicable guidelines related to federal or state programs related to the mortgage business.

Authority G.S. 53-244.11(14)1; 53-244.118(a).

SECTION .0600

04 NCAC 03M .0601 PROHIBITED BASIS FOR COMPENSATION TO MORTGAGE BROKERS AND MORTGAGE LOAN ORIGINATORS

No mortgage lender or mortgage broker shall, in connection with the making of a mortgage loan, provide to a mortgage loan originator or to a mortgage broker any compensation that may vary based on the terms of the loan, with the exception that compensation may be based solely on the principal balance of the loan.

Authority G.S. 53-244.111(16); 53-244.118(a).

04 NCAC 03M .0602 SELLER DISCOUNTS FOR USE OF AFFILIATED MORTGAGE LENDER OR BROKER

No mortgage lender or mortgage broker shall originate a mortgage loan if the use of that mortgage lender or mortgage broker is a condition for the borrower to receive a discount or thing of value by a seller affiliated with the mortgage lender or mortgage broker.

Authority G.S. 53-244.111(1); 53-244.111(8); 53-244.118(a).

04 NCAC 03M .0603 MORTGAGE LENDERS TO OFFER STANDARD MORTGAGE

(a) Mortgage lenders and mortgage brokers shall inform qualified applicants of the availability of a standard mortgage at or before presenting an alternative mortgage loan product.

(b) When offering an alternative or non-standard mortgage, mortgage lenders and mortgage brokers shall present qualified applicants with a comparison between a standard mortgage and the proposed alternative mortgage in a format prescribed by the Commissioner and discuss the risks and benefits of the alternative mortgage compared to the standard mortgage.

- (1) A mortgage broker shall be deemed to have met this requirement if the mortgage broker has presented and discussed a comparison of the standard mortgage and the proposed alternative mortgage product offered by the prospective mortgage lender, and shall not have an additional duty to present a

comparison of a standard mortgage offered by one lender with an alternative mortgage loan product offered by a different mortgage lender.

- (2) A Mortgage lender offering an alternative mortgage loan through a mortgage broker may meet this requirement through a certification by the mortgage broker that the comparison provided by the mortgage lender has been presented and discussed to the applicant.

Authority G.S. 53-244.111(1); 53-244.111(8); 53-244.118(a).

04 NCAC 03M .0604 DECEPTIVE SOLICITATIONS FOR REFINANCE

No person engaging in the mortgage business shall deliver to a person any unsolicited advertisement, marketing material, or solicitation to refinance a residential mortgage loan unless all of the following requirements are satisfied:

- (1) In addition to any disclosures otherwise required by law, the following must be disclosed on the face of any envelope containing the advertisement, marketing material, or solicitation and in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in advertisement, marketing material, or solicitation, the following statement: 'THIS IS A SOLICITATION TO REFINANCE YOUR EXISTING MORTGAGE LOAN.'
- (2) In addition to any disclosures otherwise required by law, the following must be disclosed at the top of the first page of the advertisement, marketing material, or solicitation:

- (a) In print that that is in boldface type and larger than the name of the original lender and any other person or governmental entity identified herein, the name, address, and unique identifier of the mortgage lender, mortgage broker, or mortgage loan originator who is providing, or on whose behalf is provided, the unsolicited advertisement, marketing material, or solicitation.

- (b) In print that that is boldface type and at least as large as the print identified in Sub-item (2)(a) of this Rule, the following statement: 'If you believe this solicitation is deceptive, you may file a complaint with the North Carolina Office of the Commissioner of Banks at 888-384-3811 or www.nccob.gov.'

Authority G.S. 53-244.111(1); 53-244.111(8); 53-244.118(a).

SECTION .0700

04 NCAC 03M .0701 TRANSFER OF SERVICING RIGHTS

No mortgage servicer may transfer servicing rights or obligations to a person that does not hold a current mortgage servicing license or is otherwise exempt from this Article.

Authority G.S. 53-244.100(a); 53-244.110(1); 53-244.110(3).

04 NCAC 03M .0702 REQUIREMENTS FOR MORTGAGE SERVICERS TO COMMUNICATE EFFECTIVELY WITH BORROWERS REGARDING LOSS MITIGATION

(a) A mortgage servicer shall acknowledge, in writing, a borrower's request for loss mitigation no later than five business days after such a request. The acknowledgement must identify with specificity any information needed from the borrower in order for the mortgage servicer to consider the borrower's loss mitigation request.

(b) A mortgage servicer shall respond to a loss mitigation request from a borrower no later than 30 business days after the receipt of all information necessary from the borrower to access whether or not a borrower qualifies for any loss mitigation programs offered by the mortgage servicer.

(c) A mortgage servicer shall include in a final response denying a loss mitigation request a specific reason for the denial and contact information for a person at the mortgage servicer to reconsider such a denial. In addition, such denial shall also include the following statement, in a boldface type and in a print no smaller than the largest print used elsewhere in the main body of the denial: 'If you believe the loss mitigation request has been wrongly denied, you may file a complaint with the North Carolina Office of the Commissioner of Banks at 888-384-3811 or www.nccob.gov.'

Authority G.S. 53-244.110(7); 53-244.118(a).

04 NCAC 03M .0703 CESSATION OF FORECLOSURE ACTIVITY DURING PENDENCY OF LOSS MITIGATION REQUEST

No mortgage servicer shall initiate or further a foreclosure proceeding or impose a charge incident to a foreclosure proceeding during the pendency of a loss mitigation request; provided however, that this requirement does not apply if:

- (1) the borrower has failed to comply with the terms of a sustainable loss mitigation plan within the previous 12 months; or
- (2) the mortgage servicer has provided a final response regarding a loss mitigation request within the last 12 months and reasonably believes that the current loss mitigation request was not made in good faith; or
- (3) the servicing contract or the terms of the mortgage loan, entered into prior to October 1, 2009, prohibits such a delay.

Authority G.S. 53-244.110(7); 53-244.118(a).

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Home Inspector Licensure Board intends to amend the rules cited as 11 NCAC 08 .1004 and repeal the rules cited as .1002.

Proposed Effective Date: *March 1, 2010*

Public Hearing:

Date: *November 20, 2009*

Time: *9:00 a.m.*

Location: *The Park Lane Hotel at Four Seasons, 3005 High Point, Road, Greensboro, NC 27403*

Reason for Proposed Action: *Repeal of 11 NCAC 08 .1002 because no one outside the agency is affected by it. 11 NCAC 08 .1004 and 11 NCAC 08 .1103 are amended due to new Session Law 2009-509, Senate Bill 1007*

Procedure by which a person can object to the agency on a proposed rule: *Written objections to these rules will be accepted until the expiration of the comment period on January 2, 2010.*

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

Comment period ends: *January 2, 2010*

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 (\geq \$3,000,000)**
☒ **None**

**CHAPTER 08 - ENGINEERING AND BUILDING CODES
DIVISION**

**SECTION .1000 - N.C. HOME INSPECTOR
LICENSURE BOARD**

11 NCAC 08 .1002 MEETINGS

~~(a) Regular Meetings. The date, time, and location of the Board meetings shall be listed with the Secretary of State's office. The chairman shall give written notice of the exact meeting place to each member no later than two weeks before the meeting. The chairman may reschedule a regular meeting by giving written notice to all members no later than two weeks before when the scheduled meeting would normally be held.~~

~~(b) Special Meetings. Written notice of any special meetings shall be given to all members of the Board at least two weeks before the time of the meeting, setting forth the time, date, and place of the meeting and the purpose for which it shall be held. In the event of an emergency, the notice period may be shortened as long as every member is notified before the meeting.~~

Authority G.S. 143-151.48(a).

11 NCAC 08 .1004 EQUIVALENT EXPERIENCE

(a) The Board shall consider equivalent experience of applicants who do not meet the experience requirements of G.S. 143-151.51(5)a. Any one of the following descriptions of experience is considered sufficient to meet the equivalent experience requirements:

- (1) A bachelor of science degree from any engineering, architecture or building technology school and two years experience working in building design, construction, or inspection of building, electrical, mechanical, and plumbing systems.
- (2) A two year Associate of Applied Science degree from a community college or technical school in building technology, civil engineering, electrical engineering, mechanical engineering, or architecture; and either four years of design experience in building, electrical, mechanical, and plumbing systems, or four years experience as an employee who works under the direct supervision of a licensed general (residential or building) contractor and who supervises electrical, mechanical, and plumbing subcontractors.
- (3) Six years experience as an employee who works under the direct supervision of a licensed general contractor (residential or building) performing building construction and who supervises electrical, mechanical, and plumbing subcontractors.
- (4) Certification by the North Carolina Code Officials Qualification Board as a Code Enforcement Official with Standard Level I

- (or higher) inspection certification in four areas: building, electrical, mechanical, and plumbing.
- (5) Any combination of certification listed in Paragraph (a)(4) of this Rule and a license as an electrical contractor (limited or greater) issued by the N.C. Board of Electrical Examiners, or a license as a heating or cooling contractor (H1, H2, or H3), or a plumbing contractor issued by the N.C. Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors, resulting in either a certificate or a license in four areas in building, electrical, mechanical, and plumbing contracting or inspections.
- ~~(6) For the purpose of G.S. 143-151.51(5)a, the number of completed home inspections for compensation before October 1, 1996, as a home inspector may be included.~~

(b) Applicants may submit other experience in the design, installation, or inspection of buildings and electrical, mechanical, and plumbing systems. The Board's Application Evaluation Committee shall consider such experience on a case-by-case basis.

(c) ~~Graduation in a home inspection course from a training institute or correspondence school is not sufficient to meet the equivalent experience alone. However, such courses may be listed along with other experience. At the Board's determination and discretion, successful completion of a home inspection course or training program approved by the Board may be sufficient to meet the equivalent experience requirement for licensure. Such courses may be considered along with other experience.~~

Authority G.S. 143-151.49(a)(13); 143-151.51(5)b.

SECTION .1100 - N.C. HOME INSPECTOR STANDARDS OF PRACTICE AND CODE OF ETHICS

11 NCAC 08 .1103 PURPOSE AND SCOPE

(a) Home inspections performed according to this Section shall provide the client with an understanding of the property conditions, as inspected at the time of the home inspection.

(b) Home inspectors shall:

- (1) Provide a written contract, signed by the client, before the home inspection is performed that shall:
 - (A) State that the home inspection is in accordance with the Standards of Practice of the North Carolina Home Inspector Licensure Board;
 - (B) Describe what services shall be provided and their cost; and
 - (C) State, when an inspection is for only one or a limited number of systems or components, that the inspection is limited to only those systems or components;

- (2) Inspect readily visible and readily accessible installed systems and components listed in this Section; and
- (3) Submit a written report to the client that shall:
 - (A) Describe those systems and components required to be described in Rules .1106 through .1115 of this Section;
 - (B) State which systems and components designated for inspection in this Section have been inspected, and state any systems or components designated for inspection that were not inspected, and the reason for not inspecting;
 - (C) State any systems or components so inspected that do not function as intended, allowing for normal wear and tear, or adversely affect the habitability of the dwelling;
 - (D) State whether the condition reported requires repair or subsequent observation, or warrants further investigation by a ~~specialist~~; specialist. Unless the condition being reported is self-evident, the statements shall describe the component or system, state why the condition is defective, in need of further investigation, or is unsafe, and direct the recipient to a course of action with regard to the condition; and
 - (E) State the name, license number, and signature of the person supervising the inspection and the name, license number, and signature of the person conducting the inspection.

(c) This Section does not limit home inspectors from:

- (1) Reporting observations and conditions or rendering opinions of items in addition to those required in Paragraph (b) of this Rule; or
- (2) Excluding systems and components from the inspection if requested by the client, and so stated in the written contract.

~~(d) Written reports required by this Rule for pre-purchase home inspections of three or more systems shall include a separate section labeled "Summary" that includes any system or component that:~~

- ~~(1) does not function as intended or adversely affects the habitability of the dwelling; or~~
- ~~(2) warrants further investigation by a specialist or requires subsequent observation.~~

~~This summary shall not contain recommendations for routine upkeep of a system or component to keep it in proper functioning condition or recommendations to upgrade or~~

~~enhance the function or efficiency of the home. This summary shall contain the following statements: "This summary is not the entire report. The full report may include additional information of interest or concern to the client. It is strongly recommended that the client promptly read the complete report. For information regarding the negotiability of any item in this report under a real estate purchase contract, contact your North Carolina real estate agent or an attorney."~~

Authority G.S. 143-151.49.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Insurance intends to repeal the rules cited as 11 NCAC 11A .0501-.0515.

Proposed Effective Date: *March 1, 2010*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): The Request for Hearing must be received by the Department of Insurance in writing within fifteen (15) days of publication in the Register. Request should be made to Karen E. Waddell, 1201 Mail Service Center, Raleigh, NC 27699-1201, phone (919)733-4529, fax (919)733-6495.*

Reason for Proposed Action: *These rules are no longer needed because of Session Law 2009-384 which replaces 11 NCAC 11A .0501 to 11 NCAC 11A .0515 with G.S. 58-10-185 to G.S. 58-10-265 effective January 1, 2010.*

Procedure by which a person can object to the agency on a proposed rule: *The Department of Insurance will accept written objections to these rules until the expiration of the comment period on January 2, 2010.*

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

Comment period ends: *January 2, 2010*

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 (\geq \$3,000,000)
- ☒ None

CHAPTER 11 - FINANCIAL EVALUATION DIVISION

SUBCHAPTER 11A - GENERAL PROVISIONS

SECTION .0500 - CPA AUDITS

11 NCAC 11A .0501 PURPOSE AND SCOPE

~~(a) The purpose of this Section is to improve the Department's surveillance of the financial condition of insurers by requiring an annual examination by CPAs of the financial statements reporting the financial condition and the results of operations of insurers.~~

~~(b) This Section applies to all insurers; provided that insurers having direct premiums written in North Carolina of less than two hundred fifty thousand dollars (\$250,000) in any year and having less than 500 policyholders in North Carolina at the end of any year are exempt from this Section for such year unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities. Insurers must notify the Department on or before October 1 of each year of their exempt status.~~

~~(c) Foreign insurers filing audited financial reports in another state, pursuant to such other state's requirement of audited financial reports are exempt from this Section if:~~

- ~~(1) A copy of the Audited Financial Report and Report on Internal Control Structure Related Matters noted in an audit are filed with such other state.~~
- ~~(2) A copy of any Notification of Adverse Financial Condition Report filed with such other state is filed with the Commissioner within the time specified by such other state.~~

~~This Section does not prohibit, preclude, or in any way limit the Commissioner from ordering, conducting, or performing examinations of insurers under the General Statutes or this Title.~~

Authority G.S. 58-2-40; 58-2-205; 150B-21.1(a3).

11 NCAC 11A .0502 DEFINITIONS

~~As used in this Section:~~

- ~~(1) "Audited Financial Report" means those items specified in 11 NCAC 11A .0504.~~
- ~~(2) "Commissioner" means the Commissioner of Insurance of North Carolina or his authorized representative.~~
- ~~(3) "CPA" means an independent certified public accountant or accounting firm in good standing with the American Institute of~~

~~Certified Public Accountants and in all states in which they hold a certificate.~~

~~(4) "Indemnification" means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing or other misrepresentations made by the insurer or its representatives.~~

~~(5) "Insurer" means any insurance entity as identified in G.S. 58, Articles 7, 15, 16, 17, 26, 65 and 67 and regulated by the Department.~~

Authority G.S. 58-2-40; 58-2-205.

11 NCAC 11A .0503 FILING AND EXTENSIONS FOR FILING REPORTS

~~(a) All insurers shall have an annual audit by a CPA and shall file an audited financial report with the Commissioner on or before May 10 for the previous calendar year. The Commissioner may require an insurer to file an audited financial report earlier than May 10 with 90 days advance notice to the insurer. In determining whether to require an insurer to file the report earlier than May 10, the Commissioner shall consider the standards set forth in G.S. 58-30-60(b)(1) through 58-30-60(b)(15). Two copies of this report shall be filed in the office of the Chief Examiner, Examination Section of the Department.~~

~~(b) An extension of the May 10 filing date shall be granted by the Commissioner for a period of up to 45 days upon a showing by the insurer and its CPA of the reasons for requesting such extension and a determination by the Commissioner of good cause for an extension. Examples of "good cause" include unavoidable delay arising from the designation of a new CPA by an insurer pursuant to the provisions of 11 NCAC 11A .0505 or a catastrophic event impacting the insurer. The request for extension must be submitted in writing not less than 15 days prior to the due date and must be in sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension.~~

Authority G.S. 58-2-40; 58-2-205; 150B-21.1(a3).

11 NCAC 11A .0504 CONTENTS OF ANNUAL AUDITED FINANCIAL REPORT

~~(a) The annual Audited Financial Report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows, and changes in capital and surplus for such year in conformity with G.S. 58-2-165(c).~~

~~(b) The annual Audited Financial Report shall include the following:~~

- ~~(1) Report of CPA.~~
- ~~(2) Balance sheet reporting admitted assets, liabilities, capital and surplus.~~

~~(3) Statement of operations.~~

~~(4) Statement of cash flows.~~

~~(5) Statement of changes in capital and surplus.~~

~~(6) Notes to financial statements.~~

~~(A) The notes to the financial statements required under this Subparagraph are those notes required by 11 NCAC 11A .0515; and~~

~~(B) A reconciliation of differences, if any, between the audited statutory financial statements and the Annual Statement filed pursuant to G.S. 58-2-165 with a written description of the nature of these differences.~~

~~(7) The financial statements included in the Audited Financial Report shall be prepared in a form and using language and groupings the same as the relevant sections of the Annual Statement of the insurer filed with the Commissioner, and:~~

~~(A) The financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31; provided, however, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.~~

~~(B) Amounts may be rounded to the nearest dollar.~~

~~(C) Upon written application of any insurer, the Commissioner may permit the filing of consolidated statutory financial statements if the insurer is part of a group of insurance companies that utilizes a pooling or a 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool, provided columnar consolidating worksheets are included in the filing, showing each company separately, and including a listing and description of intercompany eliminations. In determining whether to accept the filing of consolidated statements, the Commissioner shall consider the standards set forth in G.S. 58-30-60(b)(1) through 58-30-60(b)(15).~~

Authority G.S. 58-2-40; 58-2-205; 150B-21.1(a3).

11 NCAC 11A .0505 DESIGNATION OF CPA

~~(a) Each insurer required by this Section to file an annual audited financial report must within 60 days after becoming subject to such requirement, file with the Commissioner a Designation of CPA letter indicating the name and address of the CPA retained to conduct the annual audit set forth in this Section. Insurers not retaining a CPA on the effective date of this Section shall provide the Designation of CPA letter not less than two months before the date when the first audited financial report is to be filed.~~

~~(b) The insurer shall obtain an Accountant's Appointment Letter from such CPA, and file a copy with the Commissioner stating that the accountant is aware of the provisions of the North Carolina General Statutes and Administrative Code that relate to accounting and financial matters and affirming that he will express his opinion on the financial statements in the terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the Department, specifying such exceptions as he may believe appropriate. In addition, the CPA must affirm that he is aware of and will comply with the provisions of 11 NCAC 11A .0511.~~

~~(c) If a CPA who was not the CPA for the immediately preceding filed audited financial report is engaged to audit the insurer's financial statements, the insurer shall within 30 days of the date the CPA is engaged notify the Department of this event. The insurer shall concurrently furnish the Commissioner with a separate letter stating whether in the 24 months preceding such engagement there were any disagreements with the former CPA on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him to make reference to the subject matter of the disagreement in connection with his opinion. The insurer shall also in writing request such former CPA to furnish a letter addressed to the insurer stating whether the CPA agrees with the statements contained in the insurer's letter, and, if not, stating the reasons for which he does not agree; and the insurer shall furnish such responsive letter from the former CPA to the Commissioner together with its own. If the insurer cannot secure such a letter from the former CPA, the insurer shall provide a statement to the Commissioner specifying the attempts by the insurer to obtain the letter from the former CPA and the reasons, if any, given by the former CPA to provide such a letter or by the insurer for its failure to secure such a letter, or both.~~

Authority G.S. 58-2-40; 58-2-205; 150B-21.1(a3).

11 NCAC 11A .0506 QUALIFICATIONS OF INDEPENDENT CPA

~~(a) The Commissioner shall not recognize:~~

- ~~(1) Any person or firm as a CPA that is not in good standing with the American Institute of Certified Public Accountants and in all states in which the CPA is licensed to practice; or~~
- ~~(2) Any person or firm that has either directly or indirectly entered into an agreement of indemnity or release from liability (collectively referred to as indemnification) with respect to the audit of the insurer.~~

~~(b) Except as otherwise provided in this Section, a CPA shall be recognized as independent as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the North Carolina State Board of Certified Public Accountant~~

~~Examiners, or similar code of ethics and rules of professional conduct for the state in which the CPA is licensed.~~

~~(c) The Commissioner shall not recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared in whole or part by a natural person who:~~

- ~~(1) has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U. S. C. Sections 1961 to 1968k, or any dishonest conduct or practices under federal or state law subsequent to the CPA obtaining a license;~~
- ~~(2) has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this rule; or~~
- ~~(3) has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this Rule. For purposes of this item only "pattern or practice" includes one or more incidences of failure to detect an insurer's noncompliance with Article 7 of Chapter 58.~~

~~(d) The Commissioner may hold a hearing to determine whether a CPA is independent and, considering the evidence presented, may rule that the CPA is not independent for purposes of expressing an opinion on the financial statements in the annual Audited Financial Report made pursuant to this Section and require the insurer to replace the CPA with another whose relationship with the insurer is independent within the meaning of this Section.~~

Authority G.S. 58-2-40; 58-2-205; 150B-21.1(a3).

11 NCAC 11A .0507 APPROVAL OF CPA

~~(a) CPAs that practice pursuant to the provisions of this Section must file their intentions of such with the Department within 60 days of the effective date of this Section and thereafter by October 1 of each year. The Department may reject such filing if the CPA does not meet its requirements. Inclusive within this filing must be evidence of the CPA's expertise in the areas of insurance auditing and insurance accounting. Such evidence must also demonstrate expertise in the areas of insurance auditing and insurance accounting for the staff assigned to the audit. In addition, the CPA must affirm that he is aware of and will comply with the provisions of 11 NCAC 11A .0511.~~

~~(b) The CPA may be deemed to be experienced in the areas of insurance auditing and accounting if the office filing with the Department pursuant to this Section has existing audit clients in the insurance industry.~~

~~(c) The staff assigned to an audit pursuant to this Section may be deemed to be experienced in the areas of insurance auditing and accounting as follows:~~

- ~~(1) Managerial staff that has been assigned or has had responsibility for audit engagements in the insurance industry in an amount~~

averaging at least 30 percent of their chargeable time during the last three years.

- (2) ~~Non-managerial staff that has been assigned or has had responsibility for audit engagements in the insurance industry in an amount averaging at least 15 percent of their chargeable time during the last three years or during their period of employment if employed less than three years.~~

(d) ~~An audit performed by a CPA pursuant to this Section shall be staffed by managerial staff experienced in the areas of insurance auditing and accounting and by majority or equal non-managerial staff experienced in the areas of insurance auditing and accounting.~~

(e) ~~As used in this Section, insurance includes financial services.~~

Authority G.S. 58-2-40; 58-2-205.

11 NCAC 11A .0508 SCOPE OF EXAMINATION AND REPORT OF CPA

Financial statements furnished pursuant to 11 NCAC 11A .0504 shall be examined by a CPA. The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards and such other procedures illustrated in the Financial Condition Examiner's Handbook promulgated by the NAIC. The Commissioner may, from time to time, prescribe that additional auditing procedures be observed by the CPA in the examination of the financial statements of insurers pursuant to this Section.

Authority G.S. 58-2-40; 58-2-205.

11 NCAC 11A .0509 NOTIFICATION OF ADVERSE FINANCIAL CONDITION

(a) ~~The insurer required to furnish the annual Audited Financial Report shall require the CPA to immediately notify in writing an executive officer and all directors of the insurer of the final determination by that CPA that the insurer has materially misstated its financial condition as reported to the Commissioner as of the balance sheet date currently under examination or that the insurer does not meet the minimum capital and surplus requirements of Chapter 58 of the General Statutes as of that date. The insurer shall furnish such notification to the Commissioner within five days of receipt thereof.~~

(b) ~~If the CPA, subsequent to the date of the Audited Financial Report filed pursuant to this Section, becomes aware of facts that might have affected his report, the Department notes the obligation of the CPA to take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants.~~

Authority G.S. 58-2-205.

11 NCAC 11A .0510 INTERNAL CONTROL STRUCTURE RELATED MATTERS

(a) ~~In addition to the annual Audited Financial Report, each insurer shall furnish the Commissioner with two copies of a report of matters noted in an audit related to the internal control structure.~~

(b) ~~A report of the evaluation by the CPA of the accounting procedures of the insurer and its system of internal control, including any remedial action taken or proposed, shall be filed annually by the insurer with the Department at the time of the filing of the annual Audited Financial Report.~~

(c) ~~Such report shall follow the Form for Reports on Internal Control Structure Related Matters Noted in an Audit described in Volume 1, Section AU 325, of the Professional Standards of the American Institute of Certified Public Accountants.~~

Authority G.S. 58-2-40; 58-2-205.

11 NCAC 11A .0511 CPA WORKPAPERS

(a) ~~Workpapers are the records kept by the CPA of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the CPA's examination of the financial statements of an insurer. Workpapers, accordingly, may include work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules, or commentaries prepared or obtained by the CPA in the course of the CPA's examination of the financial statements of an insurer and that support the CPA'S opinion thereof.~~

(b) ~~Every insurer required to file an Audited Financial Report pursuant to this Section, shall require the CPA (through the insurer) to make available for review by Department examiners, all workpapers prepared, or legible copies thereof, in the conduct of the CPA's examination. The completed workpapers and any written communications between the CPA and the insurer relating to the audit of the insurer shall be made available for review by Department examiners at the offices of the insurer. The insurer shall require that the CPA retain the audit workpapers for a period of not less than seven years after the period reported thereon.~~

(c) ~~In the conduct of any periodic review by the Department examiners, photocopies of audit workpapers may be made and retained by the Department.~~

Authority G.S. 58-2-40; 58-2-205.

11 NCAC 11A .0512 EXEMPTIONS AND EFFECTIVE DATES

(a) ~~Upon written application of any insurer, the Commissioner may grant an exemption from compliance with this Section if the Commissioner finds, upon review of the application, that compliance with this Section would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten days from a denial of an insurer's written request for an exemption from this Section, such insurer may request in writing a hearing on its application for an exemption.~~

(b) ~~Insurers retaining a CPA on the effective date of this Section who qualifies under this Section shall comply with~~

this Section for the year ending December 31, 1990, and each year thereafter.

~~(e) Insurers not retaining a qualified CPA on the effective date of this Section may meet the following schedule for compliance, unless the Commissioner permits otherwise.~~

- ~~(1) As of December 31, 1990, file with the Commissioner:
(A) Report of CPA.
(B) Audited balance sheet.
(C) Notes to audited balance sheet.~~
- ~~(2) For the year ending December 31, 1991, and each year thereafter, such insurers shall file with the Commissioner all reports required by this Section.~~

~~(d) Foreign insurers shall comply with this Rule for the year ending December 31, 1991, and each year thereafter, unless the Commissioner permits otherwise.~~

Authority G.S. 58-2-205.

11 NCAC 11A .0513 EXAMINATIONS

~~(a) The Commissioner shall determine the nature, scope, and frequency of examinations under this Section conducted by department examiners pursuant to the Examination Law. Such examinations may cover all aspects of the insurer's assets, liabilities, condition, affairs, and operations; and may include and be supplemented by audit procedures performed by CPAs as provided in this Section. The types of examinations under the provisions of this Section performed by department examiners after the effective date of this Section shall be as follows:~~

- ~~(1) Comprehensive examinations will be performed when in the judgement of the Commissioner a complete examination of the condition and affairs of the insurer is necessary.~~
- ~~(2) Compliance examinations may consist of a review of the accountant's workpapers defined under 11 NCAC 11A .0511 and a general review of the insurer's corporate affairs and insurance operations to determine compliance with the North Carolina General Statutes and this Title. The examiners may perform alternative or additional examination procedures to supplement those performed by the CPA when the examiners determine that such procedures are necessary to verify the financial condition of the insurer.~~
- ~~(3) Targeted examinations may cover such areas as life reserve valuations, claims analyses, organizational and capital changes, and such other areas as the Commissioner deems to be appropriate.~~

~~(b) Upon completion of each examination described in this Rule, the examiner appointed by the Commissioner shall make a full and true report on the results of the examination.~~

Authority G.S. 58-2-40; 58-2-131; 58-2-132; 58-2-133; 58-2-205.

11 NCAC 11A .0514 SEASONING REQUIREMENTS

~~No person responsible for rendering an audited financial report may act in that capacity for more than seven consecutive years. Following that period of service the person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two years. An insurer may make application to the Commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The Commissioner shall consider the following factors in determining if the relief shall be granted:~~

- ~~(1) Number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm;~~
- ~~(2) Premium volume of the insurer; or~~
- ~~(3) Number of jurisdictions in which the insurer transacts business.~~

Authority G.S. 58-2-40; 58-2-205.

11 NCAC 11A .0515 NOTES TO FINANCIAL STATEMENTS

~~The notes to financial statements required in 11 NCAC 11A .0504(b)(6)(A) shall be those required by the appropriate NAIC Annual Statement Instructions and NAIC Accounting Practices and Procedures Manual, including subsequent amendments and editions, which are incorporated into this Rule by reference. These publications are available for inspection in the Financial Evaluation Division of the Department and may be purchased from the National Association of Insurance Commissioners for a cost of two hundred fifteen dollars (\$215.00) and two hundred twenty five dollars (\$225.00) respectively. The address and telephone number of the NAIC are: NAIC Executive Headquarters, 2301 McGee, Suite 800, Kansas City, MO 64108-2604, (816) 842-3600.~~

Authority G.S. 58-2-40; 58-2-205.

* * * * *

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 12 .1901-.1903.

Proposed Effective Date: *March 1, 2010*

Public Hearing:

Date: *December 4, 2009*

Time: *10:00 a.m.*

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

Reason for Proposed Action: *To clarify the prohibition on unfair or deceptive acts or practices in the business of insurance as it relates to domestic violence.*

Procedure by which a person can object to the agency on a proposed rule: *The Department of Insurance will accept written objections to the rule until the expiration of the comment period on January 2, 2010.*

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

Comment period ends: *January 2, 2010*

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 ($\geq \$3,000,000$)
☒ None

CHAPTER 12 - LIFE AND HEALTH DIVISION

SECTION .1900 – DOMESTIC VIOLENCE – PROHIBITED ACTS

11 NCAC 12 .1901 DEFINITIONS

As used in this Section, the following terms have the meanings ascribed to them:

- (1) "Abuse" means the commission of one or more of the following acts upon an aggrieved party or upon a minor child residing with or in the custody of the aggrieved party by a person with whom the aggrieved party has or has had a personal relationship, but does not include acts of self-defense:
- (a) Attempting to cause bodily injury, or intentionally causing bodily injury; or
- (b) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of

imminent serious bodily injury or continued harassment, as defined in G.S. 14-277.3, that rises to such a level as to inflict substantial emotional distress; or

- (c) Committing any act defined in G.S. 14-27.2 through G.S. 14-27.7.
- (2) "Abuse-related medical condition" means a medical condition sustained by a subject of abuse that arises in whole or part out of an act or pattern of abuse.
- (3) "Abuse status" means the fact or perception that a person is, has been, or may be a subject of abuse, irrespective of whether the person has sustained abuse-related medical conditions.
- (4) "Health benefit plan" or "plan" means an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; a plan provided by a Professional Employer Organization; or a plan provided by another benefit arrangement, to the extent permitted by the Employee Retirement Income Security Act of 1974, as amended, or by any waiver of or other exception to that Act provided under federal law or regulation. "Health benefit plan" includes accident only, credit health, dental, vision, Medicare supplement or long-term care insurance, coverage issued as a supplement to liability insurance, short-term and catastrophic health insurance, coverage only for a specified disease or illness, hospital indemnity or other fixed indemnity insurance, disability income insurance, and a policy that pays on a cost-incurred basis. "Health benefit plan" does not mean the N.C. State Health Plan, workers' compensation insurance or any plan implemented or administered by the North Carolina or United States Department of Health and Human Services, or any successor agency, or its representatives.
- (5) "Insurance professional" means an agent, broker, or adjuster as defined in G.S. 58-33-10 or a third party administrator as defined in G.S. 58-56-2.
- (6) "Insurer" means an insurance company subject to Chapter 58 of the General Statutes, a service corporation organized under Article 65 of Chapter 58 of the General Statutes, a health maintenance organization organized under Article 67 of Chapter 58 of the General Statutes, and a multiple employer welfare arrangement subject to Article 49 of Chapter 58 of the

General Statutes, the North Carolina Health Insurance Risk Pool subject to Part 6 of Article 50 of Chapter 58 of the General Statutes, and a Professional Employee Organization subject to Article 89A of Chapter 58 of the General Statutes.

- (7) "Insured" means a party named on a health benefit plan as the person with legal rights to the benefits provided by the health benefit plan. For group plans, "insured" includes a person who is a beneficiary covered by a group health benefit plan.
- (8) "Personal relationship" means a relationship wherein the parties involved:
 - (a) Are current or former spouses;
 - (b) Are persons of opposite sex who live together or have lived together;
 - (c) Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren;
 - (d) Have a child in common; or
 - (e) Are current or former household members.
- (9) "Subject of abuse" means a person against whom an act of abuse has been directed; who has current or prior injuries, illnesses or disorders that resulted from abuse; or who seeks, may have sought, or had reason to seek medical or psychological treatment for abuse; or protection, court-ordered protection or shelter from abuse.

Authority G.S. 58-2-40; 58-63-65.

11 NCAC 12 .1902 UNFAIR OR DECEPTIVE ACTS OR PRACTICES

The following are unfair or deceptive acts or practices in the business of insurance:

- (1) To deny, refuse to issue, renew or reissue, cancel or otherwise terminate a health benefit plan, or restrict or exclude health benefit plan coverage or add a premium differential to any health benefit plan on the basis of the applicant's or insured's abuse status; or
- (2) To exclude or limit coverage for losses or deny a claim incurred by an insured on the basis of the insured's abuse status;
- (3) To request information relating to acts of abuse or an applicant's or insured's abuse status, or make use of that information, however obtained, except for the limited purposes of complying with legal obligations or verifying a person's claim to be a subject of abuse.
- (4) To terminate group coverage for a subject of abuse because coverage was originally issued in the name of the abuser and the

abuser has divorced, separated from, or lost custody of the subject of abuse, or the abuser's coverage has terminated voluntarily or involuntarily. Nothing in this Rule prohibits the insurer or insurance professional from requiring the subject of abuse to pay the full premium for coverage under the health benefit plan or from requiring as a condition of coverage that the subject of abuse reside or work within the insurer's service area, if the requirements are applied to all insureds of the insurer or insurance professional. The health carrier or insurance professional may terminate group coverage after the continuation coverage required by this subsection has been in force for 18 months, if it offers conversion to an equivalent individual plan. The continuation coverage required by this section shall be satisfied by coverage required under P.L. 99-272, the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, provided to a subject of abuse and is not intended to be in addition to coverage provided under COBRA.

- (5) Item (4) of this Rule does not prohibit an insurer or insurance professional from asking about a medical condition or from using medical information to underwrite or to carry out its duties under the policy, even if the medical information is related to a medical condition that the insurer or insurance professional knows or has reason to know is abuse-related, to the extent otherwise permitted under this Rule.

Authority G.S. 58-2-40; 58-63-65.

11 NCAC 12 .1903 JUSTIFICATION OF ADVERSE INSURANCE DECISIONS

An insurer or insurance professional that takes an action that adversely affects an applicant or insured on the basis of a medical condition that the health insurer or insurance professional knows or has reason to know is abuse-related shall explain the reason for its action to the applicant or insured in writing and shall be able to demonstrate that its action, and any applicable plan provision:

- (1) Does not have the purpose or effect of treating abuse status as a medical condition or underwriting criterion;
- (2) Is not based upon any actual or perceived correlation between a medical condition and abuse;
- (3) Is otherwise permissible by law and applies in the same manner and to the same extent to all applicants and insureds with a similar medical condition without regard to whether the condition or claim is abuse-related; and

- (4) Except for claim actions, is based on a determination, made in conformance with sound actuarial principles and supported by reasonable statistical evidence, that there is a correlation between the medical condition and a material increase in insurance risk.

Authority G.S. 58-2-40; 58-63-65.

**TITLE 14A – DEPARTMENT OF CRIME CONTROL
AND PUBLIC SAFETY**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Crime Control and Public Safety/State Highway Patrol intends to amend the rule cited as 14A NCAC 09H .0321.

Proposed Effective Date: *March 1, 2010*

Public Hearing:

Date: *November 17, 2009*

Time: *9:00 a.m.*

Location: *1st Floor Conference Room, Archdale Building, 512 North Salisbury Street, Raleigh, NC 27604*

Reason for Proposed Action: *These changes are mandated by Session Law 2009-461 (Senate Bill 69) captioned: An Act to Make Certain Parts of a Rule Adopted by the Department of Crime Control and Public Safety Relating to Rotation Wrecker Services Void and Unenforceable and to Direct the Secretary to Adopt Rules Consistent with this Act and to Amend the Duties of the Highway Patrol.*

Procedure by which a person can object to the agency on a proposed rule: *The agency will accept written objections to the proposed rule amendment until the expiration of the comment period on January 2, 2010.*

Comments may be submitted to: *Captain Jeff Babb, NC State Highway Patrol, Troop Operations, 4702 Mail Service Center, Raleigh, NC 27699-4702; phone (919) 733-4030; fax (919) 733-2161; email jrbabb@ncshp.org*

Comment period ends: *January 2, 2010*

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 (\geq \$3,000,000)**
☒ **None**

CHAPTER 09 - STATE HIGHWAY PATROL

**SUBCHAPTER 09H - ENFORCEMENT
REGULATIONS**

SECTION .0300 - WRECKER SERVICE

**14A NCAC 09H .0321 ROTATION WRECKER
SERVICE REGULATIONS**

(a) The Troop Commander shall include on the Patrol Rotation Wrecker List only those wrecker services which agree in writing to adhere to the provisions in this Rule.

- (1) ~~A Highway Patrol Rotation Wrecker List shall be valid for the calendar year. A wrecker service desiring to be included on the Highway Patrol Rotation Wrecker List shall, on an annual basis shall complete a wrecker application on a form designated by the Patrol. Once included, wrecker services that desire to remain on the Highway Patrol Rotation Wrecker List shall reapply for inclusion annually on a form as may be designated by the Patrol. All initial applications and reapplications shall be submitted to the appropriate District First Sergeant. Sergeant during the annual "Open Enrollment" period of November 1st through November 30th each calendar year. Applications or reapplications for inclusion to the Highway Patrol Rotation Wrecker List shall be accepted during the annual "Open Enrollment" period.~~
- (2) In order to be listed on a rotation wrecker list within a zone, a wrecker service must have a full-time business office within that Rotation Wrecker Zone that is staffed and open during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays, and a storage facility. The Wrecker service must have someone available to accept telephone calls from the Patrol, and to allow access to towed vehicles, or to retrieve towed vehicles by the registered owner, operator, or legal possessor during business hours. The business office may not be the same physical address as the owner's residence

- unless zoned for commercial purposes and advertised as a business property. A representative from the wrecker service shall be available on call on a 24-hour basis, for emergencies. The wrecker service shall, at a minimum, allow vehicles to be retrieved between the hours of 8:00 a.m. to 5:00 p.m., seven days a week, excluding holidays. An individual (registered owner, legal possessor, or operator) shall not be charged a storage fee for days that he/she could not retrieve his/her vehicle as a result of an action or omission on the part of the wrecker service (such as where the wrecker service was not open, did not answer the telephone or a representative was not available to release the vehicle).
- (3) Wrecker service facilities and equipment, including vehicles, office, telephone lines, office equipment and storage facilities may not be shared with or otherwise located on the property of another wrecker service and must be independently insured. Vehicles towed at the request of the Patrol must be placed in the storage owned and operated by the wrecker service on the rotation list. A storage facility for a small wrecker shall be located within the assigned zone. For wrecker services with large wreckers the storage facility for vehicles towed with the large wrecker may be located anywhere within the county. To be listed on the large rotation wrecker list, a wrecker service must have at least one large wrecker. To be listed on the small rotation wrecker list, a wrecker service must have at least one small wrecker. In any case where husband and wife or other family members are engaged in the business of towing vehicles and desire to list each business separately on the Patrol wrecker rotation list, the wrecker service shall establish that it is a separate legal entity for every purpose, including federal and state tax purposes.
 - (4) Each wrecker must be equipped with legally required lighting and other safety equipment to protect the public and such equipment must be in good working order.
 - (5) Each wrecker on the Patrol Rotation Wrecker List must be equipped with the equipment required on the application list and such equipment must, at all times, be operating properly.
 - (6) The wrecker service operator must remove all debris, other than hazardous materials, from the highway and the right-of-way prior to leaving the incident/collision scene. This service must be completed as a part of the required rotation service and shall not be charged as an extra service provided. Hazardous materials consist of those materials and amounts that are required by law to be handled by local Hazardous Materials Teams. Hazardous Materials or road clean-up other than debris may be billed in quarter hour increments after the first hour on scene.
 - (7) The wrecker service must be available to the Patrol for rotation service on a 24-hour per day basis and accept collect calls (if applicable) from the Patrol. Calls for service must not go unanswered for any reason.
 - (8) The wrecker service shall respond, under normal conditions, in a timely manner. Failure to respond in a timely manner may result in a second rotation wrecker being requested. If the second wrecker is requested before the arrival of the first rotation wrecker, the initial requested wrecker shall forfeit the call and shall immediately leave the collision/incident scene.
 - (9) For Patrol-involved incidents, the wrecker service shall respond only upon request from Patrol authority or at the request of the person in apparent control of the vehicle to be towed.
 - (10) The wrecker service, when responding to rotation wrecker calls, shall charge reasonable fees for services rendered. shall present one bill to the owner or operator of any towed vehicle. Towing, storage and related fees charged for rotation services may not exceed the wrecker service's charges for nonrotation service calls that provide the same service, labor, and conditions. be greater than fees charged for the same service for non rotation calls. Wrecker services may secure assistance from another rotation wrecker service when necessary, but only one bill shall be presented to the owner or operator of the vehicle for the work performed. A price list for recovery, towing and storage shall be established and kept on file at the place of business. A price list for all small wreckers and rollbacks with a GVWR of less than 26,001 pounds shall be furnished, in writing on a Patrol form, to the District First Sergeant during the annual "Open Enrollment" period with an effective date of January 1st of the following year. The District First Sergeant shall cause this price list to be filed under the appropriate wrecker service file located in the district office. ~~Vehicle storage per day indicated on the price list for all small wreckers and~~

~~rollbacks with a GVWR of less than 26,001 pounds shall not exceed the maximum amount allowed by G.S. 20-28.3. Storage fees shall not begin to accrue until the next calendar day following the initial towing of the vehicle. Wrecker service towing fees for recovery and transport of vehicles after 5:00 p.m. and on weekends may not exceed the towing fees for recovery and transport of vehicles charged during regular "Business Hours" by more than 10 percent. A mileage fee may only be charged if the customer requests the vehicle to be towed to a location outside of the assigned wrecker zone or county. If a mileage fee is warranted, the wrecker driver shall inform the owner, operator or legal possessor of the vehicle of any additional charge for mileage prior to towing. Each Troop Commander shall designate a Troop Lieutenant to serve as a Rotation Wrecker Liaison for their respective Troop. Price lists for all small wreckers and rollbacks with a GVWR of less than 26,001 pounds shall then be forwarded to the appropriate Rotation Wrecker Liaison Lieutenant who shall review all price lists submitted for consideration in their respective Troop based upon a median of all proposed fees submitted in that Troop. Wrecker Services that submit fees that are determined to exceed the median fee by more than 15 percent shall be notified by the appropriate District First Sergeant and may resubmit fees one additional time within five business days of notification. Re-submission of a price list that continues to exceed the median fee by more than 15 percent will disqualify the wrecker service from the Highway Patrol's Rotation Wrecker System until the next "Open Enrollment" which will commence on 1 November of the following year. The individual price list for each respective wrecker service shall be in effect beginning 1 January for the next calendar year and shall be made available to customers upon request. Copies of the approved price list shall be maintained within each wrecker and shall be given to the owner, operator or legal possessor of a vehicle being towed as a result of a Highway Patrol rotation wrecker call by the wrecker driver, if the owner, operator or legal possessor of the vehicle being towed is present at the scene. Prices indicated on this form shall be the maximum amount that will be charged for a particular service and may not be increased during the specific calendar year in which they were approved; however,~~

this does not prevent charges of a lesser amount for said service.

- (11) All wrecker operators shall have a valid drivers license for the type of vehicles driven; a limited driving privilege shall not be allowed.
- (12) Wrecker owners, operators and employees shall not be abusive, disrespectful, or use profane language when dealing with the public or any member of the Patrol and shall cooperate at all times with members of the Patrol.
- (13) The wrecker service shall adhere to all Federal and State laws and local ordinances and regulations related to registration and operation of wrecker service vehicles and have insurance as required by G.S. 20-309(a).
- (14) The wrecker service shall employ only wrecker operators who demonstrate an ability to perform required services in a safe, timely, efficient and courteous manner and who satisfy all of the requirements for wrecker drivers established or referenced herein.
- (15) The wrecker service must immediately notify the District First Sergeant of any insurance lapse or change. Wrecker Services shall ensure the NC Highway Patrol is listed as "Certificate Holder" on the Certificate of Liability Insurance, in c/o the District First Sergeant, complete with the current mailing address for the Highway Patrol District Office tasked with the responsibility for ensuring compliance with Highway Patrol policy regarding the respective wrecker service.
- (16) The wrecker service shall notify the Patrol without delay whenever the wrecker service is unable to respond to calls.
- (17) Notification of rotation wrecker calls shall be made to the owner/operator or employee of the wrecker service. Notification shall not be made to any answering service, pager or answering machine.
- (18) Wrecker service vehicles shall be marked on each side by printing the wrecker service name, city and state in at least three inch letters. No magnetic or stick-on signs shall be used. Decals are permissible. The wrecker service operator shall provide a business card to the investigating officer or person in apparent control of the vehicle before leaving the scene.
- (19) Each wrecker service vehicle must be registered with the Division of Motor Vehicles in the name of the wrecker service and insured by the wrecker service. Dealer

- tags shall not be displayed on wreckers that respond to rotation calls.
- (20) Secure all personal property at the scene of a collision to the extent possible, and preserve personal property in a vehicle which is about to be towed.
- (21) Upon application to the Patrol Rotation Wrecker List, the owner shall ensure that the owner and each wrecker driver has not been convicted of, pled guilty to, or received a prayer for judgment continued (PJC):
- (A) Within the last five years of:
- (i) A first offense under G.S. 20-138.1, G.S. 20-138.2, G.S. 20-138.2A or G.S. 20-138.2B;
 - (ii) Any misdemeanor involving an assault, an affray, disorderly conduct, being drunk and disruptive, larceny or fraud;
 - (iii) Misdemeanor Speeding to Elude Arrest; or
 - (iv) A violation of G.S. 14-223, Resist, Obstruct, Delay.
- (B) Within the last ten years of:
- (i) Two or more offenses in violation of G.S. 20-138.1, G.S. 20-138.2, G.S. 20-138.2A or G.S. 20-138.2B;
 - (ii) Felony speeding to elude arrest; or
 - (iii) Any Class F, G, H or I felony involving sexual assault, assault, affray, disorderly conduct, being drunk and disruptive, fraud, larceny, misappropriation of property or embezzlement.
- (C) At any time of:
- (i) Class A, B1, B2, C, D, or E felonies;
 - (ii) Any violation of G.S. 14-34.2, Assault with deadly weapon on a government officer or employee, 14-34.5, Assault with firearm on a law enforcement officer; or G.S. 14-34.7, Assault on law enforcement officer inflicting injury;
 - (iii) Any violation of G.S. 20-138.5, Habitual DWI. For convictions occurring in federal court, another state or country or for North Carolina convictions for felonies which were not assigned a class at the time of conviction, the North Carolina offense which is substantially similar to the federal or out of state conviction or the class of felony which is substantially similar to the North Carolina felony shall be used to determine whether the owner or driver is eligible. Any question concerning a criminal record shall be discussed with the First Sergeant or his designee; or
- (iv) Three felony offenses in any federal or state court or combination thereof. The commission of a felony shall not be considered to be a second or subsequent felony unless it is committed after the conviction or guilty plea to the previous felony.
- (22) Immediately upon employment or upon the request of the District First Sergeant, the owner of the wrecker service shall supply the Patrol with the full name, current address, date of birth, and photo copy of drivers license, valid work VISA, or other INS Documentation for all wrecker drivers and owner(s) in order for the Patrol to obtain criminal history information. The Wrecker Service shall also provide a certified copy of the driving record for the owner and each driver authorized to drive on rotation upon initial application and upon the hiring of a driver if hired after initial application. Following this initial request the Wrecker Service shall provide a certified copy of the driving record for the owner and each rotation wrecker driver under their employment at the time of periodic wrecker inspections. If the owner or a driver is charged with, convicted of, enters a plea of guilty or no contest to, or receives a prayer for judgment continued (PJC) for any of the crimes listed in Subparagraph (21) of this Paragraph. After a wrecker service is placed on the rotation, the wrecker service shall inform the District First Sergeant

- immediately. Upon notification that a driver or owner was charged with any of the crimes listed in this Rule. The Patrol may conduct an independent administrative investigation. Willful failure to notify the District First Sergeant as required herein shall result in removal from the rotation wrecker service for a minimum of 12 months.
- (23) Upon request or demand, the rotation wrecker shall return personal property stored in or with a vehicle, whether or not the towing, repair, or storage fee on the vehicle has been or will be paid. Personal property, for purposes of this provision, includes any goods, wares, freight, or any other property having any value whatsoever other than the functioning vehicle itself.
- (24) The wrecker service shall tow disabled vehicles to any destination requested by the vehicle owner or other person with apparent authority, after financial obligations have been finalized.
- (25) Unless the vehicle is being preserved by the Patrol as evidence, the wrecker service shall allow insurance adjusters access to and allow inspection of the vehicle at any time during normal working hours.
- (26) Being called by the Patrol, to tow a vehicle, does not create a contract with or obligation on the part of Patrol or Patrol personnel to pay any fee or towing charge except when towing a vehicle owned by the Patrol, a vehicle that is later forfeited to the Patrol, or if a court determines that the Patrol wrongfully authorized the tow and orders the Patrol to pay transportation and storage fees.
- (27) Being placed on the Patrol Rotation Wrecker List does not guarantee a particular number or quantity of calls, does not guarantee an equivalent number of calls to every wrecker service on the rotation wrecker list, nor entitle any wrecker service to any compensation as a consequence for not being called in accordance with the list or when removed from the rotation wrecker list.
- (28) The failure to respond to a call by the Patrol shall result in the wrecker service being placed at the bottom of any rotation wrecker list and the wrecker service shall then be "automatically by-passed" when that wrecker service comes up for its next rotation call.
- (29) The District First Sergeant or his designee shall periodically or unannounced subject rotation wreckers and facilities to inspections during normal business hours.
- (30) A rotation wrecker service, upon accepting a call for service from the Patrol, must use its wrecker. Wrecker companies shall not refer a call to another wrecker company or substitute for each other.
- (31) If a rotation wrecker service moves its business location or has a change of address, the owner of the wrecker service must notify the District First Sergeant of the new address or location. Notification shall be made in writing, no later than ten days prior to the projected move. The wrecker service shall not be entitled to receive rotation calls prior to inspection of the new facility.
- (32) A wrecker service may dispatch either a wrecker or a car carrier "rollback" in response to a Patrol rotation wrecker call, except where the wrecker service is advised that a particular type of recovery vehicle is needed due to existing circumstances.
- (33) A rotation wrecker driver or employee shall not respond to a Patrol related incident with the odor of alcohol on his/her breath or while under the influence of alcohol, drugs or any impairing substance.
- (34) A wrecker service shall have in effect a valid hook or cargo insurance policy issued by a company authorized to do business in the State of North Carolina in the amount of fifty thousand dollars (\$50,000) for each small wrecker and one hundred fifty thousand dollars (\$150,000) for each large wrecker or as otherwise required by Federal regulation, whichever is greater. In addition, each wrecker service shall have a garage keeper's insurance policy from an insurance company authorized to do business in the State of North Carolina covering towed vehicles in the amount of one hundred thousand dollars (\$100,000).
- (b) The District First Sergeant shall conduct an investigation of each wrecker service desiring to be placed on the Patrol Rotation Wrecker List and determine if the wrecker service meets the requirements set forth in this Rule. If the District First Sergeant determines that a wrecker service fails to satisfy one or more of the requirements set forth in this Rule, the First Sergeant shall notify the wrecker service owner of the reason(s) for refusing to place it on the rotation wrecker list. ~~Once placed on the rotation wrecker list, a wrecker service shall remain on that list for the remainder of the calendar year.~~ Any wrecker service that fails to comply with the requirements of these rules may be removed from the rotation wrecker list.
- (c) The Troop Commander or designee shall ensure that a wrecker service will only be included once on each rotation wrecker list. Exceptions to this requirement may be made for specialized or large capacity wreckers when none are available for a County or zone.

(d) If the Troop Commander or designee chooses to use a contract, zone, or other system administered by a local agency, the local agency rules govern the system.

(e) If a wrecker service responds to a call it shall be placed at the bottom of the rotation wrecker list unless the wrecker service, through no fault of its own, is not used and receives no compensation for the call. In that event, it shall be placed back at the top of the rotation list.

Authority G.S. 20-184; 20-185; 20-187; 20-188.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to adopt the rule cited as 15A NCAC 10H .0304 and amend the rules cited as 15A NCAC 10B .0101; 10H .0301-.0302.

Proposed Effective Date: April 1, 2010

Public Hearing:

Date: December 8, 2009

Time: 7:00 p.m.

Location: Iredell County Agricultural Resource Center, 444 Bristol Drive, Statesville, NC 28677

Date: December 10, 2009

Time: 7:00 p.m.

Location: Superior Courtroom, Bladen County Courthouse, 166 East Broad Street, Elizabethtown, NC 28337

Date: December 14, 2009

Time: 7:00 p.m.

Location: Centennial Campus for Wildlife Education, 1751 Varsity Drive, Raleigh, NC 27606

Reason for Proposed Action: *Provide for the certification of captive cervid herds as chronic wasting disease (CWD) free, and to permit import, export and transportation of animals coming from certified herds.*

Procedure by which a person can object to the agency on a proposed rule: *Objections may be submitted in writing or electronic mail during the comment period to C. Norman Young, Jr., 9001 Mail Service Center, Raleigh, NC 27699-9001, phone (919)716-6813, email nyoung@ncdoj.gov*

Comments may be submitted to: *Kate Pipkin, North Carolina Wildlife Resources Commission, 1722 Mail Service Center, Raleigh, NC 27699-1722, phone (919)707-0065, email Kathryn.pipkin@ncwildlife.org*

Comment period ends: January 2, 2010

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 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0100 - GENERAL REGULATIONS

15A NCAC 10B .0101 IMPORTATION OF WILD ANIMALS AND BIRDS

(a) Before any live wild bird or wild animal is imported into North Carolina for any purpose, a permit shall be obtained from the Executive Director of the North Carolina Wildlife Resources Commission authorizing the importation, using application forms provided by the Commission.

(b) ~~No deer, Deer, elk, or other species in the family Cervidae may only be imported into the state of North Carolina from a herd in which Chronic Wasting Disease (CWD) has not been detected for at least five years and has been managed using standards equivalent to, or more stringent than, the criteria specified in 15A NCAC 10H .0301 and 15A NCAC 10H .0302. The individual state, Canadian province or country of origin must have CWD monitoring requirements that are at least as stringent as those described in this Rule, 15A NCAC 10H .0301 and 15A NCAC 10H .0302. The originating individual state's, Canadian province's or country's CWD monitoring program must be jointly reviewed by Wildlife Resources Commission and Department of Agriculture and Consumer Services personnel before approval of any importation of cervids into North Carolina. There shall be no importation from individual states, Canadian provinces or countries in which CWD has been detected, for any purpose until the U.S. Department of Agriculture (USDA) establishes a Chronic Wasting Disease (CWD) program that includes a test to detect Chronic Wasting Disease along with requirements for monitoring cervids that shall establish a basis for determining whether a cervid and any cervid herd or farm on which the tested animal has resided has been free of CWD for~~

five years, provided that the program, test and monitoring requirements are recommended for application to wild animals by the Southeastern Cooperative Wildlife Disease Study.

(c) Cervids imported into North Carolina shall be individually identified by tags provided by the Wildlife Resources Commission that shall be affixed by the licensee to each cervid as set forth in these Rules.

(d) Waterfowl imported into North Carolina shall be tested as follows:

- (1) Waterfowl shall be tested for Avian Influenza (AI) and Exotic Newcastle Disease (END) by use of serological screening methods and according to the following sample sizes:
 <100 birds - test 95% of source flock or shipment
 101-200 birds - test 44% of source flock or shipment
 201-300 birds - test 26% of source flock or shipment
 301-400 birds - test 18% of source flock or shipment
 401-500 birds - test 14% of source flock or shipment
 >500 birds - test 58 individuals from source flock or shipment.
- ~~(e)~~(2) Waterfowl that have tested positive in seriological tests shall be tested further by virus isolation/polymerase-chain-reaction (PCR) tests and identification techniques.
- ~~(f)~~(3) Cloacal swabs pooled into groups of no more than five samples for testing shall be used for virus isolation or PCR tests for AI and END.
- ~~(g)~~(4) Final virus isolation/PCR tests that are required because of positive results of serological tests shall be conducted within 10 days prior to release of birds.
- ~~(h)~~(5) The Wildlife Resources Commission shall not accept Directigen[®] test results for AI tests on captive-reared waterfowl.
- ~~(i)~~(6) Test results shall not be used to accept or reject any individual bird(s) from shipments or flocks that have positive results on any assay.
- ~~(j)~~(7) All test results shall be submitted directly from the testing lab to the Wildlife Resources Commission, Division of Wildlife Management.
- ~~(k)~~(8) Neither permit nor license shall be issued until tests are negative for AI and END.

Authority G.S. 113-134; 113-274; 113-291.3; 113-292; 106.549-97(b).

SUBCHAPTER 10H - REGULATED ACTIVITIES

SECTION .0300 - HOLDING WILDLIFE IN CAPTIVITY

15A NCAC 10H .0301 GENERAL REQUIREMENTS

(a) Captivity Permit or License Required

- (1) Requirement. The possession of any species of wild animal that is or once was native to this State or any species of wild bird, native or migratory, that naturally occurs or historically occurred in this State or any member of the family Cervidae is unlawful unless the institution or individual in possession obtains from the North Carolina Wildlife Resources Commission (Commission) a captivity permit or a captivity license as provided by this Rule.
- (2) Injured, Crippled or Orphaned Wildlife. When an individual has taken possession of an injured, crippled or orphaned wild animal or wild bird, that individual shall contact the Commission within 24 hours of taking possession in order to apply for a captivity permit, provided, however, that under no circumstances shall an individual take possession of an injured, crippled or orphaned wild turkey, black bear, deer, elk or any other member of the family Cervidae except as described in Subparagraph (3) of this Paragraph.
- (3) Rehabilitation of white-tailed deer fawns. An individual may apply to the Commission to become a permitted white-tailed deer fawn rehabilitator for the State of North Carolina. Individuals deemed to be qualified according to these Rules to rehabilitate injured or orphaned fawns may receive a captivity permit to possess fawns only for such a period of time as may be required for the rehabilitation and release of the fawns to the wild. These captivity permits shall apply only to wild white-tailed deer fawns and are available only to individuals recognized by the Commission as white-tailed deer fawn rehabilitators.

(b) Captivity Permit. A captivity permit shall be requested by mail, phone, facsimile or electronic transmission or in person. A captivity permit shall authorize possession of the animal or bird only for such period of time as may be required for the rehabilitation and release of the animal or bird to the wild; or to obtain a captivity license as provided by Paragraph (c) of this Rule, if such a license is authorized; or to make a proper disposition of the animal or bird if the application for such license is denied, or when an existing captivity license is not renewed or is terminated. Captivity permits shall not be issued for wild turkey, black bear, deer, elk or any other member of the family Cervidae except as described in Subparagraph (a)(3) of this Rule.

(c) Captivity License.

- (1) The purpose of captivity license is to provide humane treatment for wild animals or wild birds that are unfit for release. For purposes of this Rule, wild animals are

- considered "unfit" if they are incapacitated by injury or otherwise; if they are a non-native species that poses a risk to the habitat or to other species in that habitat; or if they have been rendered tame by proximity to humans to the extent that they cannot feed or care for themselves without human assistance. Persons interested in obtaining a captivity license shall contact the Commission for an application.
- (2) Denial of captivity license. Circumstances or purposes for which a captivity license shall not be issued include the following:
- (A) For the purpose of holding a wild animal or wild bird that was acquired unlawfully.
- (B) For the purpose of holding the wild animal or wild bird as a pet. For purposes of this Rule, the term "pet" means an animal kept for amusement or companionship. The term shall not be construed to include cervids held in captivity for breeding for sale to another licensed operator.
- (C) For the purpose of holding wild animals or wild birds for hunting in North Carolina.
- (D) For the purpose of holding wild turkey or black bear.
- (E) For the purpose of holding deer, elk or any other member of the family Cervidae, except current licenses which may be renewed as specified in Subparagraph (6) of this Paragraph. ~~Cervidae on a facility licensed after May 17, 2002 until the U.S. Department of Agriculture (USDA) establishes a Chronic Wasting Disease (CWD) program that includes a test to detect Chronic Wasting Disease along with requirements for monitoring cervids that shall establish a basis for determining whether a cervid and any cervid herd or farm with which the tested cervid has resided has been free of CWD for five years, provided that the program, test and monitoring requirements are recommended for application to wild animals by the Southeastern Cooperative Wildlife Disease Study.~~
- (3) Required Facilities. No captivity license shall be issued until the applicant has constructed or acquired a facility for keeping the animal or bird in captivity that complies with the standards set forth in Rule .0302 of this Section and the adequacy of such facility has been verified on inspection by a representative of the Commission.
- (4) Term of License
- (A) Dependent Wildlife. If the wild animal or wild bird has been permanently rendered incapable of subsisting in the wild, the license authorizing its retention in captivity shall be an annual license terminating on December 31 of the year for which issued.
- (B) Rehabilitable Wildlife. When the wild animal or wild bird is temporarily incapacitated, and may be rehabilitated for release to the wild, any captivity license that is issued shall be for a period less than one year as rehabilitation may require.
- (C) Concurrent Federal Permit. No State captivity license for an endangered or threatened species or a migratory bird, regardless of the term specified, shall operate to authorize retention thereof for a longer period than is allowed by any concurrent federal permit that may be required for retention of the bird or animal.
- (5) Holders of Captivity License for cervids.
- (A) Inspection of records. The licensee shall make all records pertaining to tags, licenses or permits issued by the Commission available for inspection by the Commission at any time during normal business hours, or at any time an outbreak of Chronic Wasting Disease (CWD) ~~CWD~~ is suspected or confirmed within five miles of the facility or within the facility itself.
- (B) Inspection. The licensee shall make all enclosures at each licensed facility and the record-book(s) documenting required monitoring of the outer fence of the enclosure(s) available for inspection by the Commission at any time during normal business hours, or at any time an outbreak of CWD is suspected or confirmed within five miles of the facility or within the facility itself.
- (C) Fence Monitoring Requirement. The fence surrounding the enclosure shall be inspected by the licensee or licensee's agent once a week during normal weather

- conditions to verify its stability and to detect the existence of any conditions or activities that threaten its stability. In the event of severe weather or any other condition that presents potential for damage to the fence, inspection shall occur every three hours until cessation of the threatening condition, except that no inspection shall be required under circumstances that threaten the safety of the person conducting the inspection.
- (D) A record-book shall be maintained to record the time and date of the inspection, the name of the person who performed the inspection, and the condition of the fence at time of inspection. The person who performs the inspection shall enter the date and time of detection and the location of any damage threatening the stability of the fence. If damage has caused the fence to be breachable, the licensee shall enter a description of measures taken to prevent ingress or egress by cervids. Each record-book entry shall bear the signature or initials of the licensee attesting to the veracity of the entry. The record-book shall be made available to inspection by a representative of the Commission upon request during normal business operating hours.
- (E) Maintenance. Any opening or passage through the enclosure fence that results from damage shall, within one hour of detection, be sealed or otherwise secured to prevent a cervid from escape. Any damage to the enclosure fence that threatens its stability shall be repaired within one week of detection.
- (F) Escape. The licensee or designee shall immediately upon discovery report any cervid escape from the facility to the Commission. If possible, the escaped cervid shall be recaptured alive. If live recapture is not possible, the licensee shall request a wildlife take permit and take the escaped cervid pursuant to the terms of the permit. A recaptured live cervid shall be submitted to the Commission for ~~Chronic Wasting~~ ~~Disease (CWD)~~ CWD testing using a test recognized by the Southeastern Cooperative Wildlife Disease Study unless the executive director determines that the risk of CWD transmission as a result of this escape is ~~negligible~~ negligible based upon:
- (i) amount of time the escaped cervid remained out of the facility;
 - (ii) proximity of the escaped cervid to wild populations;
 - (iii) known susceptibility of the escaped cervid species to CWD;
 - (iv) nature of the terrain in to which the cervid escaped.
- (G) Chronic Wasting Disease (CWD)
- (i) Detection. Each licensee shall immediately notify the Commission if any cervid within the facility exhibits clinical symptoms of CWD or if a quarantine is placed on the facility by the State Veterinarian. All captive cervids that exhibit symptoms of CWD shall be tested for CWD.
 - (ii) Cervid death. The carcass of any captive cervid that was six months or older at time of death shall be transported and submitted by the licensee to a North Carolina Department of Agriculture diagnostic lab for CWD evaluation within 48 hours of the cervid's death, or by the end of the next business day, whichever is later. Ear tags distributed by the Commission and subsequently affixed to the cervids as required by this Rule, may not be removed from the cervid's head prior to submitting the head for CWD evaluation.
 - (iii) The Commission may require testing or forfeiture of cervids from a facility holding cervids in this state should the

following circumstances or conditions occur:

- (I) The facility has transferred a cervid that is received by a facility in which CWD is confirmed within five years of the cervid's transport date.
- (II) The facility has received a cervid that originated from a facility in which CWD has been confirmed within five years of the cervid's transport date.
- (H) Tagging Required. Effective upon receipt of tags from the Commission, each licensee shall implement the tagging requirement using only the tags provided by the Commission as follows:
 - (i) All cervids born within a facility shall be tagged by March 1 following the birthing season each year.
 - (ii) All cervids transferred to a facility shall be tagged within five days of the cervid's arrival at the licensee's facility. However, no cervids shall be transported from one facility to another unless both sending and receiving herds are certified according to 15A NCAC 10H .0304, until restrictions on importation (10B .0101) and transportation (Paragraph (f) of this Rule) no longer apply.
 - ~~(iii) All cervids in the possession of a licensee as of October 8, 2002 shall be tagged within six months of the licensee's receipt of the tags.~~
- (I) Application for Tags.
 - (i) Application for tags for calves and fawns. ~~newborn cervid.~~ Application for tags for

cervids born within a facility shall be made by the licensee by December 1 following the birthing season of each year. The licensee shall provide the following information, along with a statement and licensee's signature verifying that the information is accurate:

- (I) Applicant name, mailing address, and telephone number;
- (II) Facility name and site address;
- (III) Captivity license number;
- (IV) Species of each cervid; and
- (V) Birth year of each cervid.
- (ii) Application for tags for cervids that were not born at the facility site shall be made by written request for the appropriate number of tags along with the licensee's application for transportation of the cervid, along with a statement and licensee's signature verifying that the information is accurate. These tag applications shall not be processed unless accompanied by a completed application for transportation. However, no transportation permits shall be issued nor shall cervids be transported from one facility to another unless both sending and receiving herds are certified according to 15A NCAC 10H .0304, until restrictions on importation (10B .0101) and transportation (Paragraph (f) of this Rule) no longer apply.
- (J) Placement of Tags.
 - (i) A single button ear tag provided by the Commission shall be

- permanently affixed by the licensee onto either the right or left ear of each cervid, provided that the ear chosen to bear the button tag shall not also bear a bangle tag, so that each ear of the cervid bears only one tag.
 - (ii) A single bangle ear tag provided by the Commission shall be permanently affixed by the licensee onto the right or left ear of each cervid except Muntjac deer, provided that the ear bearing the bangle tag does not also bear the button tag, so that each ear of the cervid bears only one tag. Muntjac deer are not required to be tagged with the bangle tag.
 - (iii) Once a tag is affixed in the manner required by this Rule, it shall not be removed.
- (K) Reporting Tags Requirement. For all cervids, except calves and fawns, cervids not in the possession of a licensee as of October 8, 2002, the licensee shall submit a Cervidae Tagging Report within 30 days of receipt of the tags. Cervidae Tagging Reports for calves and fawns shall be submitted by March 1 following the birthing season each year. ~~With regard to all cervids in the possession of a licensee as of October 8, 2002, the licensee shall submit a Cervidae Tagging report to the Commission within seven months of the licensee's receipt of the tags.~~ A Cervidae Tagging Report shall provide the following information and be accompanied by a statement and licensee's signature verifying that the information is accurate:
 - (i) Licensee name, mailing address, and telephone number;
 - (ii) Facility name and site address, including the County in which the site is located;
 - (iii) Captivity license number;
- (iv) Species and sex of each cervid;
 - (v) Tag number(s) for each cervid; and
 - (vi) Birth year of each cervid.
- (L) Replacement of Tags. The Commission shall replace tags that are lost or unusable and shall extend the time within which a licensee shall tag cervids consistent with time required to issue a replacement.
 - (i) Lost Tags. The loss of a tag shall be reported to the Commission by the licensee and application shall be made for a replacement upon discovery of the loss. Application for a replacement shall include the information required by Subparagraph ~~(e)(5)(C)~~ (c)(5)(I) of this Rule along with a statement and applicant's signature verifying that the information is accurate. Lost tags shall be replaced on the animal by the licensee within 30 days of receipt of the replacement tag.
 - (ii) Unusable Tags. Tags that cannot be properly affixed to the ear of a cervid or that cannot be read because of malformation or damage to the tags or obscurement of the tag numbers shall immediately be returned to the Commission along with an application for a replacement tag with a statement and applicant's signature verifying that the information in the application is accurate.
- (6) Renewal of captivity license for cervids. Existing captivity licenses for the possession of cervids at existing facilities shall be renewed as long as the applicant for renewal continues to meet the requirements of this Section for the license. Only licensees with Certified Herds, as defined in 15A NCAC 10H .0304, may request in their renewal applications to expand pen size or the number of pens on the licensed facility to

~~increase the holding capacity of that facility. license, provided however, no renewal of an existing license shall permit the expansion of pen size or number of pens on the licensed facility to increase the holding capacity of that facility.~~ No renewals shall be issued for a license that has been allowed to lapse due to the negligence of the former licensee.

- (7) Provision for licensing the possession of cervids in an existing facility. A captivity license shall only be issued to an individual who is 18 years of age or older. If the licensee of an existing facility voluntarily surrenders his or her captivity license, becomes incapacitated or mentally incompetent, or dies, a person who has obtained lawful possession of the facility from the previous licensee or that licensee's estate, may ~~apply for request that the existing captivity license be transferred to them and may receive a captivity license to~~ operate the existing facility. Any license ~~issued~~ transferred under this provision shall be subject to the same terms and conditions imposed on the original licensee at the time of his or her surrender or death and shall be valid only for the purpose of holding the cervids of the existing facility within that existing facility. In addition, any actions pending from complaint, investigation or other cause shall be continued notwithstanding the termination of the original license.

(d) Nontransferable. No license or permit or tag issued pursuant to this Rule shall be transferable, either as to the holder or the site of a holding ~~facility. facility, except as provided in Subparagraph (c)(7) of this Rule.~~

(e) Sale, Transfer or Release of Captive Wildlife.

- (1) It is unlawful for any person to transfer or receive any wild animal or wild bird that is being held under a captivity permit issued under Paragraph (b) of this Rule, except that any such animal or bird may be surrendered to an agent of the Commission.
- (2) It is unlawful for any person holding a captivity license issued under Paragraph (c) of this Rule to sell or transfer the animal or bird held under such license, except that such animal or bird may be surrendered to an agent of the Commission, and any such licensee may sell or transfer the animal or bird (except members of the family Cervidae) to another person who has obtained a license to hold it in captivity. For animals in the family Cervidae, sale or transfer of animals is allowed only between Certified Herds, as defined in 15A NCAC 10H .0304. Upon such a sale or transfer, the

seller or transferor shall obtain a receipt for the animal or bird showing the name, address, and license number of the buyer or transferee, a copy of which shall be provided to the Commission.

- (3) It is unlawful for any person to release into the wild for any purpose or allow to range free:
- (i) any species of deer, elk or other members of the family Cervidae, or
 - (ii) any wolf, coyote, or other non-indigenous member of the family Canidae, or
 - (iii) any member of the family Suidae.

(f) Transportation Permit.

- (1) Except as otherwise provided herein, no transportation permit shall be required to move any lawfully held wild animal or wild bird within the State.
- (2) No person shall transport black bear or Cervidae for any purpose without first obtaining a transportation permit from the Commission.
- (3) Except as provided in Subparagraph (f)(4) of this Rule, no transportation permits shall be issued for deer, elk, or other species in the family Cervidae except into and between Certified Herds as defined in 15A NCAC 10H .0304. ~~until the U.S. Department of Agriculture (USDA) establishes a Chronic Wasting Disease (CWD) program that includes a test to detect Chronic Wasting Disease, along with requirements for monitoring cervids that shall establish a basis for determining whether a cervid and any cervid herd or farm on which the tested animal has resided has been free of CWD for five years, provided that the program, test and monitoring requirements are recommended for application to wild animals by the Southeastern Cooperative Wildlife Disease Study.~~
- (4) Cervid Transportation. A permit to transport deer, elk, or other species in the family Cervidae may be issued by the Commission to an applicant for the purpose of transporting the animal or animals for export out of state, to a slaughterhouse for slaughter, from a Certified Herd to another Certified Herd as defined in 15A NCAC 10H .0304, or to a veterinary medical facility for treatment provided that the animal for which the permit is issued does not exhibit clinical symptoms of Chronic Wasting Disease. No person shall transport a cervid to slaughter or export out of state without bearing a copy of the transportation permit issued by the Commission authorizing that transportation. No person

shall transport a cervid for veterinary treatment without having obtained approval from the Commission as provided by Subparagraph (f)(4)(D) ~~(f)(4)(C)~~ of this Rule. Any person transporting a cervid shall present the transportation permit to any law enforcement officer or any representative of the Commission upon request, except that a person transporting a cervid by verbal authorization for veterinary treatment shall provide the name of the person who issued the approval to any law enforcement officer or any representative of the Commission upon request.

(A) Slaughter. Application for a transportation permit for purpose of slaughter shall be submitted in writing to the Commission and shall include the following information along with a statement and applicant's signature verifying that the information is accurate:

- (i) Applicant name, mailing address, and telephone number;
- (ii) Facility site address;
- (iii) Captivity license number;
- (iv) Name, address, county and phone number of the slaughter house to which the cervid will be transported;
- (v) Vehicle or trailer license plate number and state of issuance of the vehicle or trailer used to transport the cervid;
- (vi) Name and location of the North Carolina Department of Agriculture Diagnostic lab where the head of the cervid is to be submitted for CWD testing;
- (vii) Date of transportation;
- (viii) Species and sex of each cervid; and
- (ix) Tag number(s) for each cervid.

(B) Exportation. Nothing in this rule shall be construed to prohibit the lawful exportation of a member of the family Cervidae for sale out of state. Application for a transportation permit for purpose of exportation out of state shall be submitted in writing to the Commission and shall include the following information along with a

statement and applicant's signature verifying that the information is accurate:

- (i) Applicant's name, mailing address and telephone number;
- (ii) Facility site address;
- (iii) Captivity license number;
- (iv) Vehicle or trailer license plate number and state of issuance of the vehicle or trailer used to transport the cervid;
- (v) Name, site address, county, state and phone number of the destination facility to which the cervid is exported;
- (vi) A copy of the importation permit from the state of the destination facility that names the destination facility to which the animal is to be exported;
- (vii) Date of departure;
- (viii) Species and sex of each cervid; and
- (ix) Tag number(s) for each cervid.

(C) Between herds. Application for a transportation permit for purpose of moving a cervid from one Certified Herd to another Certified Herd, as defined in 15A NCAC 10H .0304, shall be submitted in writing to the Commission and shall include the following information along with a statement and applicant's signature verifying that the information is accurate:

- (i) Applicant's name, mailing address and telephone number;
- (ii) Facility site address;
- (iii) Captivity license number;
- (iv) Vehicle or trailer license plate number and state of issuance of the vehicle or trailer used to transport the cervid;
- (v) Name, site address, county, and phone number of the destination facility to which the cervid is moved;
- (vi) Date of departure;
- (vii) Species and sex of each cervid; and

- (viii) Tag number(s) for each cervid.
- ~~(C)~~(D) Veterinary treatment. No approval shall be issued for transportation of a cervid to a veterinary clinic out of the state of North Carolina, or for transportation from a facility out of the state of North Carolina to a veterinary clinic in North Carolina. An applicant from a North Carolina facility seeking to transport a cervid for veterinary treatment to a facility within North Carolina shall contact the Wildlife Telecommunications Center or the Wildlife Management Division of the Commission to obtain verbal authorization to transport the cervid to a specified veterinary clinic and to return the cervid to the facility. Verbal approval to transport a cervid to a veterinary clinic shall authorize transport only to the specified veterinary clinic and directly back to the facility, and shall not be construed to permit intervening destinations. To obtain verbal authorization to transport, the applicant shall provide staff of the Commission the applicant's name and phone number, applicant's facility name, site address and phone number, the cervid species, sex and tag numbers, and the name, address and phone number of the veterinary facility to which the cervid shall be transported. Within five days of transporting the cervid to the veterinary facility for treatment, the licensee shall provide the following information in writing to the Commission, along with a statement and applicant's signature verifying that the information is correct:
- (i) Applicant's name, mailing address and telephone number;
 - (ii) Facility name and site address;
 - (iii) Captivity license number;
 - (iv) Vehicle or trailer license plate number and state of issuance of the vehicle or trailer used to transport the cervid;
 - (v) Date of transportation;

- (vi) Species and sex of each cervid;
- (vii) Tag number(s) for each cervid;
- (viii) Name, address and phone number of the veterinarian and clinic that treated the cervid;
- (ix) Symptoms for which cervid received treatment; and
- (x) Diagnosis of veterinarian who treated the cervid.

(g) Slaughter at cervid facility. Application for a permit for purpose of slaughter at the cervid facility shall be submitted in writing to the Commission and shall include the following information along with a statement and applicant's signature verifying that the information is accurate:

- (A) Applicant name, mailing address, and telephone number;
- (B) Facility site address;
- (C) Captivity license number;
- (D) Name and location of the North Carolina Department of Agriculture Diagnostic lab where the head of the cervid is to be submitted for CWD testing;
- (E) Date of slaughter;
- (F) Species and sex of each cervid; and
- (G) Tag number(s) for each cervid.

Permits or authorization may not be sold or traded by the licensee to any individual for the hunting or collection of captive cervids. Only the licensee may kill a cervid within the cervid enclosure.

~~(h) No provision within this Rule other than those that permit transport for export, slaughter or veterinary treatment shall be construed to permit transportation of cervids until restrictions on transportation provided within this Subchapter, and 15A NCAC 10B .0101 no longer apply.~~

Authority G.S. 106-549.97(b); 113-134; 113-272.5; 113-272.6; 113-274.

15A NCAC 10H .0302 MINIMUM STANDARDS

- (a) Exemptions. Publicly financed zoos, scientific and biological research facilities, and institutions of higher education that were granted an exemption by the Commission from the standards of this Rule prior to December 1, 2005 are exempt from the standards set forth in this Rule for all birds and animals except the black bear so long as the captivity license in effect on that date has not expired or been revoked.
- (b) With the exception of those entities named in Paragraph (a) of this Rule who have received exemption from the Commission, all holders of captivity licenses shall comply with the following requirements:
 - (1) Deer, Elk and other species of the family Cervidae
 - (A) Enclosure. The enclosure shall be on a well-drained site containing

natural or manmade shelter for shade. The minimum size of the enclosure for all cervids except Muntjac deer shall be not less than one-half acre for the first three animals and an additional one-fourth acre for each additional animal held provided that no more than 25% shall be covered with water. At no time shall the number of cervids in the enclosure exceed the number allowed by the captivity license, except that fawns and calves shall not count towards the total number of cervids in a facility from the time they are born until March 1 of the following year. ~~license~~. The enclosure shall be surrounded by a fence of sufficient strength and design to contain the animal under any circumstances, at least eight feet high, and dog-proof to a height of at least six feet. For enclosures exclusively holding Muntjac deer, the minimum pen size shall be 800 square feet for the first three animals and 200 square feet for each additional animal. No exposed barbed wire, nails, or other protrusions that may cause injury to the animal shall be permitted within the enclosure. Captive cervids shall not be contained within or allowed to enter a place of residence.

(B) Sanitation and Care. Licensees shall provide an ample supply of clear water and salt at all times. Food shall be placed in the enclosure as needed, but not less than three times weekly. An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained. The animal(s) shall be protected against fright or harm from other animals.

(2) Wild Boars

(A) Enclosure. The enclosure shall be on a site containing trees or brush for shade. The minimum size of the enclosure shall be not less than one-half acre for the first three animals and an additional one-fourth acre for each additional animal held. The enclosure shall be surrounded by a fence at least five feet high and of sufficient strength to contain the animals. No

exposed barbed wire or protruding nails shall be permitted within the enclosure. A roofed building large enough to provide shelter in both a standing or a lying position for each boar must be provided. This building shall be closed on three sides. A pool of water for wallowing or a sprinkler system shall be provided on days when heat could cause stress to the animal(s).

(B) Sanitation and Care. Licensees shall provide an ample supply of clear water at all times. Food shall be placed in the enclosure as needed, but in any case, not less than three times weekly. An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained.

(3) Wild Birds

(A) Enclosure. The enclosure shall be large enough for the bird or birds to assume all natural postures. The enclosure shall be designed in such a way that the birds cannot injure themselves and are able to maintain a natural plumage. Protection from sun, weather, and predators shall also be provided.

(B) Sanitation and Care. The cage shall be kept clean, dry, and free from molded or damp feed. Ample food and clean water shall be available at all times.

(4) Alligators

(A) Enclosure. The enclosure shall be surrounded by a fence of sufficient strength to contain the animals and that shall prevent contact between the observer and alligator. The enclosure shall contain a pool of water large enough for the animal to completely submerge itself. If more than one animal is kept, the pool must be large enough for all animals to be able to submerge themselves at the same time. A land area with both horizontal dimensions at least as long as the animal shall also be provided. In case of more than one animal, the land area shall have both horizontal dimensions at least as long as the longest animals to occupy the land area at the same time without overlap.

- (B) Sanitation and Care. The water area shall be kept clean and food adequate to maintain good health provided. Protection shall be provided at all times from extremes in temperature that could cause stress to the animal.
- (5) Black Bear
 - (A) Educational Institutions and Zoos Operated or Established by Governmental Agencies
 - (i) Enclosure. A permanent, stationary metal cage, at least eight feet wide by 12 feet long by six feet high and located in the shade or where shaded during the afternoon hours of summer, is required. The cage shall have a concrete floor in which a drainable pool one and one-half feet deep and not less than four by five feet has been constructed. The bars of the cage shall be of iron or steel at least one-fourth inch in diameter, or heavy gauge steel chain link fencing may be used. The gate shall be equipped with a lock or safety catch, and guard rails shall be placed outside the cage so as to prevent contact between the observer and the caged animal. The cage must contain a den at least five feet long by five feet wide by four feet high and so constructed as to be easily cleaned. A "scratch log" shall be placed inside the cage. The cage shall be equipped with a removable food trough. Running water shall be provided for flushing the floor and changing the pool.
 - (ii) Sanitation and Care. Food adequate to maintain good health shall be provided daily; and clean, clear drinking water shall be available at all times. The floor of the cage and the food trough shall be flushed with water and the water in the pool changed daily. The den shall be flushed and cleaned at least once each week in hot weather. An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained. Brush, canvas, or other material shall be placed over the cage to provide additional shade when necessary for the health of the animal. The use of collars, tethers or stakes to restrain the bear is prohibited, except as a temporary safety device.
 - (B) Conditions Simulating Natural Habitat. Black bears held in captivity by other than educational institutions or governmental zoos shall be held without caging under conditions simulating a natural habitat. All of the following conditions must exist to simulate a natural habitat in a holding facility:
 - (i) The method of confinement is by chain link fence, wall, moat, or a combination of such, without the use of chains or tethers.
 - (ii) The area of confinement is at least one acre in extent for one or two bears and an additional one-eighth acre for each additional bear.
 - (iii) Bears are free, under normal conditions, to move throughout such area.
 - (iv) At least one-half of the area of confinement is wooded with living trees, shrubs and other perennial vegetation capable of providing shelter from sun and wind.
 - (v) The area of confinement contains a pool not less than one and one-half feet deep and not less than four by five feet in size.
 - (vi) Provision is made for a den for each bear to which

- the bear may retire for rest, shelter from the elements, or respite from public observation.
 - (vii) The area of confinement presents an overall appearance of a natural habitat and affords the bears protection from harassment or annoyance.
 - (viii) Provisions are made for food and water that are adequate to maintain good health and for maintenance of sanitation.
 - (ix) The applicant shall document that the applicant owns or has a lease of the real property upon which the holding facility is located, provided that if the applicant is a lessee, the lease is for a duration of at least five years from the point of stocking the facility.
- (6) **Cougar**
 - (A) Educational or scientific research institutions and zoos supported by public funds.
 - (i) Enclosure. A permanent, stationary metal cage, at least nine feet wide by 18 feet long by nine feet high and located in the shade or where shaded during the afternoon hours of summer, is required. The cage shall have a concrete floor. The bars of the cage shall be of iron or steel at least one-fourth inch in diameter, or heavy gauge steel chain link fencing may be used. The gate shall be equipped with a lock or safety catch, and guard rails shall be placed outside the cage so as to prevent contact between the observer and the caged animal. The cage shall contain a den at least five feet long by five feet wide by four feet high and so constructed as to be easily cleaned. A "scratch log" shall be placed inside the cage. The cage shall be equipped with a removable food trough. Running water shall be provided for flushing the floor and changing the pool.
 - (ii) Sanitation and Care. Food adequate to maintain good health shall be provided daily; and clean, clear drinking water shall be available at all times. The floor of the cage and the food trough shall be flushed with water and the water in the pool changed as necessary to maintain good health of the animal. The den shall be flushed and cleaned at least once each week. An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained. Brush, canvas, or other material shall be readily available to be placed over the cage to provide additional shade when necessary. The use of collars, tethers or stakes to restrain the cougar is prohibited, except as a temporary safety device.
- (B) Cougars held in captivity by other than educational or scientific institutions or publicly supported zoos shall be held without caging under conditions simulating a natural habitat. Applicants for a captivity license to hold cougar shall apply to the Commission on forms provided by the Commission, and shall provide plans that describe how the applicant's facility will comply with the requirement to simulate a natural habitat. All of the following conditions must exist to simulate a natural habitat in a holding facility.
 - (i) The method of confinement is by chain link fence, without the use of chains or tethers, provided that:

- (I) Nine gauge chain link fencing shall be at least 12 feet in height with a four foot fence overhang at a 45 degree angle on the inside of the pen to prevent escape from climbing and jumping.
- (II) Fence posts and at least six inches of the fence skirt shall be imbedded in a six inch wide by one foot deep concrete footer to prevent escape by digging.
- (ii) The area of confinement shall be at least one acre for two cougars with an additional one-eighth acre for each additional cougar. If, following a site evaluation, the Commission determines that terrain and topographical features offer sufficient escape, cover and refuge, and meet all other specifications, and that the safety and health of the animal(s) will not be compromised, smaller areas shall be permitted.
- (iii) Cougars shall be free under normal conditions to move throughout the area of confinement.
- (iv) At least one-half of the area of confinement shall be wooded with living trees, shrubs and other perennial vegetation capable of providing shelter from sun and wind; and a 20 foot wide strip along the inside of the fence shall be maintained free of trees, shrubs and any other obstructions which could provide a base from which escape through leaping could occur.
- (v) The area of confinement shall contain a pool not less than one and one-half feet deep and not less than four by five feet in size.
- (vi) Each cougar shall be provided a den to which the cougar may retire for rest, shelter from the elements, or respite from public observation. Each den shall be four feet wide by four feet high by four feet deep. Each den shall be enclosed entirely within at least an eight feet wide by ten feet deep by 12 feet high security cage. The security cage shall be completely within the confines of the facility, cement-floored, shall have nine gauge fencing on all sides and the top, and shall have a four foot, 45 degree fence overhang around the outside top edge to prevent cougar access to the top of the security cage.
- (vii) The area of confinement shall protect the cougar from harassment or annoyance.
- (C) Provisions shall be made for maintenance of sanitation and for food and water adequate to maintain good health of the animal(s).
- (D) The applicant shall document that the applicant owns or has a lease of the real property upon which the holding facility is located, provided that if the applicant is a lessee, the lease is for a duration of at least five years from the point of stocking the facility.
- (7) Other Wild Animal Enclosures.
 - (A) General Enclosure Requirements.
 - (i) The enclosure shall provide protection from free ranging animals and from sun or weather that could cause stress to the animals.
 - (ii) A den area in which the animal can escape from

- view and large enough for the animal to turn around and lie down shall be provided for each animal within the enclosure.
- (iii) No tethers or chains shall be used to restrain the animal.
- (iv) Either a tree limb, exercise device, or shelf large enough to accommodate the animal shall be provided to allow for exercise and climbing.
- (v) Sanitation and Care. Fresh food shall be provided daily, and clean water shall be available at all times.
- (vi) An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained.
- (B) Single Animal Enclosures for certain animals. The single-animal enclosure for the animals listed in this Subparagraph shall be a cage with the following minimum dimensions and horizontal areas:

Dimensions in Feet

Animal	Length	Width	Height	Per Animal
Bobcat, Otter	10	5	5	50
Raccoon, Fox, Woodchuck	8	4	4	32
Opossum, Skunk, Rabbit	6	3	3	18
Squirrel	4	2	2	8

- (C) Single Enclosure Requirements for animals not mentioned elsewhere in this Rule. For animals not listed above or mentioned elsewhere in this Rule, single animal enclosures shall be a cage with one horizontal dimension being at least four times the nose-rump length of the animal and the other horizontal dimension being at least twice the nose-rump length of the animal. The vertical dimensions shall be at least twice the nose-rump length of the animal. Under no circumstances shall a cage be less than four feet by two feet by two feet.
- requirements for multiple-animal enclosures shall apply.

Authority G.S. 19A-11; 106-549.97(b); 113-134; 113-272.5, 113-272.6.

15A NCAC 10H .0304 CAPTIVE CERVID HERD CERTIFICATION PROGRAM

- (a) The Wildlife Resources Commission has established this Captive Cervid Herd Certification Program in order to prevent the introduction of Chronic Wasting Disease (CWD) into North Carolina and reduce the potential for spread of CWD while allowing transportation of cervids from herds in which CWD has not been detected for at least five years, in accordance with the requirements in this Section. Only licensees with Certified Herds as defined in Paragraph (e) of this Rule may request to expand their pen size to accommodate additional cervids and transport cervids within North Carolina for purposes other than those specified in 15A NCAC 10H .0301(f)(4). Licensees with Certified Herds may also import cervids from a herd in which CWD has not been detected for at least five years and has been managed using standards equivalent to, or more stringent than, the criteria specified in 15A NCAC 10H .0301 and 15A NCAC 10H .0302. The individual state, Canadian province or country of origin must have CWD monitoring requirements that are at least as stringent as those described in this Section. The originating individual state's, Canadian province's or country's CWD monitoring program must be jointly reviewed by Wildlife Resources Commission and Department of Agriculture and Consumer Services personnel before approval of any importation of cervids into North Carolina.
- (D) Multiple Animal Enclosures. The minimum area of horizontal space shall be determined by multiplying the required square footage for a single animal by a factor of 1.5 for one additional animal and the result by the same factor, successively, for each additional animal. The vertical dimension for multiple animal enclosures shall remain the same as for single animal enclosures.
- (E) Young animals. The young of any animal may be kept with the parent in a single-animal enclosure only until weaning. After weaning, if the animals are kept together, the

There shall be no importation from individual states, Canadian provinces or countries in which CWD has been detected.

(b) Enrollment qualifications. Only captive cervid herds held under a valid captivity license are eligible for enrollment in the Captive Cervid Herd Certification Program. Licensees are required to comply with all captivity license requirements outlined in this Section and the rules and laws regulating possession, transportation and importation of cervids in order to remain in the Captive Cervid Herd Certification Program.

(c) Enrollment application. Each individual holding a current and valid Captivity License for cervids may apply in writing to the Commission to enroll in the Captive Cervid Herd Certification Program. The Commission may deny an application if:

- (1) the licensee has not complied with all the requirements under the captivity license statutes and all rules pertaining to the holding of cervids in captivity and the transportation or importation of cervids resulting in a failed inspection report, citation or conviction; or
- (2) the licensee has provided false information; or
- (3) CWD has been confirmed in a cervid at the licensee's facility.

(d) Enrollment dates. The enrollment date is:

- (1) the first date upon official inspection, documented by Wildlife Resources Commission and Department of Agriculture and Consumer Services personnel, on which the licensee has fully complied with all captivity rules and statutes that pertain to cervids, including tagging, provided that the licensee has continued to comply with these regulations; or
- (2) the date on which a waiver was issued by the Wildlife Resources Commission Executive Director that brought the facility into full compliance assuming that there were no other compliance actions pending, provided that the licensee has continued to comply with the captive cervid regulations.

This date may be retroactive but may extend back no earlier than the date Wildlife Resources Commission and Department of Agriculture and Consumer Services personnel documented that the licensee came into full compliance with all captivity rules and statutes related to holding cervids in captivity, including tagging of all cervids.

(e) Certified herd. When a herd is enrolled in the Captive Cervid Herd Certification Program, it will be placed in First Year status. If the herd continues to meet the requirements of the Captive Cervid Herd Certification Program, each year on the anniversary of the enrollment date the herd status will be upgraded by one year. One year from the date a herd is placed in Fifth Year status, the herd status will be changed to Certified, and the herd will remain in Certified status as long as it is enrolled in the Captive Cervid Herd Certification

Program, provided its status is not lost or suspended without reinstatement as described in Paragraph (f) of this Rule.

(f) Herd status

- (1) A Certified Herd or any herd enrolled in the program may have its status suspended or reduced if:
 - (A) the licensee fails to comply with any of the ongoing requirements for captive cervid licenses as identified in 15A NCAC 10H .0301; or
 - (B) the licensee violates any other North Carolina law or rule related to captive cervids; or
 - (C) an animal in the herd exhibits clinical signs of CWD; or
 - (D) an animal in the herd can be traced back to a herd with an animal exhibiting clinical signs of CWD; or
 - (E) the herd is quarantined by the State Veterinarian.
- (2) A Certified Herd or any herd enrolled in the program shall lose its status if:
 - (A) an animal in the herd can be traced back to a herd in which CWD has been detected; or
 - (B) CWD is detected in an animal in the herd; or
 - (C) the licensee loses his or her license.

The Wildlife Resources Commission will review cases of suspended status upon request. A Certified Herd with suspended status may regain its status if the licensee corrects within 30 days the deficiency under which the status was suspended or, in the case of suspected CWD, the disease was not detected in the suspect animal.

(g) Inspection. If an inspection of the captive cervids is needed as a part of certification, including reinstating a suspended status, the licensee will be responsible for assembling, handling and restraining the captive cervids and all costs incurred to present the animals for inspection.

Authority G.S. 106-549.97(b); 113-134; 113-272.5; 113-272.6; 113-274; 113-292.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to amend the rule cited as 15A NCAC 13A .0107.

Proposed Effective Date: April 1, 2010

Public Hearing:

Date: November 17, 2009

Time: 1:00 p.m.

Location: 401 Oberlin Road, Suite 150, Conference Room 1, Raleigh, NC 27605

Reason for Proposed Action: 15A NCAC 13A .0107 is amended to adopt a new Subpart K to provide an option for laboratories owned by colleges and universities and other eligible academic entities that are large quantity generators, small quantity generators or conditional exempt small quantity generators who may choose to have their laboratories subject to 40 CFR Part 262, Subpart K in lieu of existing generator regulations.

The new proposed rule will establish alternative requirements for hazardous waste determination, and accumulation of unwanted materials in laboratories. The rule is not an economically significant action.

Procedure by which a person can object to the agency on a proposed rule: Objections may be filed in writing by contacting: Elizabeth W. Cannon, Chief, Hazardous Waste Section, 1646 Mail Service Center, Raleigh, NC 27699-1646. Written objections to the proposed text of the Rule published in the North Carolina Register shall be specific. All comments and written exceptions for or against the proposed text of the Rule will be considered.

Comments may be submitted to: Elizabeth Cannon, Chief, Hazardous Waste Section, 401 Oberlin Road, 1646 Mail Service Center, Raleigh, NC 27699-1646, phone (919)508-8534, fax (919)715-3605, email Elizabeth.cannon@ncdenr.gov

Comment period ends: January 2, 2010

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 (\geq \$3,000,000)
☐ None

CHAPTER 13 – SOLID WASTE MANAGEMENT

SUBCHAPTER 13A - HAZARDOUS WASTE MANAGEMENT

SECTION .0100 - HAZARDOUS WASTE

15A NCAC 13A .0107 STDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE - PART 262

(a) 40 CFR 262.10 through 262.12 (Subpart A), "General", are incorporated by reference including subsequent amendments and editions.

(b) 40 CFR 262.20 through 262.27 (Subpart B), "The Manifest", are incorporated by reference including subsequent amendments and editions except that 262.24, 262.25, and 262.26 are not incorporated by reference.

(c) 40 CFR 262.30 through 262.34 (Subpart C), "Pre-Transport Requirements", are incorporated by reference including subsequent amendments and editions.

(d) 40 CFR 262.40 through 262.44 (Subpart D), "Recordkeeping and Reporting", are incorporated by reference including subsequent amendments and editions. In addition, a generator shall keep records of inspections and results of inspections required by Section 262.34 for at least three years from the date of the inspection.

(e) 40 CFR 262.50 through 262.58 (Subpart E), "Exports of Hazardous Waste", are incorporated by reference including subsequent amendments and editions.

(f) 40 CFR 262.60 (Subpart F), "Imports of Hazardous Waste", is incorporated by reference including subsequent amendments and editions.

(g) 40 CFR 262.70 (Subpart G), "Farmers" is incorporated by reference including subsequent amendments and editions.

(h) 40 CFR 262.80 through 262.89 (Subpart H), "Transfrontier Shipments of Hazardous Waste for Recovery within the OECD", are incorporated by reference including subsequent amendments and editions, except that 40 CFR 262.89(e) is not incorporated by reference.

(i) 40 CFR 262.200 through 262.216 (Subpart K), "Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities", is incorporated by reference including subsequent amendments and editions.

~~(j)~~ (j) The appendix to 40 CFR Part 262 is incorporated by reference including subsequent amendments and editions.

Authority G.S. 130A-294(c); 150B-21.6.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 17 – BOARD OF DIETETICS/NUTRITION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Dietetics/Nutrition intends to adopt the rules cited as 21 NCAC 17 .0117-.0118 and amend the rules cited as 21 NCAC 17 .0101, .0114, .0116, .0401.

Proposed Effective Date: April 1, 2010

Public Hearing:

Date: January 5, 2010

Time: 10:00 a.m.

Location: 1000 Centre Green Way, Suite 200, Cary, NC 27513

Reason for Proposed Action:

21 NCAC 17 .0101 is amended to delete the definition of "supervision" that is addressed in other rules.

21 NCAC 17 .0114 is amended to expand upon the Code of Ethics.

21 NCAC 17 .0116 is amended to define "costs" and to provide for recovery of costs.

21 NCAC 17 .0117 is proposed for adoption to comply with G.S. 93B-2.

21 NCAC 17 .0118 is proposed for adoption to comply with G.S. 93B-15.

21 NCAC 17 .0401 is amended to clarify "direct supervision" and to otherwise address the relationship between the licensee and the unlicensed person aiding the practice of dietetics/nutrition.

Procedure by which a person can object to the agency on a proposed rule: All objections or comments may be submitted in writing to the Board's office via U.S. mail or fax. Contact information is as follows: North Carolina Board of Dietetics/Nutrition, 1000 Centre Green Way, Suite 200, Cary, NC 27513, fax (919)882-1776.

Comments may be submitted to: Kim M. Dove, North Carolina Board of Dietetics/Nutrition, 1000 Centre Green Way, Suite 200, Cary, NC 27513, phone (919)861-5580, fax (919)882-1776, email kdove@ncbdn.org

Comment period ends: January 5, 2010

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 ($\geq \$3,000,000$)
☒ None

SECTION .0100 - LICENSURE

21 NCAC 17 .0101 DEFINITIONS

As used in this Chapter, the following terms and phrases, which have not already been defined in the Practice Act, G.S. 90-350 through 90-369, shall have the meanings specified:

- (1) "Act" means Dietetics/Nutrition Practice Act.
- (2) "ADA" means The American Dietetic Association.
- (3) "Applicant" means any person who has applied to the Board for a license to practice dietetics/nutrition in the State of North Carolina.
- (4) "Application" means a written request directed to and received by the Board, on forms supplied by the Board, for a license to practice dietetics/nutrition in the State of North Carolina, together with all information, documents and other materials necessary for the Board to act on that application.
- (5) "CDR" means the Commission on Dietetic Registration which is a member of the National Commission for Health Certifying Agencies.
- (6) "CADE" means the Commission on Accreditation for Dietetics Education.
- (7) "Degree" means a degree received from a college or university that was regionally accredited at the time the degree was conferred.
- (8) "Dietitian/nutritionist" means one engaged in dietetics/nutrition practice.
- (9) "Executive Secretary" means the person employed to carry out the administrative functions of the Board.
- (10) "Health care practitioner" shall include any individual who is licensed under G.S. 90.
- (11) "Nutrition assessment" means the evaluation of the nutrition needs of individuals and groups based upon biochemical, anthropometric, physical, and food intake and diet history data to determine nutritional needs and recommend appropriate nutrition intake including enteral and parenteral nutrition.
- (12) "Nutrition counseling" means the advice and assistance provided by licensed dietitians/nutritionists to individuals or groups on nutrition intake by integrating information from the nutrition assessment with information on food and other sources of nutrient and meal preparation consistent with cultural background, socioeconomic status and therapeutic needs.
- (13) "Provisionally licensed dietitian/nutritionist" means a person provisionally licensed under this act.

- (14) "Equivalent major course of study" means one which meets the knowledge requirements of the ADA-Approved Didactic program in Dietetics as referenced in the most current edition of the "Accreditation/Approval Manual for Dietetic Education Programs". This standard includes any subsequent amendments and editions of the referenced material. Copies of this manual may be purchased from the ADA Sales Order Department, P.O. Box 97215, Chicago, IL 60678-7215 at a cost of twenty-nine dollars and ninety-five cents (\$29.95).
- (15) "Supervised practice program" means one which meets the standards of the ADA-approved/accredited supervised practice program in dietetics as referenced in the most current edition of the "Accreditation/Approval Manual for Dietetic Education Programs". This standard includes any subsequent amendments and editions of the referenced material. Copies of this manual may be purchased from the ADA Sales Order Department, P.O. Box 97215, Chicago, IL 60678-7215 at a cost of twenty-nine dollars and ninety-five cents (\$29.95).
- ~~(16) "Supervision" means that a licensed dietitian/nutritionist shall:~~
 - ~~(a) be available for consultation on medical nutrition services being performed by the unlicensed person being supervised;~~
 - ~~(b) provide supervision that is characterized by a direct association with the unlicensed person being supervised; and~~
 - ~~(c) directly and personally examine, evaluate and approve the acts or functions of the person supervised.~~
- (2) The licensee shall conduct all practices of dietetics/nutrition with honesty and integrity.
- (3) The licensee shall present substantiated information and interpret controversial information without personal bias, recognizing that legitimate differences of opinion exist.
- (4) The licensee shall practice dietetics/nutrition based on scientific principles and current information.
- (5) The licensee shall assume responsibility and accountability for personal competence in practice.
- (6) The licensee shall inform the public of his/her services by using factual information and shall not advertise in a false or misleading manner.
- (7) The licensee shall not exercise undue influence on a client, including the promotion or the sale of services or products. The licensee shall be alert to any conflicts of interest and shall provide full disclosure when a real or potential conflict of interest arises.
- (8) The licensee shall not reveal information about a client obtained in a professional capacity, without prior consent of the client, except as authorized or required by law and shall make full disclosure about any limitations on his/her ability to guarantee this.
- (9) The licensee shall recognize and exercise professional judgment within the limits of the licensee's qualifications and shall not accept or perform professional responsibilities which the licensee knows or has reason to know that he or she is not qualified to perform.
- (10) The licensee shall take action, with prior consent of the client, to inform a client's physician or other health care practitioner in writing in cases where a client's nutritional status indicates a change in health status.
- (11) The licensee shall give sufficient information based on the client's ability to process information such that the client can make his or her own informed decisions. The licensee shall not guarantee that nutrition care services will cause any certain outcome or particular result for the client.
- (12) The licensee shall permit use of that licensee's name for the purpose of certifying that dietetic/nutrition services have been rendered only if the licensee has provided or supervised those services.
- (13) The licensee shall notify the Board in writing within 30 days of the occurrence of any of the following:

Authority G.S. 90-352; 90-356.

21 NCAC 17 .0114 CODE OF ETHICS FOR PROFESSIONAL PRACTICE AND CONDUCT

(a) Licensees, under the Act, shall comply with the following Code of Ethics in their professional practice and conduct. The Code reflects the ethical principles of the dietetic/nutrition professional and outlines obligations of the licensee to self, client, society and the profession and sets forth mandatory standards of conduct for all licensees.

- (1) The licensee shall provide professional services with objectivity and with respect for the unique needs and values of individuals as determined through the nutritional assessment.

- (A) The Licensee seeks any medical care or professional treatment for the chronic or persistent use of intoxicants, drugs or narcotics.
- (B) The Licensee is adjudicated to be mentally incompetent.
- (C) The Licensee has been convicted or entered into a plea of guilty or nolo contendere to any crime involving moral turpitude.
- (D) The licensee has been disciplined by an agency of another state that regulates the practice of dietetics or nutrition.

- (14) The licensee shall comply with all laws and rules concerning the profession.
- (15) The licensee shall uphold the Code of Ethics for professional practice and conduct by reporting suspected violations of the Code and the Act to the Board.
- (16) The licensee shall not interfere with an investigation or disciplinary proceeding by willful misrepresentation of facts to the Board or its representative or by the use of threats or harassment against any person.
- (17) The licensee shall not engage in kissing, fondling, touching or in any activities, advances, or comments of a sexual nature with any client or, while under the licensee's supervision, with any student, trainee, provisional licensee or person aiding the practice of dietetics/nutrition.
- (18) The licensee shall not invite, accept, or offer gifts, monetary incentives, or other considerations that affect or reasonably give an appearance of affecting the licensee's professional judgment.

(b) Conduct and circumstances which may result in disciplinary action by the Board include the following:

- (1) The licensee is a chronic or persistent user of intoxicants, drugs or narcotics to the extent that the same impairs his/her ability to practice dietetics/nutrition.
- (2) The licensee is mentally, emotionally, or physically unfit to practice dietetics/nutrition and is afflicted with such a mental, emotional or physical disability as to be dangerous to the health and welfare of a client.
- (3) The licensee has been disciplined by an agency of another state that regulates the practice of dietetics or nutrition and at least one of the grounds for the discipline is the same or substantially equivalent to the grounds for discipline in this state.
- (4) The licensee has violated any provisions of the Act or any of the rules in this Chapter.

21 NCAC 17 .0116 VIOLATIONS, COMPLAINTS, SUBSEQUENT BOARD ACTION, AND HEARINGS

(a) The definitions contained in G.S. 150B-2 (1), (2), (2b), (4a), (4b), (5), (8), (8a), (8b) are incorporated by reference within this Rule. In addition, the following definitions apply:

- (1) "Administrative Law Counsel" means an attorney whom the Board has retained to serve as procedural counsel to advise the hearing officer concerning questions of procedure for contested cases.
- (2) "Prosecuting Attorney" means the attorney retained by the Board to prepare and prosecute contested cases.

(b) Before the North Carolina Board of Dietetics/Nutrition makes a final decision in any contested case, the person, applicant or licensee affected by such decision shall be afforded an administrative hearing pursuant to the provisions of Article 3A, Chapter 150B of the North Carolina General Statutes.

- (1) The paragraphs contained in this Rule shall apply to the conduct of all contested cases heard before or for the North Carolina Board of Dietetics/Nutrition.
- (2) The following general statutes, rules, and procedures apply and are incorporated by reference within this Rule, unless another specific statute or rule of the North Carolina Board of Dietetics/Nutrition provides otherwise: the Rules of Civil Procedure as contained in G.S. 1A-1, the Rules of Evidence pursuant to G.S. Chapter 8C; the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes and Canons 1, 2 and 3 of the Code of Judicial Conduct adopted in accordance with G.S. 7A-10.1.
- (3) Every document filed with the Board shall be signed by the person, applicant, licensee, or the attorney who prepared the document, if it was prepared by an attorney, and shall contain his name, title/position, address, and telephone number. If the individual involved is a licensed dietitian/nutritionist, the license number shall appear on all correspondence with the Board. An original and one copy of each document shall be filed.

(c) Anyone may complain to the Board alleging that a person, applicant or licensee has committed an action prohibited by G.S. 90-350 through G.S. 90-369 or the rules of the Board.

- (1) A person wishing to complain about an alleged violation of G.S. 90-350 through G.S. 90-369 or the rules of the Board may notify the Executive Secretary. A complaint regarding the Executive Secretary, the staff or the Board may be directed to the chair of the Board or any Board member.

Authority G.S. 90-356(2); 90-356(3).

- (2) The initial notification of a complaint may be in writing, by telephone, or by personal visit to the Executive Secretary's office.
- (3) Upon receipt of a complaint, the Executive Secretary, unless the health and safety of the public otherwise requires, shall send to the complainant an acknowledgement letter, and request the complainant complete and file a complaint form before further action shall be taken.
- (d) An Investigator or other authorized Board staff shall investigate a complaint and may take one or more of the following actions:
 - (1) determine that an allegation is groundless and dismiss the complaint;
 - (2) determine that the complaint does not come within the Board's jurisdiction, advise the complainant and, if possible, refer the complainant to the appropriate governmental agency for handling such complaints;
 - (3) determine that a nonlicensed person has committed a prohibited action and take appropriate legal action against the violator;
 - (4) determine that a licensee has violated the Act or the rules of the Board and propose an enforcement action authorized by law.
- (e) Whenever a complaint is dismissed or a complaint file closed, the Executive Secretary shall give a summary report of the final action to the Board, the complainant, and the accused party.
- (f) In accordance with G.S. 150B-3(c), a license may be summarily suspended if Board finds that the public health, safety, or welfare requires emergency action. Such a finding shall be incorporated with the order of the Board and the order shall be effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and shall continue to be effective during the proceedings. Failure to receive the order because of refusal of service or unknown address does not invalidate the order. Proceedings shall be promptly commenced.
- (g) The Board, through its staff, shall issue a Letter of Charges only upon completion of an investigation of a written complaint and review with legal counsel or prosecuting attorney.
 - (1) Subsequent to an investigation and validation of a complaint, a Letter of Charges shall be sent on behalf of the Board to the person, applicant or licensee who is the subject of the complaint.
 - (A) The Letter of Charges shall be served in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure.
 - (B) The Letter of Charges shall serve as the Board's formal notification to the person that an allegation of possible violation(s) of the Act or the rules of the Board has been initiated.
 - (C) The Letter of Charges shall not in and of itself constitute a contested case.
 - (2) The Letter of Charges shall include the following:
 - (A) a short and plain statement of the factual allegations;
 - (B) a citation of the relevant sections of the statutes or rules involved;
 - (C) notification that a settlement conference will be scheduled upon request;
 - (D) explanation of the procedure used to govern the settlement conference;
 - (E) notification that if a settlement conference is not requested, or if held, does not result in resolution of the case, a contested case hearing will be scheduled; and
 - (F) an offer of voluntary surrender or reprimand also may be included for alleged violations of the Act.
 - (3) A case becomes a contested case after the agency and the person, applicant or licensee do not agree to a resolution of the dispute through a settlement conference or either the agency or the person, applicant or licensee requests a contested case hearing.
- (h) No Board member shall discuss with any party the merits of any case pending before the Board. If a party files in good faith an affidavit of personal bias or other reason for disqualification of any member of the Board, the Board shall determine the matter as part of the record in the case.
- (i) A settlement conference, if requested by the applicant or licensee, shall be held for the purpose of attempting to resolve a dispute through informal procedures prior to the commencement of formal administrative proceedings.
 - (1) The conference shall be held in the offices of the Board, unless another site is designated by mutual agreement of all involved parties.
 - (2) All parties shall attend or be represented at the settlement conference. The parties shall be prepared to discuss the alleged violations and the incidents on which these are based.
 - (3) At the conclusion of the day during which the settlement conference is held, a form must be signed by all parties which indicates whether the settlement offer is accepted or rejected. Subsequent to this decision:
 - (A) if a settlement is reached, the Board shall forward a written settlement agreement containing all conditions of the settlement to the other party(ies); or
 - (B) if a settlement cannot be reached, the case shall proceed to a contested case hearing by the filing

of a petition with the Board by the agency, person, applicant, or licensee.

(j) Informal disposition may be made of a contested case or an issue in a contested case by stipulation, agreement or consent order at any time prior to or during the hearing of a contested case.

(k) The Board shall give the parties in a contested case a Notice of Hearing not less than 15 calendar days before the hearing. The Notice shall be given in accordance with G.S. 150B-38(b) and (c). The Notice shall include:

- (1) acknowledgement of service, or attempted service, of the Letter of Charges in compliance with Paragraph (g) of this Rule;
- (2) date, time, and place of the hearing;
- (3) a short and plain statement of the factual allegations;
- (4) a citation of the relevant sections of the statutes or rules involved;
- (5) notification of the right of a party to represent himself or to be represented by an attorney;
- (6) a statement that, pursuant to Paragraph (n) of this Rule, subpoenas may be requested by the licensee to compel the attendance of witnesses or the production of documents;
- (7) a statement advising the licensee that a notice of representation, containing the name of licensee's counsel, if any, shall be filed with the Board not less than 10 calendar days prior to the scheduled date of the hearing;
- (8) a statement advising the licensee that a list of witnesses for the licensee shall be filed with the Board not less than 10 calendar days prior to the scheduled date of the hearing; and
- (9) a statement advising the licensee that failure to appear at the hearing may result in the allegations of the Letter of Charges being taken as true and that the Board may proceed on that assumption.

(l) Prehearing conferences may be held to simplify the issues to be determined, to obtain stipulations in regards to foundations for testimony or exhibits, to obtain stipulations of agreement on nondisputed facts or the application of particular laws, to consider the proposed witnesses for each party, to identify and exchange documentary evidence intended to be introduced at the hearing, and to consider such other matters that may be necessary or advisable for the efficient and expeditious conduct of the hearing.

- (1) The prehearing conference shall be conducted in the offices of the Board, unless another site is designated by mutual agreement of all parties.
- (2) The prehearing conference shall be an informal proceeding and shall be conducted by a Board-designated member.

- (3) All agreements, stipulations, amendments, or other matters resulting from the prehearing conference shall be in writing, signed by all parties, and introduced into the record at the beginning of the formal administrative hearing.

(m) Prehearing conferences or administrative hearings conducted before a majority of Board members shall be held in the county where the Board maintains its principal office, or by mutual consent in another location which will better promote the ends of justice or better serve the convenience of witnesses or the Board. For those proceedings conducted by an Administrative Law Judge, the venue shall be determined in accordance with G.S. 150B-38(e). All hearings conducted by the Board shall be open to the public.

(n) The Board may issue subpoenas for the Board or a licensee, in preparation for, or in the conduct of, a contested case.

- (1) Subpoenas for the attendance and testimony of witnesses or the production of documents or information, either at the hearing or for the purposes of discovery, shall be issued in accordance with G.S. 150B-39 and G.S. 1A-1, Rule 45.
- (2) Requests by a licensee for subpoenas shall be made in writing to the Board and shall include the following:
 - (A) the full name and home or business address of all persons to be subpoenaed; and
 - (B) the identification, with specificity, of any documents or information being sought.
- (3) Subpoenas shall include the date, time, and place of the hearing and the name and address of the party requesting the subpoena. In the case of subpoenas for the purpose of discovery, the subpoena shall include the date, time, and place for responding to the subpoena.
- (4) Subpoenas shall be served as in the manner provided by G.S. 150B-39 and G.S. 1A-1, Rule 45. The cost of service, fees, and expenses of any witnesses or documents subpoenaed shall be paid in accordance with G.S. 150B-39(c) and G.S. 7A-314.
- (5) Objections to subpoenas shall be heard in accordance with G.S. 150B-39 and G.S. 1A-1, Rule 45.

(o) All motions related to a contested case, except motions for continuance and those made during the hearing, shall be in writing and submitted to the Board at least 10 calendar days before the hearing, if any, is to be held either on the motion or the merits of the case. Prehearing motions shall be heard at a prehearing conference or at the contested case hearing prior to the commencement of testimony. The Board-designated hearing officer shall hear the motions and the response from the non-moving party pursuant to Rule 6 of the General Rules of Practice for the Superior and District Courts and rule on

such motions. If the prehearing motions are heard by an Administrative Law Judge from Office of Administrative Hearings, the provisions of G.S. 150B-40(e) shall govern the proceedings.

(p) Motions for a continuance of a hearing may be granted upon a showing of good cause.

- (1) Unless time does not permit, a request for a continuance of a hearing shall be made in writing and received by the office of the Board no less than seven calendar days before the hearing date. In determining whether good cause exists, consideration shall be given to the ability of the party requesting a continuance to proceed effectively without a continuance. A motion for a continuance filed less than seven calendar days from the date of the hearing shall be denied unless the reason for the motion could not have been ascertained earlier. Motions for continuance filed prior to the date of the hearing shall be ruled on by the hearing officer or the Administrative Law Judge. All other motions for continuance shall be ruled on by the majority of the Board members or Administrative Law Judge sitting at the hearing.

(A) "Good cause" includes: death or incapacitating illness of a party, representative, or attorney of a party; a court order requiring a continuance; lack of proper notice of the hearing; a substitution of the representative or attorney of a party if the substitution is shown to be required; a change in the parties or pleadings requiring postponement; and agreement for a continuance by all parties if either more time is clearly necessary to complete mandatory preparation for the case, such as authorized discovery, and the parties and the administrative law judge have agreed to new hearing date or parties have agreed to a settlement of the case that has been or is likely to be approved by the final decision maker.

(B) "Good cause" shall not include: intentional delay; unavailability of counsel or other representative because of engagement in another judicial or administrative proceeding unless all other members of the attorney's or representative's firm familiar with the case are similarly engaged; unavailability of a witness if the witness testimony can be take by

deposition, and failure of the attorney or representative to properly utilize the statutory notice period to prepare for the hearing.

- (2) During a hearing, if it appears in the interest of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the Board shall either order the additional testimony taken by deposition or continue the hearing to a future date for which oral notice on the record is sufficient. In such situations and to such extent as possible, the seated members of the Board and the Board-designated hearing officer shall receive the additional testimony. In the event that new members of the Board or a different hearing officer must participate, a copy of the transcript of the hearing shall be provided to them prior to the receipt of the additional testimony.

- (3) A continuance shall not be granted when to do so would prevent the case from being concluded within any statutory or regulatory deadline.

(q) All hearings by the Board shall be conducted by a majority of members of the Board, except as provided in Subparagraph (1) of this Paragraph. The Board shall designate one of its members to preside at the hearing. The Board shall designate an administrative law counsel as procedural officer to conduct the proceedings of the hearing. The seated members of the Board shall hear all evidence, make findings of fact and conclusions of law, and issue an order reflecting a majority decision of the Board.

- (1) When a majority of the members of the Board is unable or elects not to hear a contested case, the Board shall request the designation of an administrative law judge from the Office of Administrative Hearings to preside at the hearing. The provisions of G.S. 150B, Article 3A and 21 NCAC 17 .0116 shall govern a contested case in which an administrative law judge is designated as the Hearing Officer.

- (2) In the event that any party or attorney at law or other representative of a party engages in behavior that obstructs the orderly conduct of proceedings or would constitute contempt if done in the General Court of Justice, the Board may apply to the applicable superior court for an order to show cause why the person(s) should not be held in contempt of the Board and its processes.

(r) All parties may present evidence, rebuttal testimony, and argument with respect to the issues of law and policy, and to cross-examine witnesses. The North Carolina Rules of Evidence as found in Chapter 8C of the General Statutes shall apply to contested case proceedings, except as provided otherwise in this Rule and G.S. 150B-41.

- (1) Sworn affidavits may be introduced by mutual agreement from all parties.
 - (2) All oral testimony shall be under oath or affirmation and shall be recorded. Unless otherwise stipulated by all parties, witnesses are excluded from the hearing room until such time that they have completed their testimony and have been released.
- (s) Upon compliance with the provisions of G.S. 150B-40(e), if applicable, and G.S. 150B-42, and review of the official record, as defined in G.S. 150B-42(b) and (c), the Board shall make a written final decision or order in a contested case.
- (1) The final decision or order shall be rendered by the Board meeting in quorum and by a majority of those present and voting.
 - (2) The decision or order shall be made based on:
 - (A) competent evidence and arguments presented during the hearing and made a part of the official record in accordance with G.S. 150B-41 and Paragraph (r) of this Rule;
 - (B) stipulations of fact;
 - (C) matters officially noticed;
 - (D) other items in the official record that are not excluded by G.S. 150B-41 and Paragraph (r) of this Rule.
 - (3) All final decisions or orders shall be signed by the Executive Secretary and the Chair of the Board.
 - (4) A copy of the decision or order shall be served as in the manner provided by G.S. 150B-41(a). The cost of service, fees, and expenses of any witnesses or documents subpoenaed shall be paid in accordance with G.S. 150B-39(c) and G.S. 7A-314.
- (t) The official record of a contested case is available for public inspection upon reasonable request.
- (1) The official record shall be prepared in accordance with G.S. 150B-42(b) and (c).
 - (2) Contested case hearings shall be recorded either by a magnetic type recording system or a professional court reporter using stenomask or stenotype.
 - (3) Transcripts of proceedings during which oral evidence is presented shall be made only upon request of a party. Transcript costs shall include the cost of an original for the Board. Cost of the transcript or part thereof or copy of said transcript or part thereof which a party requests shall be divided equally among the party(ies) requesting a transcript. Cost shall be determined under supervision of the Executive Secretary.
- (u) The Board may recover against a licensee or person found to be in violation of the Act or rules adopted by the Board the following costs of disciplinary actions incurred by the Board

for the investigation, prosecution, hearing or other administrative action:

- (1) witness fees and statutorily-allowed expenses for witnesses;
- (2) direct costs of the Board in taking or obtaining of depositions of witnesses; and
- (3) costs incurred by reason of administrative or staff time of employees of the Board directly attributable to the action leading to the final decision or order.

These costs may be assessed by the Board pursuant to final decisions or orders of the Board following an administrative hearing pursuant to Article 3A of Chapter 150B of the North Carolina General Statutes. These costs may be assessed against a person or licensee for an investigation or action in the nature of disciplinary action, other than a final decision or order of the Board, pursuant to the express consent by said person in a consent order approved by the Board.

Authority G.S. 90-356; 90-363; 90-370.

21 NCAC 17.0117 SUSPENSION OF AUTHORITY AND ESCROW OF FUNDS

Not later than October 31 of each year, the Board shall file the reports required by G.S. 93B-2. In the event the reports required by G.S. 93B-2 are not timely filed and the Board's authority to expend any funds is therefore suspended, the Board shall deposit any fees or funds received during the period of suspension to an escrow account established by the Board solely for this purpose, and shall not expend such fees or funds until such time as the required reports are filed in accordance with G.S. 93B-2.

Authority G.S. 90-356; 93B-2.

21 NCAC 17.0118 ARMED SERVICES LICENSEES

Upon receipt of a written request on or behalf of a licensee who is currently in good standing with the Board, is serving in the armed forces of the United States, and to whom G.S. 105-249 grants an extension of time to file a tax return, the Board shall waive or postpone renewal fees, renewal application deadlines, continuing education requirements and any other requirement or conditions related to the maintenance of the license issued by the Board or to the renewal thereof for a period of time not less than the extended period of time to file a tax return that is granted pursuant to G.S. 93B-15.

Authority G.S. 90-356; 93B-15.

SECTION .0400 - UNLICENSED INDIVIDUALS

21 NCAC 17.0401 INDIVIDUALS AIDING THE PRACTICE OF DIETETICS/NUTRITION

(a) As used in this Section, the following terms and phrases, which have not already been defined in G.S. 90, Article 25, shall have the meanings specified:

- (1) "Certified Dietary Manager" means an individual who is certified by the Certifying Board of the Dietary Managers.
 - (2) "Dietetic Technician Registered" or "DTR" means an individual who is registered by the Commission on Dietetic Registration of the American Dietetic Association.
 - (3) "Direct supervision" as referenced in G.S. 90-368(4) means that a licensed dietitian/nutritionist shall:
 - (A) be available for consultation on delegated nutrition care activities being performed by the person being ~~supervised; and supervised,~~ either through on-site or through electronic communication, and shall be available to render assistance when needed to the unlicensed personnel and patient or client, or shall have arranged for another licensee to be available in the absence of the licensed dietitian/nutritionist; provided that the licensed dietitian/nutritionist shall be on-site at the service delivery site and within audible and visual range of any unlicensed personnel person described in Subparagraph (b)(3) of this Rule for the provision of any nutrition care activities; and
 - (B) directly and personally examine, evaluate and approve the acts or functions of the person supervised; and
 - (C) ~~provide supervision that is characterized by a first hand association. meet with the~~ unlicensed personnel in a joint effort to establish, maintain and elevate a level of performance to ensure the health, safety and welfare of clients or patients during the provision of nutrition care activities, and provide sufficient guidance and direction as to enable the unlicensed personnel to competently perform the delegated activity or function.
 - (4) "Nutrition care activities" means activities performed by unlicensed personnel which are delegated by licensed dietitians/nutritionists in accordance with Paragraphs (c) and (d) of this Rule and which support the provision of nutrition care services as referenced in G.S. 90-352(4). Nutrition care activities include the provision of nutrition care to ~~prevent~~ address and mitigate a medical condition, illness or injury and the provision of weight control programs or ~~services, services, as well as~~ community nutrition, food service, and nutrition information or education.
- (b) Unlicensed personnel aiding the practice of dietetics/nutrition ~~may include but are not limited to persons with the following:~~ following credentials:
 - (1) a Certified Dietary Manager;
 - (2) a Dietetic Technician Registered; or
 - (3) an individual who has met the academic requirements as referenced in G.S. 90-357(3)b.1, c.1 and d.
 - (c) The licensed dietitian/nutritionist may delegate nutrition care activities to unlicensed personnel that are appropriate to the level of knowledge and skill of the unlicensed personnel. The licensed dietitian/nutritionist shall verify that the unlicensed personnel has the credentials required by Paragraph (b) of this Rule and shall also be responsible for the initial and ongoing determination of the competence of the unlicensed personnel to perform any delegated acts or functions. Delegation of nutrition care activities shall be in writing and shall identify the patient or client and the act or function assigned to the unlicensed personnel. The licensed dietitian/nutritionist is responsible for supervision of the nutrition care activities of the unlicensed personnel and maintains responsibility for nutrition care activities performed by all personnel to whom the care is delegated. The licensed dietitian/nutritionist shall not delegate the entire spectrum of nutrition care services, but may delegate specific acts and functions which support the licensed dietitian/nutritionist's provision of nutrition care services. The licensed dietitian/nutritionist shall have the responsibility for clinical record keeping, and shall ensure that case notes and other records of services identify whether the licensed dietitian/nutritionist or the unlicensed personnel was the direct provider of the service. The acts and functions included in the scope of employment or contract of persons providing nutrition care services include, but are not limited to, community nutrition, food service, nutrition care activities, weight control services and nutrition information or education and shall be documented in writing.
 - (d) The following variables are to be considered by the licensed dietitian/nutritionist in determining whether or not an activity or function may be delegated to unlicensed personnel:
 - (1) knowledge and skills of the unlicensed personnel which include both basic educational and experience preparation and continuing education and experience;
 - (2) ~~verification of the licensed dietitian/nutritionist's determination of the competence of the unlicensed personnel;~~ personnel for the activity or function;
 - (3) the variables in each service setting which include but are not limited to:
 - (A) the complexity and frequency of nutrition care needed by a given client population;
 - (B) the acuity and stability of the client's condition;

PROPOSED RULES

~~(C)~~ — the accessible resources; and
~~(D)~~(C) established policies, procedures,
practices, and channels of
communication of the facilities
where the delegated activities or
functions are being performed
which lend support to the types of
nutrition care activities being
delegated, or not delegated, to

unlicensed ~~personnel~~. personnel;
and
(4) whether the licensed dietitian/nutritionist has
the skills, experience and ability to
competently supervise the unlicensed
personnel for the activity or function.

Authority G.S. 90-356(2); 90-368(4).

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) 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 60th 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 21 – OCCUPATIONAL LICENSING BOARDS
AND COMMISSIONS**

CHAPTER 32 – MEDICAL BOARD

Rule-making Agency: *Medical Board*

Rule Citation: *21 NCAC 32U .0101*

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Findings Reviewed and Approved by the Codifier:
October 1, 2009

Reason for Action: *To enable pharmacists to administer the influenza vaccine (including the new H1N1 vaccine) to patients between the ages of 14 and 18 years old, in conjunction with the State Health Director's efforts to respond to the public health threat presented by the novel H1N1 influenza virus.*

**SUBCHAPTER 32U – PHARMACISTS
VACCINATIONS**

SECTION .0100 – PHARMACISTS VACCINATIONS

**21 NCAC 32U .0101 ADMINISTRATION OF
VACCINES BY PHARMACISTS**

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

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

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

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

for treatment of the patient, in the event of an emergency or severe adverse reaction following vaccine administration;

- (E) the reporting requirements by the pharmacist to the physician issuing the written protocol, including content and time frame;
- (F) locations at which the pharmacist may administer immunizations or vaccinations; and
- (G) the requirement for annual review of the protocols by the physician and pharmacist.

(c) Policies and Procedures.

- (1) Pharmacists must follow a written protocol as specified in Subparagraph (b)(12) of this Rule for administration of influenza, pneumococcal and zoster vaccines and the treatment of severe adverse events following administration.
- (2) The pharmacist administering vaccines must maintain written policies and procedures for handling and disposal of used or contaminated equipment and supplies.
- (3) The pharmacist or pharmacist's agent must give the appropriate, most current vaccine information regarding the purpose, risks, benefits, and contraindications of the vaccine to the patient or legal representative with each dose of vaccine. The pharmacist must ensure that the patient or legal representative is available and has read, or has had read to him or her, the information provided and has had his or her questions answered prior to administering the vaccine.
- (4) The pharmacist must report adverse events to the primary care provider as identified by the patient.
- (5) The pharmacist shall not administer vaccines to patients under 18 years of age. As a public health measure as a result of the H1N1 influenza pandemic of 2009, the pharmacist shall be granted temporary authority to administer both seasonal and H1N1 influenza vaccine to patients aged 14 years or older. This temporary authority to administer influenza vaccine to patients aged 14 to 17 shall expire by operation of law 270 days from the date of initial publication in the North Carolina register unless tolled by a permanent rulemaking proceeding.
- (6) The pharmacist shall not administer the pneumococcal or zoster vaccines to a patient unless the pharmacist first consults with the patient's primary care provider. The pharmacist shall document in the patient's profile the primary care provider's order to

administer the pneumococcal or zoster vaccines. In the event the patient does not have a primary care provider, the pharmacist shall not administer the pneumococcal or zoster vaccines to the patient.

- (7) The pharmacist shall report all vaccines administered to the patient's primary care provider and report all vaccines administered to all entities as required by law, including any State registries which may be implemented in the future.

(d) Pharmacist requirements. Pharmacists who enter into a written protocol with a physician to administer vaccines shall:

- (1) hold a current provider level cardiopulmonary resuscitation (CPR) certification issued by the American Heart Association or the American Red Cross or equivalent;
- (2) successfully complete a certificate program in the administration of vaccines accredited by the Centers for Disease Control, the ACPE or a similar health authority or professional body approved by the Board;
- (3) maintain documentation of:
 - (A) completion of the initial course specified in Subparagraph (2) of this Paragraph;
 - (B) three hours of continuing education every two years beginning January 1, 2006, which are designed to maintain competency in the disease states, drugs, and administration of vaccines;
 - (C) current certification specified in Subparagraph (1) of this Paragraph;
 - (D) original written physician protocol;
 - (E) annual review and revision of original written protocol with physician;
 - (F) any problems or complications reported; and
 - (G) items specified in Paragraph (g) of this Rule.

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

- (1) be responsible for the formulation or approval and periodic review of the physician's order, standing medical order, standing delegation order, or other order or written protocol and periodically review the order or protocol and the services provided to a patient under the order or protocol;
- (2) be accessible to the pharmacist administering the vaccines or be available through direct telecommunication for consultation, assistance, direction, and provide back-up coverage;

- (3) review written protocol with pharmacist at least annually and revise if necessary; and
 - (4) receive a periodic status report on the patient, including any problem or complication encountered.
- (f) Drugs. The following requirements pertain to drugs administered by a pharmacist:
- (1) Drugs administered by a pharmacist under the provisions of this Rule shall be in the legal possession of:
 - (A) a pharmacy, which shall be the pharmacy responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination; or
 - (B) a physician, who shall be responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination;
 - (2) Drugs shall be transported and stored at the proper temperatures indicated for each drug;
 - (3) Pharmacists while engaged in the administration of vaccines under written protocol, may have in their custody and control the vaccines identified in the written protocol and any other drugs listed in the written protocol to treat adverse reactions; and
 - (4) After administering vaccines at a location other than a pharmacy, the pharmacist shall return all unused prescription medications to the pharmacy or physician responsible for the drugs.
- (g) Record Keeping and Reporting.
- (1) A pharmacist who administers any vaccine shall maintain the following information, readily retrievable, in the pharmacy records regarding each administration:
 - (A) The name, address, and date of birth of the patient;
 - (B) The date of the administration;
 - (C) The administration site of injection (e.g., right arm, left leg, right upper arm);
 - (D) Route of administration of the vaccine;
 - (E) The name, manufacturer, lot number, and expiration date of the vaccine;
 - (F) Dose administered;
 - (G) The name and address of the patient's primary health care provider, as identified by the patient; and
 - (H) The name or identifiable initials of the administering pharmacist.

- (2) A pharmacist who administers vaccines shall document annual review with physician of written protocol in the records of the pharmacy that is in possession of the vaccines administered.
- (h) Confidentiality.
- (1) The pharmacist shall comply with the privacy provisions of the federal Health Insurance Portability and Accountability Act of 1996 and any rules adopted pursuant to this act.
 - (2) The pharmacist shall comply with any other confidentiality provisions of federal or state laws.

*History Note: Authority G.S. 90-85.3(r);
Emergency Adoption Eff. September 10, 2004;
Temporary Adoption Eff. December 29, 2004;
Eff. November 1, 2005;
Amended Eff. February 1, 2008;
Emergency Amendment Eff. October 9, 2009.*

CHAPTER 46 – BOARD OF PHARMACY

Rule-making Agency: *Board of Pharmacy*

Rule Citation: *21 NCAC 46 .2507*

Effective Date: *October 9, 2009*

Findings Reviewed and Approved by the Codifier:
October 1, 2009

Reason for Action: *The State Health Director has urged the adoption of an emergency rule amendment to respond to the public health threat presented by the novel H1N1 influenza virus, and the particularly serious consequences presented to patients between the ages of 14 and 18. This amendment will enable pharmacists to administer the vaccine – which is expected to be newly available in early October – to minor patients.*

SECTION .2500 - MISCELLANEOUS PROVISIONS

21 NCAC 46 .2507 ADMINISTRATION OF VACCINES BY PHARMACISTS

- (a) Purpose. The purpose of this Rule is to provide standards for pharmacists engaged in the administration of influenza, pneumococcal and zoster vaccines as authorized in G.S. 90-85.3(r) of the North Carolina Pharmacy Practice Act.
- (b) Definitions. The following words and terms, when used in this Rule, shall have the following meanings, unless the context indicates otherwise.

- (1) "ACPE" means Accreditation Council for Pharmacy Education.

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

(c) Policies and Procedures.

- (1) Pharmacists must follow a written protocol as specified in Subparagraph (b)(12) of this Rule for administration of influenza, pneumococcal and zoster vaccines and the treatment of severe adverse events following administration.
- (2) The pharmacist administering vaccines must maintain written policies and procedures for handling and disposal of used or contaminated equipment and supplies.
- (3) The pharmacist or pharmacist's agent must give the appropriate, most current vaccine information regarding the purpose, risks, benefits, and contraindications of the vaccine to the patient or legal representative with each dose of vaccine. The pharmacist must ensure that the patient or legal representative is available and has read, or has had read to him or her, the information provided and has had his or her questions answered prior to administering the vaccine.
- (4) The pharmacist must report adverse events to the primary care provider as identified by the patient.
- (5) The pharmacist shall not administer vaccines to patients under 18 years of age. As a public health measure as a result of the H1N1 influenza pandemic of 2009, the pharmacist shall be granted temporary authority to administer both seasonal and H1N1 influenza vaccine to patients aged 14 years or older. This temporary authority to administer influenza vaccine to patients aged 14 to 17 shall expire by operation of law 270 days from the date of initial publication in the North Carolina register unless tolled by a permanent rulemaking proceeding.

- (6) The pharmacist shall not administer the pneumococcal or zoster vaccines to a patient unless the pharmacist first consults with the patient's primary care provider. The pharmacist shall document in the patient's profile the primary care provider's order to administer the pneumococcal or zoster vaccines. In the event the patient does not have a primary care provider, the pharmacist shall not administer the pneumococcal or zoster vaccines to the patient.
 - (7) The pharmacist shall report all vaccines administered to the patient's primary care provider and report all vaccines administered to all entities as required by law, including any State registries which may be implemented in the future.
- (d) Pharmacist requirements. Pharmacists who enter into a written protocol with a physician to administer vaccines shall:
- (1) hold a current provider level cardiopulmonary resuscitation (CPR) certification issued by the American Heart Association or the American Red Cross or equivalent;
 - (2) successfully complete a certificate program in the administration of vaccines accredited by the Centers for Disease Control, the ACPE or a similar health authority or professional body approved by the Board;
 - (3) maintain documentation of:
 - (A) completion of the initial course specified in Subparagraph (2) of this Paragraph;
 - (B) three hours of continuing education every two years beginning January 1, 2006, which are designed to maintain competency in the disease states, drugs, and administration of vaccines;
 - (C) current certification specified in Subparagraph (1) of this Paragraph;
 - (D) original written physician protocol;
 - (E) annual review and revision of original written protocol with physician;
 - (F) any problems or complications reported; and
 - (G) items specified in Paragraph (g) of this Rule.
- (e) Supervising Physician responsibilities. Pharmacists who administer vaccines shall enter into a written protocol with a supervising physician who agrees to meet the following requirements:
- (1) be responsible for the formulation or approval and periodic review of the physician's order, standing medical order, standing delegation order, or other order or written protocol and periodically review the order or protocol and the services provided to a patient under the order or protocol;
 - (2) be accessible to the pharmacist administering the vaccines or be available through direct telecommunication for consultation, assistance, direction, and provide back-up coverage;
 - (3) review written protocol with pharmacist at least annually and revise if necessary; and
 - (4) receive a periodic status report on the patient, including any problem or complication encountered.
- (f) Drugs. The following requirements pertain to drugs administered by a pharmacist:
- (1) Drugs administered by a pharmacist under the provisions of this Rule shall be in the legal possession of:
 - (A) a pharmacy, which shall be the pharmacy responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination; or
 - (B) a physician, who shall be responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination;
 - (2) Drugs shall be transported and stored at the proper temperatures indicated for each drug;
 - (3) Pharmacists while engaged in the administration of vaccines under written protocol, may have in their custody and control the vaccines identified in the written protocol and any other drugs listed in the written protocol to treat adverse reactions; and
 - (4) After administering vaccines at a location other than a pharmacy, the pharmacist shall return all unused prescription medications to the pharmacy or physician responsible for the drugs.
- (g) Record Keeping and Reporting.
- (1) A pharmacist who administers any vaccine shall maintain the following information, readily retrievable, in the pharmacy records regarding each administration:
 - (A) The name, address, and date of birth of the patient;
 - (B) The date of the administration;
 - (C) The administration site of injection (e.g., right arm, left leg, right upper arm);
 - (D) Route of administration of the vaccine;
 - (E) The name, manufacturer, lot number, and expiration date of the vaccine;
 - (F) Dose administered;

- (G) The name and address of the patient's primary health care provider, as identified by the patient; and
- (H) The name or identifiable initials of the administering pharmacist.

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

(h) Confidentiality.

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

History Note: Authority G.S. 90-85.3; 90-85.6; Eff. April 1, 2003; Emergency Amendment Eff. May 11, 2004; Temporary Amendment approved by RRC October 21, 2004; Amended Eff. February 1, 2008; November 1, 2005; November 1, 2004; Emergency Amendment Eff. October 9, 2009.

NORTH CAROLINA BUILDING CODE COUNCIL

Rule-making Agency: North Carolina Building Code Council

Rule Citation: 2009 NC Fuel Gas Code, Section 406.7, Purging of Gas Piping

Effective Date: October 15, 2009

Findings Reviewed and Approved by the Codifier: October 6, 2009

Reason for Action: This amendment is in response to an inadequate performance procedure prescribed in the NC Fuel Gas code. Subsequent to an investigation by the US Chemical Safety Board following an explosion at the ConAgra Plant in the spring of 2009, it was determined that the procedure allowing a gas line to be purged within a building could lead to another accident before the Permanent Rule is completed. In short, the Code allows a technician to determine the amount of Natural or LP gas within a building by sense of smell. The new language requires equipment to detect the dangerous concentration of gas within the enclosed space. The odorant added to the gas was intended to determine the presence, not the concentration of the gas.

NC FUEL GAS CODE

406.7 Purging. Purging of piping shall comply with Sections 406.7.1 through 406.7.4.

406.7.1 Removal from service. Where gas piping is to be opened for servicing, addition, or modification, the section to be worked on shall be turned off from the gas supply at the nearest convenient point, and the line pressure vented to the outdoors, ~~or to ventilated areas of sufficient size to prevent accumulation of flammable mixtures.~~ The remaining gas in this section of pipe shall be displaced with an inert gas as required by Table 406.7.1.

Exception: If the line pressure cannot be vented to the outdoors, the building and all effected spaces shall be evacuated of personnel not purging the gas lines, quantities of flammable gas shall not exceed 25% of the lower explosive limit as measured by a combustible gas detector, eliminate all ignition sources and provide adequate ventilation to prevent accumulation of flammable gases.

**TABLE 406.7.1
LENGTH OF PIPING REQUIRING PURGING WITH
INERT GAS FOR SERVICING OR MODIFICATION**

NOMINAL PIPE SIZE (Inches)	LENGTH OF PIPING REQUIRING PURGING
2½	> 50 feet
3	> 30 feet
4	> 15 feet
6	> 10 feet
8 or larger	Any length

For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm.

406.7.2 Placing in operation. Where piping full of air is placed in operation, the air in the piping shall be displaced with fuel gas, except where such piping is required by Table 406.7.2 to be purged with an inert gas prior to introduction of fuel gas. The fuel gas flow shall be continued without interruption until the vented gas is free of air. After purging, the vent shall then be closed. Where required by Table 406.7.2, the air in the piping shall first be displaced with an inert gas, and the inert gas shall then be displaced with fuel gas.

**TABLE 406.7.2
LENGTH OF PIPING REQUIRING PURGING WITH
INERT GAS BEFORE PLACING IN OPERATION**

NOMINAL PIPE SIZE (Inches)	LENGTH OF PIPING REQUIRING PURGING
3	> 30 feet
4	> 15 feet
6	> 10 feet
8 or larger	Any length

For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm.

406.7.3 Discharge of purged gases. The open end of piping systems being purged shall not discharge into confined spaces or areas where quantities of flammable gas can exceed 25% of the lower explosive limit as measured by a combustible gas detector. All potential sources of ignition shall be identified and eliminated or controlled. Precautions shall be taken to maintain the concentration of the flammable gas below 25% of the lower explosive limits, such as adequate ventilation, control of the purging rate and other measures, as appropriate.

406.7.4 Placing appliances and equipment in operation. After the piping system has been placed in operation, all appliances and equipment shall be purged and then placed in operation, as necessary.

406.7.5 Personnel Training. Personnel performing purging operation shall be trained to the hazards associated with purging and shall not rely on odor when monitoring the concentration of combustible gas.

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

Rules approved by the Rules Review Commission at its meeting on September 17, 2009.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Certification of Instructors</u>	12	NCAC	09B	.0301*	23:09 NCR
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ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Delegation</u>	15A	NCAC	02C	.0119*	22:24 NCR
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PUBLIC HEALTH, COMMISSION FOR

<u>Incorporation by Reference</u>	15A	NCAC	13B	.0815	23:15 NCR
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<u>Definitions</u>	15A	NCAC	13B	.0816	23:15 NCR
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<u>Permit Fees</u>	15A	NCAC	13B	.0818	23:15 NCR
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<u>Location of Septage Land Application Sites</u>	15A	NCAC	13B	.0821	23:15 NCR
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<u>Management of Septage Land Application Sites</u>	15A	NCAC	13B	.0822	23:15 NCR
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<u>Record Keeping for Septage Management Firms</u>	15A	NCAC	13B	.0823	23:15 NCR
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<u>Sampling and Analysis</u>	15A	NCAC	13B	.0824	23:15 NCR
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<u>Land Use and Site Closure</u>	15A	NCAC	13B	.0826	23:15 NCR
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<u>Transportation of Septage</u>	15A	NCAC	13B	.0827	23:15 NCR
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<u>Revocation of Permits</u>	15A	NCAC	13B	.0828	23:15 NCR
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<u>Appeals</u>	15A	NCAC	13B	.0829	23:15 NCR
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<u>Incorporation by Reference</u>	15A	NCAC	13B	.0830*	23:15 NCR
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<u>Definitions</u>	15A	NCAC	13B	.0831*	23:15 NCR
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<u>General Provisions</u>	15A	NCAC	13B	.0832*	23:15 NCR
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<u>Permit Fees</u>	15A	NCAC	13B	.0834*	23:15 NCR
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<u>Location of Septage Land Application Sites</u>	15A	NCAC	13B	.0837*	23:15 NCR
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<u>Management of Septage Land Application Sites</u>	15A	NCAC	13B	.0838*	23:15 NCR
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<u>Record Keeping for Septage Management Firms</u>	15A	NCAC	13B	.0839	23:15 NCR
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<u>Sampling and Analysis</u>	15A	NCAC	13B	.0840	23:15 NCR
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<u>Land Use and Site Closure</u>	15A	NCAC	13B	.0843	23:15 NCR
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<u>Transportation of Septage</u>	15A	NCAC	13B	.0844*	23:15 NCR
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<u>Revocation of Permits</u>	15A	NCAC	13B	.0845	23:15 NCR
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<u>Appeals</u>	15A	NCAC	13B	.0846	23:15 NCR
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<u>Pilot Plant Studies</u>	15A	NCAC	18C	.0714	23:21 NCR
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<u>General Requirement</u>	15A	NCAC	18C	.1301*	23:21 NCR
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<u>Tests, Forms and Reporting</u>	15A	NCAC	18C	.1302*	23:21 NCR
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<u>Facility Oversight</u>	15A	NCAC	18C	.1303*	23:21 NCR
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<u>Disinfection</u>	15A	NCAC	18C	.2002*	23:21 NCR
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<u>Analytical and Monitoring Requirements</u>	15A	NCAC	18C	.2004*	23:21 NCR
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APPROVED RULES

<u>Reporting and Record Keeping Requirements</u>	15A	NCAC	18C	.2006*	23:21 NCR
<u>Enhanced Filtration and Disinfection</u>	15A	NCAC	18C	.2007	23:21 NCR
<u>Disinfectants and Disinfection Byproducts</u>	15A	NCAC	18C	.2008	23:21 NCR
<u>Applicability and Residual Disinfectant Concentrations</u>	15A	NCAC	18C	.2201*	23:21 NCR
<u>Ground Water Rule</u>	15A	NCAC	18C	.2202*	23:21 NCR

REVENUE, DEPARTMENT OF

<u>Measure of Tax Due</u>	17	NCAC	07B	.0105*	n/a G.S. 150B-1(d)(4)
<u>Research Services</u>	17	NCAC	07B	.0115*	n/a G.S. 150B-1(d)(4)
<u>Taxability of Gross Receipts</u>	17	NCAC	07B	.1201*	n/a G.S. 150B-1(d)(4)
<u>Governmental Sale and Purchases</u>	17	NCAC	07B	.1701*	n/a G.S. 150B-1(d)(4)
<u>Sales to Tire Recappers</u>	17	NCAC	07B	.1905*	n/a G.S. 150B-1(d)(4)
<u>Electricity and Other Fuel</u>	17	NCAC	07B	.2101*	n/a G.S. 150B-1(d)(4)
<u>Contractors, Subcontractors, and Retailer-Contractors</u>	17	NCAC	07B	.2602*	n/a G.S. 150B-1(d)(4)
<u>Pre-Fabricated Buildings: Contractors</u>	17	NCAC	07B	.2606*	n/a G.S. 150B-1(d)(4)
<u>Plumbing: Heating Contractors: Purchases</u>	17	NCAC	07B	.2608*	n/a G.S. 150B-1(d)(4)
<u>Broadcasting Equipment</u>	17	NCAC	07B	.3102*	n/a G.S. 150B-1(d)(4)
<u>Motion Picture Production Firms</u>	17	NCAC	07B	.3107*	n/a G.S. 150B-1(d)(4)
<u>Exempt Prosthetic Devices</u>	17	NCAC	07B	.3301*	n/a G.S. 150B-1(d)(4)
<u>Exempt Durable Medical Equipment</u>	17	NCAC	07B	.3302*	n/a G.S. 150B-1(d)(4)
<u>Commercial Printers and Publishers</u>	17	NCAC	07B	.4701*	n/a G.S. 150B-1(d)(4)
<u>Taxable Optical Supplies</u>	17	NCAC	07B	.5004*	n/a G.S. 150B-1(d)(4)

BARBER EXAMINERS, BOARD OF

<u>Physical Structure</u>	21	NCAC	06F	.0101*	23:22 NCR
<u>Effect of Notice of Violation on License or Certificate</u>	21	NCAC	06Q	.0104*	23:22 NCR

CHIROPRACTIC EXAMINERS, BOARD OF

<u>Drug Testing</u>	21	NCAC	10	.0504*	23:22 NCR
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DENTAL EXAMINERS, BOARD OF

<u>Dental Hygiene School Extension Facilities and Off Campus...</u>	21	NCAC	16G	.0106*	23:20 NCR
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SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS, BOARD OF EXAMINERS FOR

<u>Hearing Screening</u>	21	NCAC	64	.0212*	G.S. 150B-21.5(a)(3)(5)
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RECREATIONAL THERAPY LICENSURE, BOARD OF

<u>Renewal Requirements for Licensed Recreational Therapist</u>	21	NCAC	65	.0602*	23:21 NCR
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STATE PERSONNEL COMMISSION

<u>Reduction in Force</u>	25	NCAC	01C	.1004*	23:22 NCR
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ADMINISTRATIVE HEARINGS, OFFICE OF

<u>Emergency Waiver</u>	26	NCAC	01	.0105	23:24 NCR
<u>Order for Mediated Settlement Conference</u>	26	NCAC	03	.0201	23:24 NCR

<u>Selection of Mediator</u>	26	NCAC	03	.0202*	23:24 NCR
<u>Duties of Parties, Representatives, and Attorneys</u>	26	NCAC	03	.0204	23:24 NCR
<u>Sanctions for Failure to Attend</u>	26	NCAC	03	.0205	23:24 NCR
<u>Authority and Duties of Mediators</u>	26	NCAC	03	.0206	23:24 NCR
<u>Compensation of the Mediator</u>	26	NCAC	03	.0207*	23:24 NCR

This rule is subject to the next Legislative Session. (See G.S. 150B-21.3.)

PUBLIC HEALTH, COMMISSION FOR

<u>Definitions</u>	15A	NCAC	13A	.0102*	23:23 NCR
<u>Petitions - Part 260</u>	15A	NCAC	13A	.0103	23:23 NCR
<u>Identification and Listing of Hazardous Wastes - Part 261</u>	15A	NCAC	13A	.0106*	23:23 NCR

TITLE 12 – DEPARTMENT OF JUSTICE

12 NCAC 09B .0301 CERTIFICATION OF INSTRUCTORS

(a) Any person participating in a Commission-certified criminal justice training course or program as an instructor, teacher, professor, lecturer, or other participant making presentations to the class shall first be certified by the Commission as an instructor.

(b) The Commission shall certify instructors under the following categories: General Instructor Certification, Specialized Instructor Certification or Professional Lecturer Certification as outlined in Rules .0302, .0304 and .0306 of this Section. Instructor certification shall be granted on the basis of documented qualifications of experience, education, and training in accord with the requirements of this Section and reflected on the applicant's Request for Instructor Certification Form.

(c) In addition to all other requirements of this Section, each instructor certified by the Commission to teach in a Commission-certified course shall remain competent in his/her specialized areas. Such competence includes remaining current in the instructor's area of expertise, which shall be demonstrated by attending and successfully completing all instructor updates issued by the Commission.

(d) The Standards Division may notify an applicant for instructor certification or a certified instructor that a deficiency appears to exist and attempt, in an advisory capacity, to assist the person in correcting the deficiency.

(e) When any person certified as an instructor by the Commission is found to have knowingly and willfully violated any provision or requirement of the rules in this Subchapter, the Commission may take action to correct the violation and to ensure that the violation does not recur, including:

- (1) issuing an oral warning and request for compliance;
- (2) issuing a written warning and request for compliance;
- (3) issuing an official written reprimand;
- (4) suspending the individual's certification for a specified period of time or until acceptable corrective action is taken by the individual; and

(5) revoking the individual's certification.

(f) The Commission may deny, suspend, or revoke an instructor's certification when the Commission finds that the person:

- (1) has failed to meet and maintain any of the requirements for qualification;
- (2) has failed to remain knowledgeable in the person's areas of expertise;
- (3) has failed to deliver training in a manner consistent with the instructor lesson plans outlined in the "Basic Instructor Training Manual" as found in 12 NCAC 09B .0209;
- (4) has failed to follow specific guidelines outlined in the "Basic Law Enforcement Training Course Management Guide" as found in 12 NCAC 09B .0205;
- (5) has demonstrated in the delivery of commission-mandated training, unprofessional personal conduct, defined as an act that is: conduct for which no reasonable person should expect to receive prior warning; job-related conduct which constitutes a violation of State or federal law; conviction or commission of a criminal offense as set out in 12 NCAC 09A .0204; the willful violation of Rules of this Chapter; conduct that is detrimental to instruction in the Commission's mandated courses; the abuse of client(s), student(s) over whom the instructor has charge; or falsification of an instructor application or in other employment documentation;
- (6) has demonstrated instructional incompetence;
- (7) has knowingly and willfully obtained, or attempted to obtain instructor certification by deceit, fraud, or misrepresentation;
- (8) has failed to meet or maintain good moral character as defined in: re Willis, 299 N.C. 1, 215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (9175); State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); in re Legg, 325 N.C. 658, 386 S.E. 2d 174(1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); in re

- Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 647 (1983); and their progeny, as required to effectively discharge the duties of a criminal justice instructor;
- (9) has failed to deliver training in a manner consistent with the Qualified Retired Law Enforcement Officers Firearms Qualification Certification Program as found in 12 NCAC 09H .0102; or
- (10) has knowingly and willfully aided or attempted to aid any person in obtaining qualification/certification under the Qualified Retired Law Enforcement Officers Firearms Qualification Certification Program by deceit, fraud or misrepresentation.

History Note: Authority G.S. 17C-6;

Eff. January 1, 1981;

Amended Eff. October 1, 2009; August 1, 2004; April 1, 1999; July 1, 1991; January 1, 1985.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 02C .0119 DELEGATION

- (a) The Secretary is delegated the authority to grant permission for well construction under G.S. 87-87.
- (b) The Secretary is delegated the authority to give notices and sign orders for violations under G.S. 87-91.
- (c) The Secretary may grant a variance from any construction standard, or the approval of alternate construction methods or materials, specified under the Rules of this Section.

History Note: Authority G.S. 143-215.3(a)(1);

Eff. March 1, 1985;

Amended Eff. October 1, 2009, December 1, 1992.

15A NCAC 13A .0102 DEFINITIONS

- (a) The definitions contained in G.S. 130A-290 apply to this Subchapter.
- (b) 40 CFR 260.10 (Subpart B), Definitions, is incorporated by reference, including subsequent amendments and editions except that the Definitions for "Disposal", "Landfill", "Management or hazardous waste management", "Person", "Sludge", "Storage", and "Treatment" are defined by G.S. 130A-290 and are not incorporated by reference, and the definitions in 260.10 for "Facility", "Transfer Facility", "Hazardous secondary material", "Hazardous secondary material generated and reclaimed under the control of the generator", "Hazardous secondary material generator", "Intermediate facility", and "Land-based unit" are not incorporated by reference.
- (c) The following definitions shall be substituted for "Facility" and "Transfer Facility":

- (1) "Facility" means:
- (A) All contiguous land, structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).
- (B) For the purpose of implementing corrective action under 40 CFR 264.101, all contiguous property under the control of the owner or operator seeking a permit under Subtitle C of RCRA. This definition also applies to facilities implementing corrective action under RCRA Section 3008(h).
- (C) Notwithstanding Part (B) of this definition, a remediation waste management site is not a facility that is subject to 40 CFR 264.101, but is subject to corrective action requirements if the site is located within such a facility.
- (2) "Transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation.
- (d) The following additional definitions shall apply throughout this Subchapter:
- (1) "Section" means the Hazardous Waste Section, in the Division of Waste Management, Department of Environment and Natural Resources.
- (2) The "Department" means the Department of Environment and Natural Resources (DENR).
- (3) "Division" means the Division of Waste Management (DWM).
- (4) "Long Term Storage" means the containment of hazardous waste for an indefinite period of time in a facility designed to be closed with the hazardous waste in place.
- (5) "Off-site Recycling Facility" means any facility that receives shipments of hazardous waste from off-site to be recycled or processed for recycling through any process conducted at the facility, but does not include any facility owned or operated by a generator of hazardous waste solely to recycle their own waste.

History Note: Authority G.S. 130A-294(c); 150B-21.6;

Eff. September 1, 1979;

Amended Eff. June 1, 1989; June 1, 1988; February 1, 1987; October 1, 1986;

Transferred and Recodified from 10 NCAC 10F .0002 Eff. April 4, 1990;
Amended Eff. April 1, 1993; October 1, 1990; August 1, 1990;
Recodified from 15A NCAC 13A .0002 Eff. December 20, 1996;
Amended Eff. August 1, 2000;
Temporary Amendment Eff. January 1, 2009;
Amended Eff. Pending Legislative Review.

15A NCAC 13A .0103 PETITIONS - PART 260

- (a) All rulemaking petitions for changes in this Subchapter shall be made in accordance with 15A NCAC 24B .0101.
- (b) In applying the federal requirements incorporated by reference in this Rule, "15A NCAC 24B .0101" shall be substituted for references to 40 CFR 260.20.
- (c) 40 CFR 260.21 through 260.43 (Subpart C), "Rulemaking Petitions," are incorporated by reference including subsequent amendments and editions, except that 40 CFR 260.30(d), 260.30(e), 260.33(c), 260.34, 260.42 and 260.43 are not incorporated by reference.

History Note: Authority G.S. 130A-294(c); 150B-21.6;
Eff. November 19, 1980;
Amended Eff. June 1, 1988; May 1, 1987; January 1, 1986;
October 1, 1985;
Transferred and Recodified from 10 NCAC 10F .0028 Eff. April 4, 1990;
Amended Eff. April 1, 1993; November 1, 1991; October 1, 1990;
Recodified from 15A NCAC 13A .0003 Eff. December 20, 1996;
Amended Eff. August 1, 2000;
Temporary Amendment Eff. January 1, 2009;
Amended Eff. Pending Legislative Review.

15A NCAC 13A .0106 IDENTIFICATION AND LISTING OF HAZARDOUS WASTES - PART 261

- (a) 40 CFR 261.1 through 261.9 (Subpart A), "General", are incorporated by reference including subsequent amendments and editions, except that 40 CFR 261.2(a)(2)(ii) and 40 CFR 261.4(a)(23), 261.4(a)(24), and 261.4(a)(25) are not incorporated by reference.
- (b) 40 CFR 261.10 through 261.11 (Subpart B), "Criteria for Identifying the Characteristics of Hazardous Waste and for Listing Hazardous Waste", are incorporated by reference including subsequent amendments and editions.
- (c) 40 CFR 261.20 through 261.24 (Subpart C), "Characteristics of Hazardous Waste" are incorporated by reference including subsequent amendments and editions.
- (d) 40 CFR 261.30 through 261.37 (Subpart D), "Lists of Hazardous Wastes" are incorporated by reference including subsequent amendments and editions.
- (e) 40 CFR 261.38 through 261.41 (Subpart E), "Exclusions/Exemptions" are incorporated by reference including subsequent amendments and editions.
- (f) The Appendices to 40 CFR Part 261 are incorporated by reference including subsequent amendments and editions.

History Note: Authority G.S. 130A-294(c); 150B-21.6;
Eff. November 19, 1980;

Amended Eff. June 1, 1988; February 1, 1988; December 1, 1987;
August 1, 1987;
Transferred and Recodified from 10 NCAC 10F .0029 Eff. April 4, 1990;
Recodified from 15A NCAC 13A .0007 Eff. August 30, 1990;
Amended Eff. January 1, 1996; April 1, 1993; February 1, 1992;
December 1, 1990;
Recodified from 15A NCAC 13A .0006 Eff. December 20, 1996;
Amended Eff. April 1, 2007; August 1, 2000;
Temporary Amendment Eff. January 1, 2009;
Amended Eff. Pending Legislative Review.

15A NCAC 13B .0815 INCORPORATION BY REFERENCE

15A NCAC 13B .0816 DEFINITIONS

History Note: Authority G.S. 130A-291.1;
Eff. October 1, 1995;
Repealed Eff. October 1, 2009.

15A NCAC 13B .0818 PERMIT FEES

History Note: Authority G.S. 130A-291.1;
Eff. October 1, 1995;
Repealed Eff. October 1, 2009.

15A NCAC 13B .0821 LOCATION OF SEPTAGE LAND APPLICATION SITES

15A NCAC 13B .0822 MANAGEMENT OF SEPTAGE LAND APPLICATION SITES

15A NCAC 13B .0823 RECORD KEEPING FOR SEPTAGE MANAGEMENT FIRMS

15A NCAC 13B .0824 SAMPLING AND ANALYSIS

History Note: Authority G.S. 130A-291.1;
Eff. October 1, 1995;
Repealed Eff. October 1, 2009.

15A NCAC 13B .0826 LAND USE AND SITE CLOSURE

15A NCAC 13B .0827 TRANSPORTATION OF SEPTAGE

15A NCAC 13B .0828 REVOCATION OF PERMITS

15A NCAC 13B .0829 APPEALS

History Note: Authority G.S. 130A-291.1;
Eff. October 1, 1995;
Repealed Eff. October 1, 2009.

15A NCAC 13B .0830 INCORPORATION BY REFERENCE

- (a) All Sections of the Code of Federal Regulations (CFR) cited in this Section are hereby incorporated by reference, including subsequent amendments or additions.
- (b) Copies of Federal statutes, test methods and procedures, and other published standards referenced in this Section are hereby incorporated by reference, including subsequent amendments or additions.

(c) Copies of all material incorporated by reference are available for inspection at the Department of Environment and Natural Resources, Division of Waste Management, Solid Waste Section, 401 Oberlin Road, Raleigh, N.C. 27699-1646.

(d) Material incorporated by reference in the Federal Register may be obtained at Government Institutes, 15200 NBN Way, Blue Ridge Summit, PA 17214 at a cost of one thousand five hundred sixty-seven dollars and fifty cents (\$1,567.50). Federal Register materials are codified once a year and may be obtained at the above address for a cost of: 40 CFR 190-259 thirty-nine dollars and seventy-five cents (\$39.75), 40 CFR 425-699 sixty dollars and seventy five - cents (\$60.75) or at <http://www.gpoaccess.gov/cfr>.

*History Note: Authority G.S. 130A-291.1;
Eff. October 1, 2009.*

15A NCAC 13B .0831 DEFINITIONS

In addition to the terms defined in G.S. 130A-290, as used in this Section the following terms have the following meanings:

- (1) "Agronomic rates" are defined as those rates that provide the nitrogen and other nutrient needs of the crop based on available realistic yield expectations (RYE) established for a soil series through published Cooperative Extension Service bulletins, Natural Resources Conservation Service publications or county soil surveys, but do not overload the soil with nutrients or other constituents which may eventually leach to groundwater, limit crop growth, or adversely impact soil quality.
- (2) "Annual septage application rate" means the maximum amount, in gallons, of septage that can be applied to a unit area of land during a 365-day period.
- (3) "CFR" means Code of Federal Regulations.
- (4) "Department" means Department as defined in G.S. 143-212.
- (5) "Division" means the Division of Waste Management in the Department. All rules cited in this Section, under the authority of the Division, may be obtained at 401 Oberlin Road, Raleigh, North Carolina 27604, or at the Division's web page at www.wastenotnc.org.
- (6) "Land application" shall mean the spraying or spreading of septage onto the land surface; the injection of septage below the land surface; or the incorporation of septage into the soil so that the septage can condition the soil or fertilize crops or vegetation grown in the soil.
- (7) "Licensed Geologist" means an individual who is licensed to practice geology in accordance with G.S. 89E.
- (8) "Nutrient Management Plan" means a plan to define the management requirements and nutrient needs of crops to be grown on a septage land application site, including the amount, sources, placement and timing of nutrient applications to maximize the nutrient

uptake of the crop. Plan implementation shall protect the environment and maintain crop productivity.

- (9) "Place of business" means any store, warehouse, manufacturing establishment, place of amusement or recreation, service station, food handling establishment, office, or any other place where people work or are served.
- (10) "Place of public assembly" means any fairground, auditorium, stadium, church, campground, theater, school, or any other place where people gather or congregate.
- (11) "Professional Engineer" means an individual who is licensed to practice engineering in accordance with G.S. 89C.
- (11) "Residence" means any habitable home, hotel, motel, summer camp, labor work camp, mobile home, dwelling unit in a multiple-family structure, or any other place where people reside.
- (12) "Rock" means the consolidated or partially consolidated mineral matter or aggregate, including bedrock or weathered rock, not exhibiting the properties of soil.
- (13) "Seasonal High Water Table" or "SHWT" is the highest level to which the soil is saturated, as may be determined through the identification of redoximorphic features in the soil profile including low chroma mottling. This does not include temporary perched conditions. Alternatively, the SHWT can also be determined from water level measurements or via soil/groundwater modeling.
- (14) "Septage" means septage as defined in G.S. 130A-290(a)(32) and also shall include washings from the interior of septage handling containers, including pumper trucks.
- (15) "Septage Management Facility" means land, personnel, and equipment used in the management of septage, including but not limited to, land application sites.
- (16) "Soil" means the unconsolidated mineral and organic material of the land surface. It consists of sand, silt, and clay minerals and variable amounts of organic materials.
- (17) "Soil Scientist" means an individual who is licensed to practice soil science in accordance with G.S. 89F.
- (18) "Soil textural classes" means soil classification based upon size distribution of mineral particles in the fine-earth fraction less than two millimeters in diameter. The fine-earth fraction includes sand (2.0 – 0.05 mm in size), silt (0.05 mm – 0.002 mm), and clay (less than 0.002 mm in size) particles. The specific textural classes are defined as follows:
 - (a) "Sand" means soil material that contains 85 percent or more of sand;

- the percentage of silt plus 1.5 times the percentage of clay less than 15;
- (b) "Loamy sand" means soil material that contains at the upper limit 70 to 91 percent sand, and the percentage of silt plus 1.5 times the percentage of clay is not less than 15; at the lower limit contains not less than 70 to 85 percent sand, and the percentage of silt plus twice the percentage of clay is less than 30;
- (c) "Sandy loam" means soil material that contains 7 to 20 percent clay, and the percentage of silt plus twice the percentage of clay exceeds 30, and contains 52 percent or more sand; or less than 7 percent clay, less than 50 percent silt, and more than 43 percent sand;
- (d) "Loam" means soil material that contains 7 to 27 percent clay, 28 to 50 percent silt, and 52 percent or less sand;
- (e) "Silt loam" means soil material that contains 50 percent or more silt and 12 to 27 percent clay; or contains 50 to 80 percent silt and less than 12 percent clay;
- (f) "Silt" means soil material that contains 80 percent or more silt and less than 12 percent clay;
- (g) "Sandy clay loam" means soil material that contains 20 to 35 percent clay and less than 28 percent silt, and more than 45 percent sand;
- (h) "Clay loam" means soil material that contains 27 to 40 percent clay and more than 20 to 46 percent sand;
- (i) "Silty clay loam" means solid material that contains 27 to 40 percent clay and 20 percent or less sand;
- (j) "Sandy clay" means soil material that contains 35 percent or more clay and 45 percent or more sand;
- (k) "Silty clay" means soil material that contains 40 percent or more clay and 40 percent or more silt; and
- (l) "Clay" means soil material that contains 45 percent or less sand, and less than 40 percent silt.
- (20) "Technical specialist" means an individual designated by the Soil and Water Conservation Commission, pursuant to rules adopted by that Commission, to certify animal waste management plans.
- (21) "Treatment of septage" means the preparation of septage for final use or disposal. Treatment includes, but is not limited to, thickening,

stabilization, and dewatering of septage. Treatment does not include storage of septage.

Definitions in 40 CFR 503.9(d), (g), (h), (j), (k), (l), (r), (t), (u), (v), (w), (bb), and in 40 CFR 503.11(a), (b), (c), (d), (f), (g), (h), (I), (k), (l), (m), (n) are incorporated by reference including subsequent amendments and editions. Copies of the Code of Federal Regulations may be obtained from the Solid Waste Section at no cost.

History Note: Authority G.S. 130A-291.1; Eff. October 1, 2009.

15A NCAC 13B .0832 GENERAL PROVISIONS

(a) General permitting requirements.

- (1) No person shall manage septage, or any part of septage, or operate a Septage Management Firm without first obtaining a permit from the Division as required under G.S. 130A-291.1(c);
- (2) The permit requirement of G.S. 130A-291.1(c) applies to persons who remove septage, and other waste materials or spent media from wastewater systems permitted by the Division of Environmental Health, under the authority of Article 11, Chapter 130A of the North Carolina General Statutes;
- (3) The permit requirement of G.S. 130A-291.1(c) applies to persons who manage septage generated from properties which they own, lease or manage as part of a business, including but not limited to mobile homes, mobile home parks, restaurants, and other residential and commercial property;
- (4) The Division may deny a permit application, in accordance with G.S. 130A-295.3(c);
- (5) The Division may require an applicant, to demonstrate substantial compliance in accordance with G.S. 130A-294(b2)(2);
- (6) All conditions for permits issued in accordance with this Section shall be followed;
- (7) Where specified in this Section permit applications or specific portions of applications shall be prepared by a qualified environmental professional in accordance with 15A NCAC 13B .0202(a)(3); and
- (8) Initial septage land application site and detention and treatment facility permits shall be issued for a maximum of one year. Renewal permits shall be issued for five years if the facility has not had a major violation and records have been maintained in accordance with this Section.

(b) Portable sanitation permitting provisions.

- (1) A mobile or modular office that meets the criteria of G.S. 130-291.2 shall be considered a chemical or portable toilet as defined in G.S. 130A-290(1c). Leaks or overflows of the storage tank at a mobile or modular office shall be considered illegal land application and

shall be the responsibility of the office occupant and owner of the mobile or modular office.

- (2) No person shall rent or lease portable toilet(s) or manage or dispose of waste from portable toilet(s), regardless of ownership of the toilet(s) unless that person is permitted to operate a septage management firm.
- (3) Placement of a chemical or portable toilet as defined in G.S. 130A-290(1c) for potential use in North Carolina shall be considered operation of a septage management firm which requires a permit.

(c) Recreational vehicle waste provisions.

- (1) Domestic septage from a recreational vehicle shall be managed in accordance with this Section or shall flow directly into a wastewater treatment system permitted by the Department of Environment and Natural Resources.
- (2) Wastewater from recreational vehicles that are tied down, blocked up, or are not relocated on a regular basis, and are not connected to an approved wastewater system, shall be managed in accordance with Article 11, Chapter 130A of the NC General Statutes.
- (3) Recreational vehicle dump stations that do not discharge directly to a wastewater treatment system permitted by the Department of Environment and Natural Resources shall be permitted as a septage detention and treatment facility in accordance with this Section.

(d) Alternate septage management method limitations.

- (1) Grease septage, or any part of grease septage, shall not be introduced or reintroduced into a grease trap, interceptor, separator, or other appurtenance used for the purpose of removing cooking oils, fats, grease, and food debris from the waste flow generated from food handling, preparation, and cleanup unless the Division has received written approval from the wastewater treatment plant operator or the onsite wastewater system permitting authority that reintroduction is acceptable.
- (2) Septage, or any part of septage, shall not be reintroduced into an onsite wastewater system unless approved pursuant to G.S. 130A-343(c).
- (3) Septage, or any part of septage, shall not be placed in containers at restaurants designated for yellow grease.
- (4) Septage, or any part of septage, shall not be disposed of in a municipal solid waste landfill unless the waste passes the paint filter test and the landfill receiving the waste has provided the Division written documentation that the specific material will be accepted.
- (5) Septage, or any part of septage, shall not be disposed of in a dumpster unless the waste passes the paint filter test, the landfill receiving the waste is a properly permitted

municipal solid waste landfill, in accordance with 15A NCAC 13B .1600, and the landfill operator has provided the Division written documentation that the specific material will be accepted.

- (6) Septage, or any part of septage, managed through subsurface disposal shall be considered a treatment facility and shall require a permit in accordance with this Section and G.S. 130A-343.
- (7) Facilities receiving septage, or any part of septage, for composting shall be permitted in accordance with Section .1400 of these Rules.

(e) All training, to meet the requirements of G.S. 130A-291.3(a) and (b), must be pre-approved by the Division.

(f) Waste from holding tanks, not otherwise addressed in this Section, and from wastewater systems pumped more often than every 30 days shall not be considered domestic septage and shall not be land applied at a permitted septage land application site.

(g) Inspection and entry. The permit holder of a septage management firm or facility shall allow a representative of the Division to:

- (1) Enter the permit holder's premises where a regulated facility or activity is located or conducted;
- (2) Access and copy any records required in accordance with this Section or conditions of the permit;
- (3) Inspect any facilities, equipment (including monitoring and control equipment), practices or operations regulated by the Division;
- (4) Sample or monitor for the purposes of assuring permit compliance or as otherwise authorized by the Federal Clean Water Act or the North Carolina Solid Waste Management Act, any substances, parameters or soils at any location; and
- (5) Photograph for the purpose of documenting times of compliance or noncompliance at septage management facilities, or where appropriate to protect legitimate proprietary interests, require the permit holder to make such photos for the Division.

(h) Failure of a person to follow a requirement in any rule set forth in this Section or the taking of any action prohibited by any rule in this Section shall constitute a violation of that rule.

History Note: Authority G.S. 130A-291.1; Eff. October 1, 2009.

15A NCAC 13B .0834 PERMIT FEES

(a) Every septage management firm shall pay an annual permit fee by January 1 of each year in accordance with G.S. 130A-291.1(e) or (e1), unless the firm notifies the Division prior to January 1 that the firm will not operate during the next year. Fees shall be paid to the Division of Waste Management, Solid Waste Section, 1646 Mail Service Center, Raleigh, NC 27699-1646. This fee may be paid by check or money order made payable to the Division of Waste Management.

(b) Annual fees are not pro-rated and shall not be refunded or credited to a subsequent year.

(c) Failure to apply for permit renewal or failure to pay the permit fee by January 1 shall result in assessment of a late fee in accordance with G.S. 130A-291.1(e2). Failure to pay the appropriate fees within 45 days after January 1 shall result in an additional administrative penalty pursuant to G.S. 130A-22(a) of ten dollars (\$10.00) per day for each day thereafter that the fees are not paid.

(d) Annual permit renewal, including fee payment, shall be the responsibility of the operator of the septage management firm. If the operator did not receive annual permit renewal forms, it shall not be a defense to assessment of late fees.

(e) A food service facility that is permitted to operate a septage detention facility in accordance with Rules .0836 and .0833 of this Section and that has paid the fee specified in G.S. 130A-291.1(e1) shall be allowed to empty their own grease interceptors, separators, traps, or other appurtenances used for the purpose of removing cooking oils, fats, grease, and food debris from the waste flow generated from food handling, preparation, and cleanup, that have a volume of 25 gallons or less, into the permitted detention facility. The permitted facility shall be constructed and located in accordance with the requirements of Rule .0841 of this Section and emptied at least quarterly by a permitted septage management firm.

*History Note: Authority G.S. 130A-291.1;
Eff. October 1, 2009.*

15A NCAC 13B .0837 LOCATION OF SEPTAGE LAND APPLICATION SITES

(a) Soil characteristics (Morphology) which shall be evaluated are as follows:

- (1) Texture – The relative proportions of the sand, silt, and clay sized mineral particles in the fine-earth fraction of the soil are referred to as soil texture. The texture of the different horizons of soils shall be classified into three general groups and 12 soil textural classes based upon the relative proportions of sand, silt, and clay sized mineral particles.
 - (A) Soil Group I – Sandy Texture Soils: The sandy group includes the sand and loamy sand textural classes.
 - (B) Soil Group II – Coarse Loamy and Fine Loamy Texture Soils: The coarse loamy and fine loamy group includes sandy loam, loam, silt, silt loam, sandy clay loam, clay loam, and silty clay loam textural classes.
 - (C) Soil Group III – Clayey Texture Soils: The clayey group includes sandy clay, silty clay, and clay textural classes.
- (2) The soil textural class shall be determined in the field by hand texturing samples of each soil horizon in the soil profile using the following criteria:

- (A) Sand: Sand has a gritty feel, does not stain the fingers, and does not form a ribbon or ball when wet or moist;
- (B) Loamy Sand: Loamy sand has a gritty feel, stains the fingers, forms a weak ball, and cannot be handled without breaking;
- (C) Sandy Loam: Sandy loam has a gritty feel and forms a ball that can be picked up with the fingers and handled with care without breaking;
- (D) Loam: Loam may have a slightly gritty feel but does not show a fingerprint and forms only short ribbons of from 0.25 inch to 0.50 inch in length. Loam will form a ball that can be handled without breaking;
- (E) Silt Loam: Silt loam has a floury feel when moist and will show a fingerprint but will not ribbon and forms only a weak ball;
- (F) Silt: Silt has a floury feel when moist and sticky when wet but will not ribbon and forms a ball that will tolerate some handling;
- (G) Sandy Clay Loam: Sandy clay loam has a gritty feel but contains enough clay to form a firm ball and may ribbon to form 0.75 inch to one-inch long pieces;
- (H) Silty Clay Loam: Silty clay loam is sticky when moist and will ribbon from one to two inches. Rubbing silty clay loam with the thumbnail produces a moderate sheen. Silty clay loam produces a distinct fingerprint;
- (I) Clay Loam: Clay loam is sticky when moist. Clay loam forms a thin ribbon of one to two inches in length and produces a slight sheen when rubbed with the thumbnail. Clay loam produces a nondistinct fingerprint;
- (J) Sandy Clay: Sandy clay is plastic, gritty and sticky when moist and forms a firm ball and produces a thin ribbon to over two inches in length;
- (K) Silty Clay: Silty clay is both plastic and sticky when moist and lacks gritty feeling. Silty clay forms a ball and readily ribbons to over two inches in length;
- (L) Clay: Clay is both sticky and plastic when moist, produces a thin ribbon over two inches in length, produces a high sheen when rubbed with the thumbnail, and forms a strong ball resistant to breaking;

- (M) The Division may substitute laboratory determination of the soil textural class as defined in this Section by particle-size analysis of the fine-earth fraction (less than 2.0 mm in size) using the sand, silt and clay particle sizes as defined in this Section for field testing when conducted in accordance with ASTM (American Society for Testing and Materials) D-422 procedures for sieve and hydrometer analysis. For fine loam and clayey soils (Group II and III) the dispersion time shall be increased to 12 hours.
- (3) Wetness Condition:
- (A) Soil wetness conditions caused by a seasonal high-water table, perched water table, tidal water, or seasonally saturated soils shall be determined by observation of common soil mottles of colors of chroma 2 or less, using the Munsell color chart, in mottle or a solid mass. If drainage modifications have been made, the soil wetness conditions may be determined by direct observation of the water surface in monitoring wells during periods of typically high water elevations. However, colors of chroma 2 or less which are relic from minerals of the parent material shall not be considered indicative of a soil wetness condition.
- (B) Soils which do not meet the required depths to a soil wetness condition shall be considered unsuitable and septage shall not be applied, unless the required separation distances can be maintained. Water table monitoring wells may be utilized to determine the actual depth to a soil wetness condition. The Division may limit discharges to certain months where soil wetness conditions are marginal for use.
- (C) The required depth to a soil wetness condition is determined by the Soil Group Textural Classification.
- (4) Soil Group I soil shall be considered suitable where soil wetness conditions are deeper than 36 inches below the point of septage application or incorporation.
- (5) Soil Group II soils shall be considered suitable where soil wetness conditions are deeper than 24 inches below the point of septage application or incorporation.
- (6) Soil Group III soils shall be considered suitable where soil wetness conditions are deeper than 18 inches below the point of septage application or incorporation.
- (7) Depth to rock: soil depth shall be considered suitable where depth to rock is deeper than 24 inches below the point of septage application or incorporation or deeper than 18 inches if the septage is pretreated to accomplish pathogen reduction and surface applied over vegetation.
- (8) Mine reclamation sites will be considered on a case by case basis.
- (b) Septage land application sites shall not be located in the watershed of a Class WS-I stream. New septage land application sites shall not be located in the water quality critical area of Class WS-II, WS-III, or WS-IV streams or reservoirs. This prohibition does not apply to those portions of a water supply watershed which are drained by Class B or Class C streams.
- (c) Setbacks. At the time of initial permitting, septage land application sites shall observe the minimum setback distances specified in this Rule. Minimum setbacks shall be maintained throughout the life of the site only on land owned, operated or controlled by the permittee or by the landowner(s) at the time of initial permitting. Any sale, lease or other conveyance of land by the permittee, or by the landowner(s) if different from the permittee, subsequent to the initial permitting of the site shall include restrictions to ensure continued maintenance of the setbacks. Failure to maintain required setbacks shall result in immediate permit revocation.
- (d) All septage disposal sites shall be located at least the minimum distance specified for the following:
- (1) Residence not occupied by the applicant – 500 feet, residence occupied by the applicant 100 – feet;
 - (2) Place of business, other than the septage management firm office, or place of public assembly – 500 feet;
 - (3) Well or spring – 500 feet;
 - (4) Surface waters. Stream classification shall be determined in accordance with 15A NCAC 02B .0301 through .0317 Assignment of Stream Classifications;
 - (5) Fresh waters:
 - (A) Class WS-I, Class WS-II, or Class WS-III streams – 300 feet;
 - (B) Class B stream – 300 feet;
 - (C) Class C stream – 200 feet; and
 - (D) Other streams and bodies of water – 200 feet;
 - (6) Tidal salt waters:
 - (A) Class SA or Class SB – 300 feet from mean high water mark; and
 - (B) Class SC and other coastal waters – 200 feet from mean high water mark.
 - (7) Supplemental classifications:
 - (A) Trout waters and swim waters – 200 feet; and
 - (B) Nutrient sensitive waters and outstanding resource waters – 300 feet.

- (8) Groundwater lowering ditches and devices – 100 feet;
- (9) Adjoining property under separate ownership or control – 50 feet;
- (10) Public road right of ways – 100 feet;
- (11) Food crops – 50 feet;
- (12) Wetlands – 50 feet;
- (13) Woods line – five feet, unless greater distance is required as part of an erosion and runoff control plan;
- (14) Land application site on the same tract of land, permitted to a different operator – 100 feet; and
- (15) Setbacks in Subparagraphs (d)(3), (4), (5), (6), (7), and (8) of this Rule may be reduced 50 percent when septage is pretreated to accomplish pathogen reduction and when the land within the setback area is in permanent, established grass with at least 95 percent cover or when the setback area is in forest with a continuous canopy and a 95 percent forest litter cover. Accurate property line locations are the responsibility of the site operator.

(e) Septage land application sites less than five acres in size, individual fields of a site less than two acres in size, and sites with complex soil patterns or unusual shapes shall be permitted only if the applicant demonstrates to the Division that the site can be properly managed for crop production and that septage can be evenly distributed over the site.

(f) Septage land application sites shall not be located where the slope of the land is greater than 12 percent unless all of the conditions of this Paragraph are met:

- (1) The site is in permanent, established grass with at least 95 percent cover or is in forest with a continuous canopy and a 95 percent forest litter cover;
- (2) Plans submitted to the Division are prepared in accordance with accepted erosion and runoff control practices and indicate the following:
 - (A) Management practices and discharge methods which will be used to reduce the potential for run-off from the site and assure even septage distribution over the site; and
 - (B) Location of potential surface water monitoring devices upslope and downslope from the area proposed to be permitted and identification of sampling methods. Monitoring may be required.
- (3) Setbacks will be increased and application rates decreased as appropriate to protect any nearby surface waters which are to be approved by the Division; and
- (4) No site shall include slopes in excess of 25 percent.

(g) A new septage land application site shall not jeopardize the continued existence of threatened or endangered species or result in the destruction or adverse modification of a critical habitat,

protected under the Federal Endangered Species Act of 1973. Agricultural land shall not be considered potential habitat.

(h) Septage, or any part of septage, as defined in G.S. 130A-290, treated to meet the standard for Class A sewage sludge in accordance with the federal regulations for pathogen reduction and vector attraction reduction in 40 CFR Part 503, Subpart D, may be permitted by the Division for application to a public contact site, home lawns and gardens, or to be sold or given away in a bag or other container, provided it can be demonstrated that pollutant limits in 40 CFR 503.13(b)(1) Table 3 are not exceeded. Persons who prepare the septage, and persons who derive material from the septage, shall comply with the applicable record keeping requirements in 40 CFR 503.17(a)(1), (2) or (6). Treatment verification, acceptable to the Division, shall be available. All treatment methods and facilities shall obtain a permit from the Division in accordance with Rule .0836.

*History Note: Authority G.S. 130A-291.1;
Eff. October 1, 2009.*

15A NCAC 13B .0838 MANAGEMENT OF SEPTAGE LAND APPLICATION SITES

(a) General requirements for septage land application sites.

- (1) Only domestic septage, as defined in G.S. 130A-290, shall be land applied or otherwise placed on a septage land application site, unless specified in the permit;
- (2) Each site shall be posted with "NO TRESPASSING" signs. Access roads or paths crossing or leading to the disposal area shall be posted "NO TRESPASSING" and a legible sign of at least two feet by two feet stating "SEPTAGE LAND APPLICATION SITE" shall be maintained at each entrance to the land application area;
- (3) Each site shall have an all weather access road;
- (4) No hazardous wastes shall be permitted on the site;
- (5) No site shall be permitted for land application of industrial or commercial septage unless the applicant demonstrates to the Division that the strength of the organic and inorganic components of the septage is within the normal range for domestic septage;
- (6) Treatment Plant Septage generated by the operation of a wastewater system permitted under Article 11 of Chapter 130A may be land applied at a septage land application site permitted under this Section;
- (7) Septage shall be applied to the surface of the land from a moving vehicle in such a manner as to have no standing liquid or soil disturbance resulting from the waste flow after the discharge is complete;
- (8) Septage shall not be applied to a site if any liquid is ponded on the site or if the site is flooded, frozen, or snow covered;

- (9) Septage shall not be applied to a site if the application method will result in ruts greater than three inches in the soil surface;
 - (10) Disposal area boundaries shall be clearly marked on the ground while a site or any portion of a site is in use;
 - (11) All septage discharges shall be made at a location on the site consistent with the nutrient management plan;
 - (12) All septage discharges, including aerial drift from discharges, shall be made within the permitted boundaries of the land application site;
 - (13) Land application of septage shall be limited to a maximum daily hydraulic application rate of one acre inch;
 - (14) Grease septage from a grease trap, interceptor, separator, or other appurtenance used for the purpose of removing cooking oils, fats, grease, and food debris from the waste flow generated from food handling, preparation, and cleanup shall not be land applied unless the trap has been pumped within the last 90 days or the grease septage adequately screened or dewatered to prevent damage to land application site vegetation;
 - (15) Grease septage shall be diluted at least 1:1 from its concentration when pumped with domestic septage or water if land applied over perennial vegetation. This dilution shall be increased if crop damage occurs. This dilution requirement shall not apply to the liquid portion of grease septage that has been adequately treated to remove solids, fats, oils and grease as long as crop damage does not occur;
 - (16) Solids resulting from septage treatment shall not be land applied unless the solids are treated to meet pathogen reduction and vector attraction reduction requirements in 40 CFR 503, and the permittee has satisfactorily demonstrated to the Division that the solids can be evenly land applied at agronomic rates with standard agricultural spreading equipment;
 - (17) The site shall be managed in such a manner as to minimize soil erosion and surface water runoff. Appropriate soil and water management practices shall be implemented and maintained in accordance with the Division-approved erosion and run-off control plan. All water control structures shall be designed, installed, and maintained to control the run-off resulting from a 10-year storm;
 - (18) Approved nutrient management plans shall be followed;
 - (19) Land application sites or portions of land application sites that do not follow the approved nutrient management plan shall not be used for land application until brought into compliance with the nutrient management plan;
 - (20) alternate plan for the storage or disposal of septage during periods when the permitted land application site is not available;
 - (21) Land application sites permitted for the management of grease septage, or commercial or industrial septage, shall have a septage detention facility available, of adequate size to meet the requirement of Subparagraph (a)(15) of this Rule; and
 - (22) A septage land application site permit holder or operator is responsible for the actions of any septage management firm that the permit holder or operator allows to use his land application site.
- (b) Maximum land application rates for septage shall be determined based upon the following:
- (1) Domestic septage land application rates shall be in accordance with 40 CFR Part 503.12(c);
 - (2) Land application of domestic treatment plant septage shall not exceed the rate in 40 CFR 503.14(d);
 - (3) Pollutant limits for regulated metals in 40 CFR part 503.13 shall not be exceeded for any type septage;
 - (4) Grease septage shall be land applied at a rate that is equal to or less than the agronomic rate, but in no case shall the application of untreated grease septage exceed 25,000 gallons per acre per year;
 - (5) Sites permitted for the land application of grease septage shall meet the requirements of 40 CFR Part 257.3-5;
 - (6) Land application rates for septage treated to reduce solids, nutrients, or pollutants shall be determined based on the analysis of the treated material;
 - (7) At least four analyses of treated liquid shall be required prior to receiving an adjusted land application rate. Additional samples shall be required for highly variable material;
 - (8) Each analysis shall include nitrogen panel, phosphorus, potassium, soluble salts, pH, regulated metals except mercury, calcium, manganese, magnesium, iron, sulfur, boron and chlorine;
 - (9) After an adjusted rate is approved, sampling shall be required every 60 days for the first 12 months of operation;
 - (10) After the initial 12 months, wastes with consistent sample results shall be sampled quarterly; and
 - (11) Land application rates for industrial or commercial septage, or commercial or industrial treatment plant septage shall be determined as specified in Subparagraphs (b)(1) and (b)(2) of this Rule unless testing

determines that a lower rate is necessary due to other non-domestic pollutants.

(c) Septage treatment standards:

- (1) Domestic septage shall be treated in accordance with the requirements in 40 CFR Part 503 Subpart D (including Appendix A and B) except that 503.33(b)(11) is not incorporated;
- (2) Grease septage, treated grease septage, commercial or industrial treatment plant septage, and commercial/industrial septage shall be treated in accordance with 40 CFR 257.3-6 or treated by an equivalent or more stringent process in 40 CFR 503 Subpart D;
- (3) Grease septage, or any part of grease septage, mixed with domestic septage shall be treated as grease septage; and
- (4) Domestic treatment plant septage shall be treated to meet the pathogen reduction and the vector attraction reduction requirements in 40 CFR 503, Subpart D.

(d) No one other than the permit holder shall land apply septage at a permitted site unless approved in writing by the Division. The permit holder shall submit a written request and written authorization from the landowner(s), if different from the permit holder. The request shall include the name of the firm requesting approval and the type and amount of septage proposed to be discharged.

(e) Permit holders of septage land application sites shall develop and maintain records and reports to demonstrate compliance with this Section and the permit requirements of each site.

- (1) Permit holders of sites receiving septage shall maintain a log which meets the requirements of 40 CFR Part 503.17(b);
- (2) Permit holders of all septage land application sites shall have all records and certifications required to be kept available for review during any announced site inspections by the Division; and
- (3) The permit holder of a site where more than one septage management firm has been authorized by the Division to discharge septage shall submit a monthly report to the Division which shall include the following information for each discharge: the date and quantity of each discharge, the type of septage discharged, and the name of the septage management firm discharging.
- (4) All test results for nutrients, metals, contaminants, and pathogens required in this Section shall be maintained by the site operator or the preparer.

(f) Septage shall not be land applied at a new septage land application site until a representative of the Division has inspected the site to determine compliance with these rules and consistency with the permit application and all permit conditions.

(g) Methods of land application for which there are no standards in these rules shall be permitted only if it can be demonstrated

that the proposed method manages septage in a manner at least equivalent to these Rules and to protect public health and the environment. Plans shall be submitted and prepared in accordance with professional engineering principles.

*History Note: Authority G.S. 130A-291.1;
Eff. October 1, 2009.*

15A NCAC 13B .0839 RECORD KEEPING FOR SEPTAGE MANAGEMENT FIRMS

(a) Each permit holder shall maintain a log which includes at least the following information for each septage pumping event:

- (1) The date, type, quantity, and location of septage pumped;
- (2) Location of the discharge of the septage.

(b) A septage management firm shall make all records required in accordance with this Section or conditions of the permit available for inspection by a representative of the Division at the time and place of an inspection of the firm's septage pumper truck(s) or upon request.

*History Note: Authority G.S. 130A-291.1;
Eff. October 1, 2009.*

15A NCAC 13B .0840 SAMPLING AND ANALYSIS

(a) Monitoring or sample analysis required by this Section, and all costs involved, are the responsibility of the septage management firm, site operator, or the owner of the wastewater system, as appropriate. This includes all costs of analysis of sampling, handling, and testing.

(b) The permit holder of a septage land application site shall arrange for annual representative soil samples to be taken from each field at the permitted site during the last quarter of each calendar year.

(c) Soil samples shall be taken annually from each area designated as a separate field of a septage land application site and analyzed for cation exchange capacity, pH, phosphorus, potassium, calcium manganese, magnesium, zinc, and copper. Analysis for other metals shall be required when zinc levels reach 30 pounds per acre or copper levels reach 35 pounds per acre. Sites permitted to receive septage, other than domestic septage, shall be sampled annually to determine compliance with 40 CFR 257.3-6.

(d) Domestic septage and grease septage shall be monitored in accordance with 40 CFR Part 503.16(b).

(e) Domestic treatment plant septage proposed to be land applied at a permitted septage land application site shall be sampled before the initial application, and annually thereafter, prior to being removed from a treatment facility for the following:

- (1) Metals addressed in 40 CFR 503.13; and
- (2) Total solids, pH, ammonia, nitrates, total kjeldahl nitrogen (TKN), biochemical oxygen demand (BOD), chemical oxygen demand (COD), total phosphorus, potassium, sodium and magnesium.

(f) Industrial or commercial septage, or commercial treatment plant septage, proposed to be land applied at a permitted septage land application site, shall be sampled prior to being removed

from a wastewater system. Analytical results shall be submitted to the Division for consideration prior to the issuance of a permit or approval to land apply the septage. Analysis shall be conducted for:

- (1) Metals addressed in 40 CFR 503.13;
- (2) Total solids, pH, ammonia, nitrates, TKN, BOD, COD, total phosphorus, potassium, sodium and magnesium; and
- (3) Organic chemicals, using a complete Toxicity Characteristic Leaching Procedure or other appropriate sampling, such as EPA Test numbers 8240 or 8270, unless an examination of the industrial process and the material used indicates less extensive analysis is acceptable.

Sample analysis shall be performed by a laboratory certified for waste analysis. Analysis shall be conducted in accordance with 40 CFR Part 503.8. Organic chemical analysis shall be conducted according to Subparagraph (f)(3) of this Rule. Results from the North Carolina Department of Agriculture and Consumer Services laboratory will be accepted where appropriate.

*History Note: Authority G.S. 130A-291.1;
Eff. October 1, 2009.*

15A NCAC 13B .0843 LAND USE AND SITE CLOSURE

- (a) Adherence to the site restrictions in 40 CFR 503.32(c) of Subpart D shall be required.
- (b) Nursery and horticultural products, trees and other forest products, including but not limited to pine straw and pine bark, shall not be harvested or gathered for 30 days after septage application.
- (c) Public access is to be controlled in accordance with 40 CFR 503.32(c) of Subpart D.
- (d) The permit holder or operator of the site shall notify the Division at least 30 days prior to final closure of a septage land application site in order to schedule a site inspection for determination of compliance with this Section.
- (e) Prior to final closure, the soil pH of the site shall be raised to 6.5, unless the fertility requirements for crops to be grown in the following year dictate less.

*History Note: Authority G.S. 130A-291.1;
Eff. October 1, 2009.*

15A NCAC 13B .0844 TRANSPORTATION OF SEPTAGE

- (a) All septage shall be transported in a safe, sanitary manner that prevents leaks and spills and comply with the following:
 - (1) All tanks shall be constructed of metal and permanently attached to the truck bed, unless otherwise approved by the Division;
 - (2) All valves shall be in proper working order and be completely closed during transportation;
 - (3) All access ports shall have proper fitting lids in good repair and be completely closed during transportation;

- (4) Portable toilet pump units that slide into pickup truck beds shall be bolted to the trucks in accordance with manufacturer specifications;
- (5) Boats used to pump or transport septage shall be United States Coast Guard approved or engineered plans shall be available indicating that the specific craft is stable in the water when fully loaded; and
- (6) Tanks that are mounted on trailers for the pumping or transportation of septage shall meet all applicable state and federal requirements for highway use.

(b) All permitted septage management firms shall display decals or lettering on each side of every pumper vehicle operated by the firm. The decals or lettering shall include the name, address (town name), phone number, and septage management firm permit number. All decals or lettering on the pumper vehicle shall be no less than three inches in height and plainly visible. Identification shall be permanently attached (i.e., no removable signs).

(c) Applicants for septage management firm permits which were not permitted in the previous calendar year shall have each pump truck inspected prior to the Division's issuance of a permit.

(d) Septage to be discharged at a wastewater treatment plant or any part of the collection system for that plant shall be handled in accordance with the plant rules and policies.

(e) All vehicles used in the transportation of septage, including spare vehicles and tankers, shall meet the requirements of this section and be included in the permit application.

(f) Vehicles used in the transportation of septage, that are listed on an approved septage management firm permit application, may remain loaded or partially loaded on land owned by the septage management firm for up to seven days without obtaining a permit for a detention or treatment facility. Such vehicles shall comply with all parts of this Rule.

*History Note: Authority G.S. 130A-291.1;
Eff. October 1, 2009.*

15A NCAC 13B .0845 REVOCATION OF PERMITS

The Division shall suspend or revoke permits in accordance with G.S. 130A-23.

*History Note: Authority G.S. 130A-291.1;
Eff. October 1, 2009.*

15A NCAC 13B .0846 APPEALS

Appeals shall be made in accordance with G.S. 150B.

*History Note: Authority G.S. 130A-291.1;
Eff. October 1, 2009.*

15A NCAC 18C .0714 PILOT PLANT STUDIES

(a) A pilot plant study proposal shall be submitted to the Department for approval before the study is conducted. The following conditions shall apply:

- (1) An engineering report shall describe the proposed study and shall include the information and data to justify use of the particular plant to treat the source water;
 - (2) The proposed plant shall employ treatment techniques that are consistent with this Subchapter;
 - (3) The pilot plant shall be of the same design and operation as the proposed plant;
 - (4) A protocol for conducting the study shall be submitted which includes the duration, testing procedures, reporting procedures, plant scale and other factors which affect the proposed plant operation; and
 - (5) The study shall be conducted over a time sufficient to treat all worst case source water conditions expected through the year.
- (b) Pilot plant finished water shall not be introduced to a public water system unless approved by the Department.
- (c) When the proposed plant or pilot plant has been tested under worst case conditions on similar water and achieved 3.0 log removal of *Giardia* cysts and a maximum of 0.3 NTU turbidity levels 95 percent of the time in filtered effluent, the particular model plant may be proposed without on-site testing.
- (d) The pilot plant shall comply with the provisions of Section .2000 of this Subchapter.

History Note: Authority G.S. 130A-315; 130A-317; P.L. 93-523;
Eff. July 1, 1994;
Amended Eff. October 1, 2009.

15A NCAC 18C .1301 GENERAL REQUIREMENTS

- (a) For the purposes of this Section,
- (1) A "facility" is defined as any individual operational unit or a combination of operational units that a public water system uses in the treatment or distribution of drinking water.
 - (2) Any "operator" referenced in this Section shall hold a valid certificate issued by the North Carolina Water Treatment Facility Operators Certification Board. An "Operator in Responsible Charge (ORC)" designated for each facility shall hold a grade of certification corresponding to or higher than the classification of the facility.
- (b) Treatment facility. The supplier of water shall have an Operator in Responsible Charge (ORC), as required by 15A NCAC 18D .0206. The ORC or certified treatment facility operator working under the direction of the ORC shall be familiar with the entire water system, including the chlorinators, piping and other appurtenances pertaining to the operation of the treatment plant and the distribution system.
- (c) Distribution facility. The collection of distribution system samples and field measurements required on monthly operation reports, including residual disinfectant testing in the distribution system in accordance with Rule.1302(a)(2)(A) of this Section

may be performed by a person under the ORC's direction, subject to the following provisions:

- (1) The standard operating procedures plan prepared in accordance with 15A NCAC 18D .0701(f) shall include procedures for sampling and for performing residual disinfectant tests and other field measurements.
- (2) In order to report low residual disinfectant test readings or other problems, the designee shall, at all times, be able to contact the ORC or certified operator working under the direction of the ORC, who shall take corrective action as needed to keep the system in compliance.

History Note: Authority G.S. 90A-29; 130A-315; P.L. 93-523;
Eff. January 1, 1977;
Readopted Eff. December 5, 1977;
Amended Eff. October 1, 2009; July 1, 1994; September 1, 1990;
 June 30, 1980; September 1, 1979.

15A NCAC 18C .1302 TESTS, FORMS AND REPORTING

(a) Required tests. If a public water system uses disinfectants or other chemicals for the treatment of water, residual disinfectant tests and other applicable water quality tests required by this Subchapter shall be made during every oversight visit to the facility required by Rule .1303 of this Section. Residual disinfectant concentrations shall be maintained in accordance with 15A NCAC 18C .2002 and .2201 and shall be tested as follows:

- (1) Residual disinfectant tests at the entry point. For systems providing treatment, residual disinfectant concentrations shall be measured in the water entering the distribution system by the operator during every visit required by Rule .1303(a) of this Section.
- (2) Residual disinfectant tests in the distribution system shall be performed as follows:
 - (A) Residual disinfectant concentrations shall be measured weekly at locations that represent maximum residence time of the water in the distribution system or at other locations with high water age. These locations shall be designated on the sample siting plan required under 15A NCAC 18C .1534. The number of required weekly tests is shown in Table A below. Samples collected on the same day must be collected from different locations.

Table A: Measurement Requirements for Residual Disinfectant Concentrations and Chloramine Operational Parameters

Distribution System Classification according to 15A NCAC 18D .0205(b)	Minimum Number of Samples Per Week
D	1
C	3
A and B	5

(B) Distribution systems classified as C or D in Table A may request the Department to reduce the requirements for measuring residual disinfectant concentrations in the distribution system at the locations that represent maximum residence time or other locations with high water age as required in Part (a)(2)(A) of this Rule. The request shall be in writing and shall demonstrate to the Department that the residual disinfectant concentrations measured at the entry point in accordance with Subparagraph (a)(1) of this Rule are sufficient in providing the minimum residual disinfectant concentrations required under 15A NCAC 18C .2002 and .2201. The Department shall consider the presence of continuous monitoring, size and configuration of the distribution system, magnitude of disinfectant degradation and results of performance studies.

(3) Chloramine Operational Parameters. When ammonia and chlorine are applied disinfectants, the system shall measure analytical parameters pertinent to the operation as follows:

(A) Water entering the distribution system. Parameters to be measured shall, at a minimum, include total chlorine, monochloramine, free ammonia, and pH and shall be performed daily, while the treatment facility is in operation.

(B) Water in the distribution system. Parameters to be measured shall, at a minimum, include total chlorine, monochloramine, free ammonia, and pH and shall be measured no less often than denoted in Table A.

(b) Forms, Reports and Records. A public water system shall report and retain records as follows:

(1) Test results shall be documented and reported monthly on forms and in a format provided by the Department and shall be signed by the ORC. Copies of report forms may be obtained

from the Public Water Supply Section. The monthly report shall be submitted by the 10th day of the following month to the Public Water Supply Section.

(2) The forms and reports shall be in an electronic format provided by the Department for water systems owned or operated by local governments and all community water systems serving 1,000 or more service connections or 3,000 or more individuals, regardless of ownership, effective April 1, 2010. Community water systems serving less than 1,000 service connections and less than 3,000 individuals and all non-transient, non-community water systems shall report test results in an electronic format provided by the Department effective October 1, 2010. The Department may waive the requirement for electronic submission in accordance with G.S. 130A-329. Requests for waivers shall be submitted in writing to the Department no less than two months prior to the deadline.

(3) Records documenting compliance with Section .1300 shall be retained on the premises of the water system for a minimum of three years.

History Note: Authority G.S. 130A-315; 90A-29; P.L. 93-523;

Eff. January 1, 1977;

Readopted Eff. December 5, 1977;

Amended Eff. October 1, 2009; July 1, 1994; September 1, 1990; February 1, 1987; June 30, 1980.

15A NCAC 18C .1303 FACILITY OVERSIGHT

(a) Treatment Facility Oversight. At a minimum, the supplier of water shall ensure that during each oversight visit required by this Rule the water system's treatment facility receives a routine visual inspection from the source to the point where water enters the distribution system; equipment settings are adjusted and chemical feed tanks are filled as necessary; dates and quantities of chemicals added are recorded; and the physical and chemical tests required on plant monthly operation reports are performed. In addition, the supplier of water shall have an ORC, or a certified treatment facility operator working under the direction of the ORC, on site as frequently as necessary to ensure compliance with the requirements of this Section and Subchapter. At least one visit per week shall be performed by the ORC for the treatment facility or by an operator with a grade of certification corresponding to or higher than the classification of the facility. The supplier of water shall provide oversight at a public water system treatment facility while the facility is in operation, as follows:

(1) Surface Water or Groundwater Under the Direct Influence (GWUDI) of Surface Water Treatment Facilities. Surface water or GWUDI systems shall provide an operator as required in 15A NCAC 18D .0206 and shall have the ORC or an operator with a grade of certification corresponding to or higher than

- the classification of the facility on-site at least 20 percent of the time the facility is in operation, as calculated on a weekly basis.
- (2) Ground Water Treatment Facilities. The requirements for ground water treatment facilities are as follows:
- (A) Ground water treatment facilities with any individual parameter rating value of 10 or higher as classified by 15A NCAC 18D .0203 shall be visited by an operator daily.
- (B) Ground water treatment facilities with all individual parameter rating values less than 10 as classified 15A NCAC 18D .0203 shall be visited by an operator as often as necessary to ensure compliance with the requirements of this Subchapter but no less often than denoted in Table B below. For the standard frequency of three times per week, no more than two consecutive days shall pass between operator oversight visits. For the standard frequency of two times per week, no more than three consecutive days shall pass between operator oversight visits.
- (3) Supplemental Treatment Facilities. The requirements for supplemental treatment facilities are as follows:
- (A) A supplemental treatment facility, including booster chlorination, is a facility designed to treat water that has previously been treated to meet standards of the "North Carolina Drinking Water Act." Supplemental treatment facilities with any individual parameter rating value of 10 or higher as designated by 15A NCAC 18D .0203 shall be visited by an operator daily.
- (B) Supplemental treatment facilities with all individual parameter rating values less than 10 as designated by 15A NCAC 18D .0203 shall be visited by an operator as often as necessary to ensure compliance with the requirements of this Subchapter but no less often than denoted in Table B below. For the standard frequency of three times per week, no more than two consecutive days shall pass between operator oversight visits. For the standard frequency of two times per week, no more than three consecutive days shall pass between operator oversight visits.

Table B: Standard Frequency of Oversight Visits for Ground Water and Supplemental Treatment Facilities

SYSTEM TYPE	POPULATION SIZE	STANDARD FREQUENCY OF OVERSIGHT VISITS
Community	> 10,000	Daily
	> 3,300 to 9,999	Five times per week
	501 to 3,300	Three times per week
	500 or fewer	Two times per week
Non-transient, non-community	> 1,000	Three times per week
	1,000 or fewer	Two times per week
Transient, non-community	Any population size	Once per week, unless an ORC is not required by 15A NCAC 18D .0206

(b) Distribution Facility Oversight. Distribution facilities have no specified standard frequency of oversight visits under this Section. The distribution facility shall be visited by the operator as frequently as necessary to operate the facility, provide emergency response and ensure compliance with the requirements of this Section and Subchapter.

(c) Increased Frequency of Oversight. The requirements for increasing the frequency of oversight visits are:

- (1) A system that fails to maintain any operational parameter or has any failure of the treatment or distribution facility that would cause a violation of water quality or treatment standards of Section .1500 of this Subchapter shall be visited by the operator daily until the system has returned to compliance, as determined by the Department. Daily visits shall be required for all systems failing to maintain minimum residual disinfectant concentrations under Rules .2002 or .2201 of this Subchapter or maximum residual disinfectant levels under Rule .2008 of this Subchapter until compliant disinfection levels are restored, regardless of the standard frequency of oversight visits for that system.
- (2) The Department may require additional operator oversight visits for a system that has a violation of this Subchapter, an equipment malfunction, a customer complaint, an emergency or other situation that may affect the ability of the system to comply with the requirements of this Subchapter. In determining the frequency and duration of

increased oversight visits, the Department shall consider the following:

- (A) nature of the malfunction, complaint, emergency or other situation;
- (B) degree of risk to the public health or welfare;
- (C) size and type of population exposed;
- (D) type of treatment and chemicals used by the water system;
- (E) type, size, and configuration of the distribution system; and.
- (F) potential or actual damage to property or the environment.

(d) Reduced Frequency of Oversight. The Department may grant written approval to reduce the standard frequency of operator oversight visits of this Subchapter to not less than once per week if a system can document compliance with this Subchapter and any of the following:

- (1) Equivalent public health protection is provided through use of remotely controlled continuous monitoring and recording technology. The recorded data must be reviewed at a minimum of five days a week. This technology must be capable of contacting the operator 24 hours a day, seven days a week in case of operational failure, including a loss of signal.
- (2) Equivalent public health protection is provided by operator visits less frequent than those specified under Part (a)(2)(B) of this Rule based on a facility's overall contribution to the daily flow of the water system and the system's proposed alternative plan and schedule.
- (3) Equivalent public health protection is provided through use of process control devices and standard operating procedures to ensure that no chemical misfeeds can occur and include all of the following, at a minimum:
 - (A) wiring of chemical pumps to the well pumps such that they must operate simultaneously;
 - (B) devices to regulate chemical feeds such that overfeeding and underfeeding of chemicals is prevented;
 - (C) anti-siphoning devices installed to prevent siphonage of chemicals into the water system;
 - (D) demonstration that adequate chemical storage and supply is available to ensure continuous feed between visits; and
 - (E) equipment is calibrated in accordance with manufacturers' recommendations but in no case less than once per year.

History Note: Authority G.S. 130A-315; 90A-29; P.L. 93-523;
 Eff. January 1, 1977;
 Redopted Eff. December 5, 1977;

Amended Eff. October 1, 2009; July 1, 1994; September 1, 1990; June 30, 1980; September 1, 1979.

15A NCAC 18C .2002 DISINFECTION

The provisions of 40 C.F.R. 141.72 are hereby adopted by reference in accordance with G.S. 150B-21.6 including subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. These provisions are adopted with the following exceptions:

- (1) Water entering the distribution system. In 40 C.F.R. 141.72 (a)(2), (a)(3) and (b)(2), "0.2 mg/l" of residual disinfectant concentration shall be replaced with "0.2 mg/l measured as free chlorine when chlorine is the singular applied disinfectant and 1.0 mg/l measured as total chlorine when ammonia and chlorine are applied disinfectants".
- (2) Water in the distribution system at Coliform Sampling Sites. In 40 C.F.R. 141.72(a)(4) and (b)(3), "undetectable" shall be replaced with "less than 0.2 mg/l measured as free chlorine when chlorine is the singular applied disinfectant and less than 1.0 mg/l measured as total chlorine when ammonia and chlorine are applied disinfectants".
- (3) Water in the distribution system at Maximum Residence Time Sites. For samples collected at maximum residence time sites or at other locations with high water age as required by 15A NCAC 18C .1302(a)(2), residual disinfectant concentrations shall be at detectable levels as set forth and calculated in 40 C.F.R. 141.72(a)(4) and (b)(3).

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.72;
 Eff. January 1, 1991;
 Amended Eff. October 1, 2009.

15A NCAC 18C .2004 ANALYTICAL AND MONITORING REQUIREMENTS

The provisions of 40 C.F.R. 141.74 are hereby adopted by reference in accordance with G.S. 150B-21.6 including subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. These provisions are adopted with the following exceptions:

- (1) The residual disinfectant concentration of the water entering the distribution system shall be monitored continuously, and the lowest value shall be recorded each day, except that if there is a failure in the continuous monitoring equipment, grab sampling every four hours may be conducted in lieu of continuously monitoring, but for no more than five working days following the failure of the equipment.

Systems serving 3,300 or fewer persons may take grab samples in lieu of providing continuous monitoring on an ongoing basis at the frequency of every four hours that water is being treated.

- (2) In 40 C.F.R. 141.74, "0.2 mg/l" of residual disinfectant concentration shall be replaced with "0.2 mg/l measured as free chlorine when chlorine is the singular applied disinfectant and 1.0 mg/l measured as total chlorine when ammonia and chlorine are applied disinfectants".

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.74;
Eff. January 1, 1991;
Amended Eff. October 1, 2009.

15A NCAC 18C .2006 REPORTING AND RECORD KEEPING REQUIREMENTS

The provisions of 40 C.F.R. 141.75 are hereby adopted by reference in accordance with G.S. 150B-21.6 including subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. These provisions are adopted with the following exception: In 40 C.F.R. 141.75, "0.2 mg/l" of residual disinfectant concentration shall be replaced with "0.2 mg/l measured as free chlorine when chlorine is the singular applied disinfectant and 1.0 mg/l measured as total chlorine when ammonia and chlorine are applied disinfectants".

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.75;
Eff. January 1, 1991;
Amended Eff. October 1, 2009.

15A NCAC 18C .2007 ENHANCED FILTRATION AND DISINFECTION

- (a) Public water systems shall respond to the State in writing to significant deficiencies outlined in sanitary survey reports no later than 45 days after receipt of the report, indicating how and on what schedule the system will address significant deficiencies noted in the survey.
- (b) Public water systems shall take necessary steps to address significant deficiencies identified in sanitary survey reports if such deficiencies are within the control of the public water system and its governing body.
- (c) Sanitary survey means an onsite review by the State of the water source (identifying sources of contamination using results of source water assessments where available), facilities, equipment, operation, maintenance, and monitoring compliance of a public water system to evaluate the adequacy of the system, its sources and operations and the distribution of safe drinking water.
- (d) A significant deficiency is a defect in a system's design, operation, or maintenance, as well as any failures or malfunctions of its treatment, storage, or distribution system,

that is causing or has the potential to cause the introduction of contamination into water delivered to customers.

(e) When a public water system is required to conduct a comprehensive performance evaluation (CPE) pursuant to this Subchapter, the CPE shall include: assessment of water treatment plant performance, evaluation of major unit processes, identification and prioritization of performance limiting factors, assessment of the applicability of comprehensive technical assistance, and a written CPE report. The public water system shall participate in a comprehensive technical assistance (CTA) activity when the Department determines, based on the CPE results, there is a potential for improved water treatment performance and the public water system is able to receive and implement technical assistance. During the CTA phase, the public water system shall use the CPE results to identify and systematically address factors limiting performance of its water treatment plant; further, the public water system shall implement process control priority-setting techniques, and maintain long-term involvement in training staff and administrators.

(f) The provisions of 40 C.F.R. 141, Subpart P - Enhanced Filtration and Disinfection - (Systems Serving 10,000 or More People) and Subpart T - Enhanced Filtration and Disinfection - (Systems Serving Fewer than 10,000 People) and the provisions of 40 C.F.R. 141, Subpart W- Enhanced Treatment for Cryptosporidium are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's webpage at <http://www.epa.gov/ogwdw/regs.html>.

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141
Eff. August 1, 2000;
Amended Eff. October 1, 2009; November 1, 2005.

15A NCAC 18C .2008 DISINFECTANTS AND DISINFECTION BYPRODUCTS

(a) The provisions of 40 C.F.R. 141.53 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's webpage at <http://www.epa.gov/ogwdw/regs.html>.

(b) The provisions of 40 C.F.R. 141.54 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's webpage at <http://www.epa.gov/ogwdw/regs.html>.

(c) The provisions of 40 C.F.R. 141.64 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's webpage at <http://www.epa.gov/ogwdw/regs.html>.

(d) The provisions of 40 C.F.R. 141.65 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's webpage at <http://www.epa.gov/ogwdw/regs.html>.

(e) The provisions of 40 C.F.R. 141, Subpart L- Disinfectant Residuals, Disinfection Byproducts, and Disinfection Byproduct Precursors and the provisions of 40 C.F.R. 141, Subparts U- Initial Distribution System Evaluations and Subpart V - Stage 2 Disinfection Byproducts Requirements are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's webpage at <http://www.epa.gov/ogwdw/regs.html>.

(f) Travel trailer parks, campgrounds, and marina slips that are community water systems as defined by G.S. 130A-313(10), but do not serve 25 or more of the same persons more than six months per year shall be regulated as transient non-community water systems for the purpose of this Rule.

*History Note: Authority G.S. 130A-315; P.L. 93-525; 40 C.F.R. 141;
Eff. August 1, 2000;
Amended Eff. October 1, 2009; August 1, 2002.*

15 A NCAC 18C .2201 APPLICABILITY AND RESIDUAL DISINFECTANT CONCENTRATIONS

(a) Applicability. The provisions of this Section apply to all ground water systems. A ground water system is defined as any public water system that uses ground water including a consecutive system receiving finished ground water. A ground water system does not include public water systems that combine all of their ground water with surface water or with ground water under the direct influence of surface water prior to treatment under Subpart H.

(b) Disinfection. Systems providing chemical disinfection in accordance with 15A NCAC 18C .0402(j) shall measure residual disinfectant concentrations. The locations and concentrations shall be as follows:

- (1) Water entering the distribution system. The residual disinfectant concentration shall not be less than 0.2 mg/l measured as free chlorine

when chlorine is the singular applied disinfectant and shall not be less than 1.0 mg/l measured as total chlorine when ammonia and chlorine are applied disinfectants for more than two consecutive daily visits for systems that are collecting grab samples and not more than four hours for systems that perform continuous monitoring.

- (2) Water in the distribution system at Coliform Sampling Sites. The residual disinfectant concentration shall not be less than 0.2 mg/l measured as free chlorine when chlorine is the singular applied disinfectant and shall not be less than 1.0 mg/l measured as total chlorine when ammonia and chlorine are applied disinfectants.
- (3) Water in the distribution system at Maximum Residence Time Sites. Systems shall measure residual disinfectant concentrations at maximum residence time sites or at other locations with high water age. The residual disinfectant concentrations at these locations shall be at detectable levels as set forth and calculated in 40 C.F.R. 141.72(a)(4) and (b)(3).

*History Note: Authority G.S. 130A-315; P.L. 93-523;
Eff. October 1, 2009.*

15A NCAC 18C .2202 GROUND WATER RULE

The provisions of 40 C.F.R. 141, Subpart S – Ground Water Rule are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's web page at <http://www.epa.gov/ogwdw/regs.html>. The provisions are incorporated with the following exceptions:

- (1) Fecal indicator for source water monitoring. When systems are required to conduct triggered source water monitoring or assessment source water monitoring under 40 C.F.R. 141.402 (a) and (b) respectively, any of the following three fecal indicators can be used: *E. coli*, enterococci or coliphage.
- (2) Corrective Action Alternatives. Ground water systems that are required to implement corrective action in accordance with 40 C.F.R. 141.403(a)(6) must determine that alternatives (a)(6)(i), (a)(6)(ii) and (a)(6)(iii) are not feasible before implementing alternative (a)(6)(iv). The rationale for selection of alternative (a)(6)(iv) must be documented in accordance with 15A NCAC 18C .0307(b)(10).
- (3) Assessment Source Water Monitoring. The Department shall use information from the

Public Water Supply Section's database and from its Source Water Assessment Program to identify sources subject to assessment source water monitoring. Systems notified by the Department must commence assessment source water monitoring for the sources identified by January 1, 2010. The system shall conduct assessment source water monitoring for any source that receives physical or chemical treatment and possesses any one of the following characteristics:

- (a) Any source subject to the requirements of G.S. 130A-317(b) and applicable rules for which the public water system did not receive approval from the Department for construction or alteration.
- (b) Source is deemed by the Source Water Assessment Program to have a Higher Inherent Vulnerability Rating and the system has historical total or fecal coliform MCL violations during the compliance periods between January 1, 2005 and December 31, 2008.
- (c) Source is deemed by the Source Water Assessment Program to have a Higher Inherent Vulnerability Rating and the system has total or fecal coliform monitoring violations cited for more than 25 percent of the compliance periods between January 1, 2005 and December 31, 2008.

Any system shall perform assessment source water monitoring as directed by the Department in response to deficiencies identified by a sanitary survey that are related to source or treatment. Assessment source water monitoring shall be conducted in accordance with the requirements specified in 40 C.F.R. 141.402(b)(1) through (6) using any of the following three fecal indicators: *E. coli*, enterococci or coliphage.

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141 Subpart S; Eff. October 1, 2009.

TITLE 17 – DEPARTMENT OF REVENUE

17 NCAC 07B .0105 MEASURE OF TAX DUE

(a) When the customer purchases more than one article at one trading period, the applicable rate of tax may be applied to each article purchased or to the total charge for all articles purchased. Those businesses having cash registers at each counter or in each department shall collect a tax equal to the tax due on the total

charge for tangible personal property purchased by a customer at one trading period without leaving the place of business.

(b) The tax computation must be computed to the third decimal place. The amount of tax shall be rounded up whenever the third decimal place is greater than four.

History Note: Authority G.S. 105-164.11; 105-262; Eff. February 1, 1976; Amended Eff. October 1, 2009; October 1, 1993; October 1, 1990.

17 NCAC 07B .0115 RESEARCH SERVICES

Sales of scientific or research equipment to independent contract research organizations for use in performing research services for clients are subject to the applicable statutory state and local sales or use tax. If a contract research organization qualifies under G.S. 105-187.51B(a)(2), then research equipment that meets the requirements of that subsection are exempt from sales and use tax.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; 105-164.13; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46; Eff. February 1, 1976; Amended Eff. October 1, 2009; April 1, 2006; October 1, 1993; October 1, 1991.

17 NCAC 07B .1201 TAXABILITY OF GROSS RECEIPTS

(a) Gross receipts derived from the rental of any room or rooms, lodgings or accommodations furnished by any hotel, motel, inn, tourist camp, tourist cabin and any private residence, condominium (time share and interval ownership properties), cottage or any other place in which rooms, lodgings or accommodations are furnished to transients for consideration are subject to the general rate of State tax and any applicable local sales or use tax, except as set forth in Paragraphs (b) and (c) of this Rule or as otherwise provided by the statute.

(b) Receipts derived from the rental of any room, lodging or accommodation to the same person for a period of 90 continuous days or more are not subject to the tax, and the tax collected from any person prior to the accumulation of such 90 continuous days of occupancy by said person shall be refunded to such person by the retailer collecting the same. A retailer actually making any such refund of tax which he has paid to the department may claim credit for the tax so refunded on a subsequent return filed by him with the department.

(c) Receipts derived from an occasional or isolated rental of a private residence or cottage by the owner for less than a total of 15 days in a calendar year are not subject to sales tax. The less than 15 days exclusion is applicable only to those private residences and cottages which are not made available for rental to transients. If the private residence or cottage is generally or routinely made available by the owner for rental to transients, the less than 15 days exclusion is not applicable to such rentals and all receipts there from are taxable without regard to the aforementioned period. When private residences and cottages are listed with real estate agents, including "real estate brokers" as defined in G.S. 93A-2, for rental to transients, such private

residences and cottages are deemed to be generally available for rental to transients and the less than 15 days exclusion is not applicable to any receipts from such rentals to transients.

(d) Sales of time share or interval ownership property which can be transferred by estate, gift or devise pursuant to deeds or documents under which the owners have a fixed and continuing right to occupy such units during a specified period of time in the same manner as a person who owns or is buying a private residence or cottage are considered to be sales of real property not subject to sales or use tax. When owners of interval ownership and time share property do not occupy the property but rent it to transients or place the property in the hands of a rental agent, including "real estate brokers" as defined in G.S. 93A-2, for rental on their behalf to transients, such receipts are subject to sales tax and the less than 15 days exclusion is not applicable to any receipts from such rentals as explained in Paragraph (c) of this Rule.

History Note: Authority G.S. 105-164.4; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46; Eff. February 1, 1976; Amended Eff. October 1, 2009; October 1, 1993; October 1, 1991; August 1, 1988; July 1, 1984.

17 NCAC 07B .1701 GOVERNMENTAL SALES AND PURCHASES

(a) General. -- With the exception of electricity and telecommunication and ancillary service, sales to State agencies are exempt from State and local sales or use taxes pursuant to G.S. 105-164.13(52), and from the privilege tax pursuant to Article 5F of Chapter 105 of the General Statutes. The items must be purchased by the State agency for its own use pursuant to a valid purchase order issued by the agency that contains its exemption number and a description of the property purchased, or the items must be paid for with a State-issued check, electronic deposit, credit card, procurement card, or credit account of the agency. For all purchases other than by an agency-issued purchase order, the agency must provide to or have on file with the retailer the agency's exemption number. The exemption does not apply to sales of tangible personal property to contractors for use in the performance of contracts with State agencies or to sales of tangible personal property to employees of State agencies. Sales to counties, cities, and other political subdivisions are subject to the applicable State and local tax.

(b) A governmental unit that sells tangible personal property at retail is considered to be a retailer. The reporting, payment, and other requirements that apply to a nongovernmental entity apply to a governmental entity unless a law exempts the governmental entity from the requirement.

(c) DOT. -- Sales to the Department of Transportation are exempt from State and local sales and use tax. This exemption does not apply to sales of tangible personal property to contractors for use in the performance of contracts with the Department of Transportation nor to sales of tangible personal property to employees of the Department of Transportation.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-187.52; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46; Eff. February 1, 1976; Amended Eff. October 1, 2009; August 1, 1998; August 1, 1996; October 1, 1993; October 1, 1991; May 1, 1990; February 1, 1987.

17 NCAC 07B .1905 SALES TO TIRE RECAPPERS

(a) Sales to tire recappers of camelback or other rubber products, cement and rubber solvent, cord fabric, wheel weights and other items of a similar nature which enter into or become an ingredient or component part of the recapped tires or are attached to and delivered with the tires to the customer are exempt from tax.

(b) The gross receipts derived by a utility from sales of electricity to tire recappers for use in connection with the operation of the recapping plant are subject to tax at the rate set in G.S. 105-164.4. Sales of other fuel, except piped natural gas, to tire recappers for use in connection with the operation of the recapping plant are exempt from sales tax. Sales of piped natural gas are exempt from sales tax and are subject to the excise tax imposed by Article 5E of G.S. 105.

(c) Sales to tire recappers of mill machinery, or parts and accessories therefor, for use exclusively in the recapping process are exempt from sales tax. Sales to contractors and subcontractors of mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with manufacturing industries and plants and sales to subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts encompassed in such contracts with manufacturing industries and plants are exempt from sales tax. Such mill machinery or mill machinery parts and accessories must be for use by tire recappers in the production process, as the term "production" is defined in 17 NCAC 07D .0102(a)(1), to qualify for the exemption from sales and use tax when purchased by such contractors or subcontractors. Contractors and subcontractors may obtain Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form E-595E, from the Taxpayer Assistance Division, North Carolina Department of Revenue, to be executed by them and furnished to their vendors in connection with such purchases as the vendor's authority to apply the exemption. The following items when sold to tire recappers for use exclusively in the recapping process are considered to be mill machinery or mill machinery parts and accessories within the meaning of the Sales and Use Tax Article:

- (1) wire brushes;
- (2) mold lube;
- (3) curing tubes and rims;
- (4) molds and matrices;
- (5) buffing equipment;
- (6) buffing discs;
- (7) buffing rasps;
- (8) rasp teeth;
- (9) crayons for marking tires;
- (10) tire trimmers;
- (11) boilers;

- (12) tire handling equipment used exclusively between the beginning and ending steps of the recapping process;
- (13) inspection spreaders used exclusively to inspect casings being recapped;
- (14) spinners used for applying cement used on casings being recapped;
- (15) pre-condensing tanks for air lines used for applying cement, dusting buffed casings, and inflating curing tubes;
- (16) casing balancers used exclusively in balancing casings to be recapped;
- (17) tread builders used to apply tread rubber to casings being recapped;
- (18) air compressors used exclusively in retreading or recapping process;
- (19) dust collectors;
- (20) knives, stitchers, rollers, shears, awls, and splicing tools used to perform work on the ingredient material or the manufactured product;
- (21) thermometers, pyrometers, and durometers used in testing mold heat and cure hardness of the rubber used in the recapping process;
- (22) bagging and debagging equipment;
- (23) sprayers used exclusively in the recapping process;
- (24) matrix loaders;
- (25) steam traps and valves used in steam lines for curing molds; and
- (26) mold cleaners.

(d) The following are examples of items which are subject to the applicable statutory state and local sales or use tax when sold to tire recappers for use or consumption:

- (1) motor vehicle jacks;
- (2) tire tools not used between the beginning and ending recapping processes;
- (3) balancing machinery used after recapping process is completed;
- (4) equipment used to remove tires from the rim before the recapping process begins;
- (5) administrative equipment such as office supplies, file cabinets and other office equipment;
- (6) cleaning compounds for janitorial and sanitary purposes;
- (7) uniforms for employees;
- (8) advertising materials;
- (9) lubricants, repair parts and accessories for motor vehicles;
- (10) inspection bags; and
- (11) gloves.

(e) The lists in Paragraphs (c) and (d) of this Rule are not intended to be exclusive but are for illustrative purposes only. If there is any question as to the tax status of any item not on the lists, it may be submitted to the Secretary of Revenue for a determination as to the applicable rate of tax.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; 105-264; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46; Eff. February 1, 1976; Amended Eff. October 1, 2009; July 1, 1999; October 1, 1993; June 1, 1992; October 1, 1991; May 1, 1985.

17 NCAC 07B .2101 ELECTRICITY AND OTHER FUEL

(a) Electricity. - Electricity is tangible personal property and its sale is subject to tax at the rates set in G.S. 105-164.4. Local sales and use taxes do not apply to sales or purchases of electricity.

(b) Other Fuel. - The sale of bottled gas, coal, coke, fuel oil, oxygen, acetylene, hydrogen, liquefied petroleum gas, or another combustible to a user or consumer is subject to the applicable statutory state and local tax unless the sale is exempt from tax under G.S. 105-164.13. Sales of piped natural gas are exempt from sales tax and are subject to the excise tax imposed by G.S. 105, Article 5E.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-164.16; 105-262; 105-467; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46; Eff. February 1, 1976; Amended Eff. October 1, 2009; July 1, 2000; August 1, 1998; October 1, 1993; October 1, 1991; May 1, 1990; August 1, 1986.

17 NCAC 07B .2602 CONTRACTORS, SUBCONTRACTORS, AND RETAILER-CONTRACTORS

(a) Contractors are considered the consumers of tangible personal property they use in fulfilling contracts and are liable for payment of applicable statutory State and local sales or use taxes on the property. When a contractor or a subcontractor purchases taxable tangible personal property from a supplier outside this State who collects applicable statutory State and local sales and use taxes, the contractor must remit the tax to the supplier. When a contractor or subcontractor purchases taxable tangible personal property for use in this State from a supplier outside this State who does not collect the applicable State and local sales and use taxes, the contractor or subcontractor must remit the tax directly to the Department.

(b) The term retailer-contractor shall mean any person who engages in the business of selling building materials, supplies, equipment, and fixtures at retail and, in addition to such business, enters into contracts for constructing, building, erecting, altering or repairing buildings or other structures, and for the installation of equipment and fixtures to buildings and, in the performance of such contracts, consumes or uses such materials or merchandise. When a retailer-contractor as herein defined makes purchases of the above-named tangible personal property, a part of which he will use in performing contracts and a part of which he will sell at retail, the retailer-contractor shall furnish his supplier a Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form E-595E. The supplier shall keep the certificate for his records as his authority for not charging tax on the transaction. The retailer-contractor then becomes liable for remitting, directly to the department, tax on the sales price of

any tangible personal property sold at retail, and tax on the cost price of any tangible personal property used in the performance of a contract.

(c) Sales to contractors and subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with manufacturing industries and plants and sales to subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts encompassed in such contracts with manufacturing industries and plants are exempt from sales and use tax. Such mill machinery or mill machinery parts and accessories must be for use by a manufacturing industry or plant in the production process, as the term "production" is defined in 17 NCAC 07D .0102(a)(1), to qualify for the exemption when purchased by such contractors or subcontractors. Contractors and subcontractors may obtain the Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form E-595E, from the Taxpayer Assistance Division, North Carolina Department of Revenue, to be completed by them and furnished to their vendors in connection with such purchases as the vendors' authority to apply the exemption from sales and use tax thereto.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; 105-264; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;
Eff. February 1, 1976;
Amended Eff. October 1, 2009; August 1, 2002; October 1, 1993; June 1, 1992; October 1, 1991; February 8, 1981.

17 NCAC 07B .2606 PRE-FABRICATED BUILDINGS: CONTRACTORS

Sales of pre-fabricated buildings to contractors, builders, or other users or consumers in this state are subject to the applicable statutory state and local sales or use tax. A pre-fabricated building is not a modular home as defined under G.S. 105-164.3(21b).

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;
Eff. February 1, 1976;
Amended Eff. October 1, 2009; October 1, 1993; October 1, 1991; October 1, 1990.

17 NCAC 07B .2608 PLUMBING: HEATING CONTRACTORS: PURCHASES

Contractors are deemed to be the users or consumers of building materials and other tangible personal property which they use in the performance of lump-sum, cost-plus or time and material contracts to furnish and install a plumbing, heating, air conditioning or electrical system or which they use in making repairs, alterations or additions to an existing system. Contractors are therefore liable for payment of the applicable statutory state and local sales and use tax on their purchases of such property. The tax paid on such purchases is a part of the cost of the property and may be recovered in the contract price; however, the tax shall not be charged as a separate item to the property owner. Contractors must also pay the tax on purchases

of property which they resell unless such contractors have been classified by the Department of Revenue as retailer-contractors and have been authorized to use the Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form E-595E. The tax due on all purchases by contractors shall be paid to the suppliers unless the purchases are made from out-of-state vendors who do not collect North Carolina sales or use tax. Contractors must remit the tax on such out-of-state purchases directly to the Department of Revenue.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 2009; October 1, 1993; October 1, 1991.

17 NCAC 07B .3102 BROADCASTING EQUIPMENT

(a) Sales of broadcasting equipment and parts and accessories thereto and towers to commercial radio or television companies which operate under the regulation and supervision of the Federal Communications Commission are exempt from sales and use tax. Taxable tangible personal property purchased by the radio and television companies other than towers, antennas and broadcasting equipment or parts and accessories thereto is subject to the applicable statutory state and local sales or use tax.
 (b) Sales to a cable service provider of broadcasting equipment, parts, and accessories attached to the equipment are exempt from sales and use tax. The term broadcasting equipment does not include cable. Therefore, cable and other tangible personal property not considered broadcasting equipment, parts, and accessories attached to the equipment are subject to the applicable statutory state and local sales and use tax.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; 105-164.13; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;
Eff. February 1, 1976;
Amended Eff. October 1, 2009; October 1, 1993; October 1, 1991; December 1, 1984; March 1, 1984.

17 NCAC 07B .3107 MOTION PICTURE PRODUCTION FIRMS

(a) Sales to motion picture production firms of cameras, film and props or building materials used in the construction of sets which are used in the actual filming of movies for sale, lease or rental are exempt from sales and use tax. The sale of chemicals and equipment used to develop and edit film which is used to produce release prints is exempt from sales and use tax.
 (b) Sales of machinery and equipment and other property to motion picture production firms for use in receiving tangible personal property and other activities such as raw materials storage, finished goods storage, distribution or administration is subject to the applicable statutory state and local sales or use tax.
 (c) The purchase of film by a movie production company which becomes a component part of release prints that are actually produced and sold, leased or rented to its customers are exempt from sales and use tax. Also, chemicals which are used to develop release prints that are for sale, lease or rental are exempt from tax.

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

17 NCAC 07B .3301 EXEMPT PROSTHETIC DEVICES

(a) Exemption. G.S. 105-164.13(12) exempts from sales and use tax prosthetic devices as defined in G.S. 105-164.3(30b). The exemption includes orthodontic materials that are purchased by an orthodontist for assembly into an appliance to be worn by a patient. Prosthetic devices are exempt regardless of whether they are sold on prescription.

(b) Specific Items. -- The Sales and Use Tax Technical Bulletins contain a list of exempt prosthetic devices and a list of orthodontic materials that are considered to be exempt prosthetic devices when they are purchased by an orthodontist for assembly into an appliance. An item that is not included in these lists may also be exempt.

History Note: Authority G.S. 105-164.13; 105-262; Eff. February 1, 1976; Amended Eff. October 1, 2009; April 1, 1999; August 1, 1998; October 1, 1993; October 1, 1991; July 1, 1989; February 1, 1986.

17 NCAC 07B .3302 EXEMPT DURABLE MEDICAL EQUIPMENT

(a) Devices. -- G.S. 105-164.13(12) exempts from sales and use tax durable medical equipment as defined under G.S. 105-164.3(8b) when sold on prescription. The Sales and Use Tax Technical Bulletins contain a list of items that are exempt from tax as durable medical equipment when sold on prescription. An item not included in the list in the Bulletins may also be exempt from tax when sold on prescription.

(b) Records. - A vendor who sells durable medical equipment pursuant to a written prescription must keep sales records that segregate these sales. The vendor must keep the original prescription for inspection by the Secretary of Revenue or an agent of the Secretary.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Eff. February 1, 1976; Amended Eff. October 1, 2009; April 1, 1999; August 1, 1998; October 1, 1993; June 1, 1992; October 1, 1991; February 1, 1986.

17 NCAC 07B .4701 COMMERCIAL PRINTERS AND PUBLISHERS

(a) All retail sales of tangible personal property by commercial printers or publishers are subject to the applicable statutory state and local sales or use tax unless the sales are subject to a lesser rate of tax under the provisions of G.S. 105-164.4(a) or are exempt under the provisions of G.S. 105-164.13. The following transactions are also exempt from sales or use tax:

- (1) charges for advertising space in newspapers, magazines and other publications;

(2) charges made by printers for imprinting or binding books or forms or other similar items which are owned by their customers;

(3) Printed material which is sold by a retailer to a purchaser within or without this state when the printed material is delivered by the printer directly to a mailing house or to a common carrier or to the United States Postal Service for delivery to a mailing house in this state which will preaddress and presort the material and deliver it to a common carrier or to the United States Postal Service for delivery to recipients outside this state designated by the purchaser.

(A) Sales of printed material by a retailer located within or without this state which is delivered directly to the purchaser in this state for the original purpose of preparing and delivering the printed material to the United States Postal Service or a common carrier for delivery to prospective customers or other recipients outside this state are exempt from sales and use tax provided the purpose is consummated. A purchaser of the printed material for preparation and delivery to prospective customers and other recipients outside this state must furnish the vendor a written statement certifying that the printed material is being purchased for use in a mailing program which is in place at the time of purchase; otherwise, the vendor must collect and remit the tax on the sales. Sales of printed materials to a user or consumer in this state to be placed in the purchaser's inventory for use as needed are subject to sales or use taxes notwithstanding that all or a portion of the printed material may be delivered to the United States Postal Service or a common carrier for delivery to prospective customers or other recipients outside this state.

(B) A retailer who sells printed material delivered to a common carrier or the United States Postal Service for delivery to the purchaser at a point within this state who prepares the material to be mailed to prospective customers or other recipients without charge and transports the material outside this state to be delivered to the United States Postal Service or a common carrier or to a mailing house outside this state for delivery to designated recipients is liable for

sales or use tax except as provided in this Rule.

(b) Retail sales of advertising circulars, catalogues, booklets, pamphlets, forms, tickets, letterheads, envelopes and similar items and retail sales of books, magazines, periodicals, newspapers and other publications are subject to the applicable statutory state and local sales or use tax unless the sales are exempt from tax under the provisions of G.S. 105-164.13. When publications, other than magazines, are sold by subscription, the tax accrues at the time the subscription is accepted.

(c) Sales to commercial printers and publishers of machinery and equipment and parts therefor and accessories thereto for use directly in the production of newspapers, magazines and other printed matter for sale are exempt from sales tax. Included herein are custom made plates and dies when title thereto does not pass to the printers' customers. Sales to commercial printers and publishers of tangible personal property such as wood and metal which is used to fabricate plates and dies for use in the production of printed matter for sale are exempt from sales tax when title to the plates and dies does not pass to the printers' customers. Sales to commercial printers and publishers of machinery, equipment, film, and similar items of tangible personal property for use or consumption directly in the production of the plates and dies are also exempt from sales tax. It is a printing trade practice that title to lithographic and gravure plates and dies is retained by the printer or publisher. Unless it is otherwise agreed in writing, the items purchased by the printer or publisher are exempt from sales tax.

(d) Sales to commercial printers of custom made plates and dies for resale are exempt from sales or use tax when supported by Streamlined Sales and Use Tax Agreement Certificates of Exemption, Form E-595E. Sales to commercial printers of tangible personal property as wood and metal which becomes a component part of printing plates produced by the printers for sale to customers are likewise exempt from sales or use tax when supported by certificates of exemption. However, sales to commercial printers of machinery, equipment, film, and similar items of tangible personal property which do not enter into or become a component part of the plates and dies but are used or consumed by the printer in the direct production of the plates and dies are exempt from sales tax. When, at the request of the customer, commercial printers purchase custom made printing plates and dies for use in the direct production of the printed matter or when they purchase wood and metal which becomes a component part of printing plates and dies fabricated by the printer for use in the direct production of printed matter and title to the plates and dies passes to the printers' customers, the items may be purchased for resale. The printer is liable for collecting and remitting the applicable statutory state and local sales or use tax on the total retail sales price of the plates and dies including charges for tangible personal property and art work or any other services that go into the manufacture or delivery thereof. In such cases, the printer's sales invoices and records must show that the plates and dies are actually sold to the customer; otherwise, the items are deemed to have been used by the printer, and the cost price of same is exempt from sales tax.

(e) Sales to commercial printers and publishers of tangible personal property which is not resold as such or which does not

become an ingredient or component part of the tangible personal property which they produce for sale or which is not production machinery or parts therefor and accessories thereto are subject to the applicable statutory state and local sales or use tax.

(f) The provisions of Paragraph (d) of this Rule have no application to sales of printing equipment and supplies to firms which operate print shops for the production of printed matter for their own use and not for sale. Purchases of printing equipment and supplies by such firms are subject to the applicable statutory state and local sales or use tax.

History Note: Authority G.S. 105-164.4; 105-164.5; 105-164.6; 105-164.13; 105-262; 105-264; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;

Eff. February 1, 1976;

Amended Eff. October 1, 2009; April 1, 2001; October 1, 1993; June 1, 1992; October 1, 1991; February 1, 1988.

17 NCAC 07B .5004 TAXABLE OPTICAL SUPPLIES

All sales to users or consumers of eyeglass frames not for use in connection with eyeglasses ground on prescription, sunglasses not ground on prescription, solutions for cleaning eyeglasses, telescopes, binoculars, opera glasses, and similar items, by whomsoever made, are subject to the applicable statutory state and local sales or use tax. In addition, the retail sale of nose pads, temples and any other repair parts for eyeglass frames are subject to the tax without regard to whether the repair parts are sold to be used on frames with prescription lens. All persons, including opticians, optometrists, and oculists, making such sales shall register as retail merchants and collect and remit the tax due thereon.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;

Eff. February 1, 1976;

Amended Eff. October 1, 2009; October 1, 1993; October 1, 1991.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 06 - BOARD OF BARBER EXAMINERS

21 NCAC 06F .0101 PHYSICAL STRUCTURE

(a) The physical structure of barber schools in North Carolina shall conform to the following criteria:

- (1) be a minimum of 14 linear feet wide;
- (2) be equipped with a minimum of ten barber chairs in sanitary and safe condition sufficient for the number of students enrolled;
- (3) have a minimum of 896 square feet in the practical area for the first ten chairs;
- (4) have an additional 70 square feet in the practical area for each additional barber chair over the required ten;

- (5) have at least five linear feet of space between each chair, center to center;
- (6) have no more than two students enrolled per barber chair;
- (7) be equipped with toilet facilities with hand-washing sink or basin sufficient to serve the number of people at the school;
- (8) have concrete or wood floors covered with smooth, nonporous materials;
- (9) have instructional materials, for example, blackboard space, slide programs, sufficient to teach barbering;
- (10) have a workstand, with mirror, for each barber chair in the practical work area, constructed of material that renders it easily cleaned;
- (11) have a tool cabinet for each barber chair, with a door as nearly air tight as possible;
- (12) have a towel cabinet, or other method of storage, such that clean towels are stored separate from used towels;
- (13) have at least one fully functional sink or lavatory, with hot and cold water, for each two barber chairs, located within seven unobstructed linear feet of each barbering area;
- (14) have the school separate from any other place or type of business by a substantial wall of ceiling height;
- (15) have a classroom area, separate from the practical area;
- (16) have desk chairs sufficient to serve the number of students enrolled, and a desk and chair for the instructors;
- (17) have a time clock for electronic recordation of student hours;
- (18) have an informational sign displayed in each practical area of the school indicating that all barbering services are performed by students; and
- (19) have a bulletin board hanging in each classroom area with a posting of the sanitation rules and minimum school curricula as prescribed under 21 NCAC 06F .0210, or any other memorandum, letter or rule issued by the Board which states it is to be posted for the information of students.

This Paragraph applies to barber schools permitted on or after December 1, 1994 or which undergo modifications or structural renovations after that date.

(b) Barber schools permitted on or after July 1, 2008, shall have a minimum of 20 square feet per student in the classroom area.

(c) The sink distance requirement set forth in Subparagraph (a)(13) of this Rule does not apply to barber schools permitted on or before September 1, 2009.

History Note: Authority G.S. 86A-15; 86A-22; Eff. February 1, 1976;

Readopted Eff. February 8, 1978;

Amended Eff. October 1, 2009; June 1, 2008; December 1, 1994; May 1, 1989.

21 NCAC 06Q .0104 EFFECT OF NOTICE OF VIOLATION ON LICENSE OR CERTIFICATE

(a) The Board shall refuse to issue or renew any license, certificate or permit issued pursuant to Chapter 86A of the General Statutes until satisfied that the applicant meets all qualifications for licensure. For purposes of this Rule, a pending violation is not considered satisfaction of qualification for licensure with the Board until the applicant has complied with all provisions contained in the Notice of Probable Cause, Settlement Agreement or Final Agency Order entered by the Board.

(b) The Board shall refuse to renew any license, certificate or permit issued pursuant to Chapter 86A of the General Statutes until satisfied that the licensee meets all qualifications for licensure. For purposes of this Rule, a pending violation is not considered satisfaction of qualification for licensure with the Board until the licensee has complied with all provisions contained in the Settlement Agreement or Final Agency Order entered by the Board.

History Note: Authority G.S. 86A-1; 86A-10; 86A-17; 86A-18; 86A-20;

Eff. October 1, 2009.

CHAPTER 10 - BOARD OF CHIROPRACTIC EXAMINERS

21 NCAC 10 .0504 DRUG TESTING

(a) Reasonable Suspicion. The Secretary of the Board may require a licentiate to submit to drug or blood alcohol testing if there is reasonable suspicion that the licentiate is consuming drugs or alcohol to such an extent or with such frequency as to impair the ability to treat patients. For purposes of this Rule, reasonable suspicion exists when:

- (1) The licentiate is cited or arrested on drug-related criminal charges;
- (2) The licentiate admits to the Board or to a judicial tribunal that the licentiate has abused alcohol or prescription drugs or consumed illicit drugs; or
- (3) The Secretary receives the sworn affidavit of a credible witness stating that the witness personally observed the licentiate in the licentiate's chiropractic office during business hours and the licentiate's behavior was erratic, unprofessional and apparently influenced by drug or alcohol consumption.

(b) Approved Laboratory. Any drug test required by the Secretary shall be conducted by an approved laboratory in accordance with the protocol set forth in Article 20, Chapter 95 of the General Statutes, Controlled Substance Examination Regulation.

(c) Reporting Results. The results of a licentiate's drug test shall be reported directly to the Secretary by the laboratory conducting the test and shall not be disclosed to any person other than the licentiate except for use as evidence in Board disciplinary actions or when disclosure is mandated by law.

(d) Right to Dispute Results. In any Board disciplinary proceeding in which a licensee's drug test results are introduced into evidence, including a preliminary hearing before the Chiropractic Review Committee, the licensee may dispute the accuracy of the test results.

(e) Effect of Refusal. A licensee's refusal to submit to a drug test required by the Secretary pursuant to this Rule shall be considered the concealment of information about a matter affecting licensure, in violation of G.S. 90-154(b)(19).

*History Note: Authority G.S. 90-142; 90-154;
Eff. October 1, 2009.*

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

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

(a) Dental hygiene schools may operate extension facilities and conduct off-campus hygiene classes in which dental hygiene services are provided to members of the public at Board approved sites, including non-profit health care facilities serving low income populations, state and county institutions with resident populations, hospitals, state or county health department and area health education centers.

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

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

*History Note: Authority G.S. 90-29(c)(4); 90-233(c)(2);
Eff. November 1, 2009.*

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

21 NCAC 64 .0212 SUPERVISION OF HEARING SCREENING

(a) The Board of Examiners for Speech and Language Pathologists and Audiologists interprets the words "audiometric screening" used in G.S. 90-294(f) as the presentation of pure tone stimuli at fixed intensity using pass/fail criteria requiring no interpretation by the person administering the screening. Objective methods of screening auditory function based upon new technology may be used subject to the conditions specified in this Rule.

(b) Fixed-intensity, pure tone audiometric screening performed within the context of an individual speech-language evaluation or assessment is within the scope of practice of licensed speech

and language pathologists, and by extension allowed for registered speech-language pathology assistants, provided that it can be demonstrated that the licensee or registered assistant has received formal instruction and practicum in audiometric screening as part of his or her training program.

(c) Licensed speech and language pathologists, registered speech-language pathology assistants, and unlicensed persons may perform screenings of hearing sensitivity and auditory function on the general public or specific populations provided that the individuals performing such screenings have been trained by a licensed audiologist or physician in the specific techniques for that screening and provided that supervision of the screening program is by a licensed audiologist or physician.

(d) Screening programs using objective or technology-based hearing screening techniques in place of traditional fixed-frequency, pure tone audiometry (for example, automated auditory brainstem response tests, otoacoustic emission screening instruments, microprocessor audiometers, etc.), even though such techniques and instruments may yield a pass-fail indication, require the oversight and supervision of a licensed audiologist or physician.

(e) The Board of Examiners for Speech and Language Pathologists and Audiologists interprets the word "supervision" in G.S. 90-294(f) to include the following elements:

- (1) selecting the appropriate calibrated screening instrument to be used for the target population;
- (2) providing sufficient initial and refresher training in the specific screening methods and instruments to be used to ensure that the screeners have sufficient knowledge of the screening methods, understand the limitations of the screening program, and can demonstrate proper operation of the equipment;
- (3) assuring that records are maintained describing the training received by the screeners, the names of attendees, the nature of any evaluation and any referral made;
- (4) providing sufficient evaluation of the test site for ambient sound and to ensure that the screeners are following the screening protocol; and
- (5) reviewing samples of screening records to confirm that the screening has conformed to the program standards.

(f) Licensed speech and language pathologists and registered speech-language pathology assistants shall not instruct others in the techniques of hearing screening or supervise hearing screening programs. These aspects of a hearing screening program are within the scope of practice of licensed audiologists and physicians.

*History note: Authority G.S. 90-304(a)(3);
Eff. September 2, 2005;
Amended Eff. October 1, 2009.*

CHAPTER 65 – BOARD OF RECREATIONAL THERAPY LICENSURE

21 NCAC 65 .0602 RENEWAL REQUIREMENTS FOR LICENSED RECREATIONAL THERAPIST AND LICENSED RECREATIONAL THERAPY ASSISTANT

- (a) Board staff shall send a renewal notice to the licensee 60 days prior to the expiration date at their last known address.
- (b) Licenses issued shall be subject to renewal every two years upon completion of continuing education requirements as defined in Rule .0601.
- (c) Each Licensee must complete and submit a renewal application package. All materials must be postmarked by December 15th of the year prior to the applicant's expiration date printed on their license. The renewal application package must be submitted to the Board and must be accompanied by the proper fees.
- (d) Unless a person has advised the Board that he or she does not intend to renew the license, Board staff shall send a renewal to the person's last known home or email address.

History Note: Authority G.S. 90C-2; 90C-24(a)(3); Eff. January 1, 2007; Amended Eff. October 1, 2009.

TITLE 25 – OFFICE OF STATE PERSONNEL

25 NCAC 01C .1004 REDUCTION IN FORCE

- (a) A State government agency may separate an employee whenever it is necessary due to shortage of funds or work, abolishment of a position or other material change in duties or organization. Retention of employees in classes affected shall be based on systematic consideration of all the following factors: type of appointment, relative efficiency, actual or potential adverse impact on the diversity of the workforce and length of service. However, neither temporary, probationary nor trainee employees in their initial six months of training shall be retained where an employee with a permanent appointment must be separated in the same or related class.

(b) Agency Responsibilities:

- (1) Each agency shall develop a written policy for reduction in force which meets its particular needs and provides assurance to employees that potential reductions shall be considered on a fair and systematic basis in accordance with factors defined in the reduction-in-force policy. The policy of each agency shall be filed with the Office of State Personnel as a public record; and
- (2) Each agency shall inform the employee of separation as soon as possible and inform the employee of the priority reemployment consideration available. The agency shall provide employees with a minimum of 30 calendar days written notification of separation prior to the effective date of the reduction in force.

- (c) Appeals: An employee may appeal the separation if it is alleged that the separation is in retaliation for the employee's opposition to alleged discrimination against the employee on

account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or disabling condition as defined by Chapter 168A of the General Statutes. An employee may appeal the separation if it is alleged that the separation is a denial of the veterans' preference granted in connection with a reduction in force for an eligible veteran as provided in Chapter 126, Article 13. The appeal may be made either through the agency internal grievance procedure or may be filed directly with the Office of Administrative Hearings, at the choice of the employee.

- (d) The agency must analyze any application of its reduction-in-force policy to determine its impact on equal employment opportunity in accordance with the Equal Employment Opportunities Commission's Uniform Guidelines on Employee Selection Procedures.

- (e) Severance Salary Continuation: Severance salary continuation shall be administered in accordance with the rules contained in 25 NCAC 01D .2700. Pursuant to G.S. 126-8.5, the Office of State Budget and Management is responsible for determining whether severance continuation is applicable. Prior approval shall be received from the Office of State Budget and Management before severance salary continuation is paid.

History Note: Authority G.S. 126-4(2); Eff. February 1, 1976; Amended Eff. May 1, 1980; January 1, 1980; Emergency Amendment (a) Eff. March 16, 1981 for a Period of 77 Days to Expire on June 1, 1981; Emergency Amendment (a) Made Permanent with Change Eff. April 8, 1981; Amended Eff. December 1, 1995; March 1, 1994; November 1, 1990; March 1, 1987; Recodified from 25 NCAC 01D .0504 Eff. December 29, 2003; Amended Eff. October 1, 2009; March 1, 2005.

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

26 NCAC 01 .0105 EMERGENCY WAIVER

The Director of the Office of Administrative Hearings shall waive any rule adopted by the Office of Administrative Hearings that is not statutorily required if the Director finds that the waiver is necessary to protect the public health and safety at any time:

- (1) the President of the United States, the Governor, the General Assembly, or a mayor or board of county commissioners, declares a state of emergency or state of disaster;
- (2) the State Health Director or a local health director issues an isolation or quarantine order; or
- (3) the business and disaster recovery plan required by G.S. 147-33.89 is implemented by the OAH Business Continuity Management Team.

History Note: Authority G.S. 7A-751(a); Eff. October 1, 2009.

26 NCAC 03 .0201 ORDER FOR MEDIATED SETTLEMENT CONFERENCE

(a) Order by Chief Administrative Law Judge. The Chief Administrative Law Judge may, by written order, require parties and their representatives to attend a pre-hearing mediated settlement conference in any contested case.

(b) Timing of the Order. The Chief Administrative Law Judge may issue the order within 10 days of the filing of the contested case petition. Paragraph (c) of this Rule and Paragraph (b) of Rule .0203 of this Section shall govern the content of the order and the date of completion of the conference.

(c) Content of Order. The Chief Administrative Law Judge's order shall:

- (1) require the mediated settlement conference be held in the contested case;
- (2) establish a deadline for the completion of the conference;
- (3) state that the parties have the right to select their own mediator as provided in Paragraph (a) of Rule .0202 of this Section;
- (4) state the rate of compensation of the mediator appointed by the presiding Administrative Law Judge pursuant to Paragraph (c) of Rule .0202 of this Section in the event that the parties do not exercise their right to select a mediator; and
- (5) state that the parties shall be required to pay the mediator's fee at the conclusion of the settlement conference unless otherwise apportioned by the presiding Administrative Law Judge.

(d) Motion to Dispense with Mediated Settlement Conference. A party may move the presiding Administrative Law Judge, within 10 days after the date of the Chief Administrative Law Judge's order, to dispense with the conference. Such motion shall state the reasons the relief is sought. For good cause shown, the presiding Administrative Law Judge may grant the motion.

(e) Motion for Mediated Settlement Conference. In contested cases not ordered to mediated settlement conference, any party may move the presiding Administrative Law Judge to order such a conference. Such motion shall state the reasons why the order should be allowed and shall be served on non-moving parties. Objections may be filed in writing with the presiding Administrative Law Judge within 10 days after the date of the service of the motion. Thereafter, the presiding Administrative Law Judge shall rule upon the motion without a hearing and notify the parties or their attorneys of the ruling. In the event that mediation is ordered, the parties may select a mediator by agreement as provided in Paragraph (a) of Rule .0202 of this Section within 21 days of the date of the presiding Administrative Law Judge's order. If the parties cannot agree or have failed to select a mediator within the 21 days, the presiding Administrative Law Judge shall appoint a certified mediator pursuant to Paragraph (c) of Rule .0202 of this Section.

History Note: Authority G.S. 150B-23.1; Eff. February 1, 1994; Amended Eff. October 1, 2009.

26 NCAC 03 .0202 SELECTION OF MEDIATOR

(a) Selection of Certified Mediator by Agreement of Parties. The parties may select a certified mediator by agreement within 21 days of the Chief Administrative Law Judge's order. The petitioner or petitioner's attorney shall file with the Office of Administrative Hearings a Notice of Selection of Mediator by Agreement within 21 days of the Chief Administrative Law Judge's order, however, any party may file the notice. Such notice shall include: the name, address and telephone number of the mediator selected; the rate of compensation of the mediator; the agreement of the parties as to the selection of the mediator and rate of compensation; and that the mediator is certified pursuant to these Rules.

(b) The presiding Administrative Law Judge shall appoint mediators certified by the Dispute Resolution Commission pursuant to Paragraph (c) of this Rule.

(c) Appointment of Mediator by the presiding Administrative Law Judge. If the parties cannot agree upon the selection of a mediator, the petitioner or petitioner's attorney shall so notify the presiding Administrative Law Judge and request by motion, on behalf of all parties, that the presiding Administrative Law Judge appoint a mediator. The motion must be filed within 21 days of the date of the Chief Administrative Law Judge's order and shall state that the parties have had a full and frank discussion concerning the selection of a mediator and have been unable to agree. Upon receipt of a motion to appoint a mediator, or failure of the parties to file a Notice of Selection with the presiding Administrative Law Judge within 21 days of the Chief Administrative Law Judge's order, the presiding Administrative Law Judge shall appoint a mediator, certified pursuant to these Rules, who has expressed a willingness to mediate contested cases.

(d) Mediator Information Directory. To assist the parties in the selection of a mediator by agreement, the Office of Administrative Hearings shall prepare and keep current a list of certified mediators who wish to mediate contested cases. The list shall be kept in the Office of Administrative Hearings and made available to the parties upon request.

(e) Disqualification of Mediator. Any party may move for an order disqualifying the mediator. For good cause, such order shall be entered. If the mediator is disqualified, a replacement mediator shall be selected by the parties or appointed by the presiding Administrative Law Judge pursuant to this Rule. Nothing in this Paragraph shall preclude mediators from disqualifying themselves.

History Note: Authority G.S. 7A-751(a); 150B-23.1; Eff. February 1, 1994; Amended Eff. October 1, 2009; April 1, 2001.

26 NCAC 03 .0204 DUTIES OF PARTIES, REPRESENTATIVES, AND ATTORNEYS

(a) Attendance. The following persons shall physically attend a mediated settlement conference:

- (1) All individual parties, or an officer or employee or agent of a party who is not a natural person who is not the party's outside counsel and who has been authorized to decide on behalf of the party whether and on what

terms to settle the contested case; or in the case of a governmental entity, an employee or agent who is not the party's outside counsel and who has authority to decide on behalf of the party whether and what terms to settle the contested case; provided if under law proposed settlement terms can be approved only by a Board, the representative shall have authority to negotiate on behalf of the party and to make a recommendation to that Board;

- (2) At least one counsel of record for each party or other participant whose counsel has appeared in the contested case; and
- (3) For any insured party against whom a claim is made, a representative of the insurance carrier who is not the carrier's outside counsel and who has authority to make a decision on behalf of the carrier or who has been authorized to negotiate on behalf of the carrier and can promptly communicate during the conference with persons who have the decision-making authority.

(b) Any party or person required to attend a mediated settlement conference shall physically attend until an agreement is reduced to writing and signed as provided in Paragraph (c) of this Rule or an impasse has been declared. The party or person may have the attendance requirement excused or modified including the allowance of that party's or person's participation without physical attendance by order of the presiding Administrative Law Judge, upon motion of a party and notice to all parties and persons required to attend and the mediator, or by agreement of all parties and persons required to attend and the mediator.

(c) Finalizing Agreement. If an agreement is reached in the conference parties shall reduce its terms to writing and sign it along with their counsel. By stipulation of one or more of the parties and at their expense, the agreement may be electronically recorded. A consent judgment, voluntary dismissals, or withdrawal of petition shall be filed with the Office of Administrative Hearings by the persons the parties designate.

(d) Payment of Mediator's Fee. The parties shall pay the mediator's fee as provided by Rule .0207 of this Section.

History Note: Authority G.S. 7A-751(a); 150B-23.1; Eff. February 1, 1994; Amended Eff. October 1, 2009; April 1, 2001.

26 NCAC 03 .0205 SANCTIONS FOR FAILURE TO ATTEND

If a party or other person required to attend a mediated settlement conference fails to attend without good cause, the presiding Administrative Law Judge may impose upon the party or person any appropriate monetary sanction including, but not limited to, the payment of fines, attorneys fees, mediator fees, expenses and loss of earnings incurred by persons attending the conference as authorized by G.S. 150B-33(b)(8) or (10). A party seeking sanctions against another party or person shall do so in a written motion stating the grounds for the motion and the relief sought. The motion shall be served upon all parties and on any person against whom sanctions are being sought. If the

presiding Administrative Law Judge imposes sanctions, it shall do so, after notice and a hearing, in a written order, making findings of fact supported by substantial evidence and conclusions of law.

History Note: Authority G.S. 7A-751(a); 150B-23.1; Eff. February 1, 1994; Amended Eff. October 1, 2009; April 1, 2001.

26 NCAC 03 .0206 AUTHORITY AND DUTIES OF MEDIATORS

(a) Authority of Mediator.

- (1) Control of Conference. The mediator shall at all times be in control of the conference and the procedures to be followed.
- (2) Private Consultation. The mediator may communicate privately with any participant or counsel prior to and during the conference. The fact that private communications have occurred with a participant shall be disclosed to all other participants at the beginning of the conference.
- (3) Scheduling the Conference. The mediator shall make a good faith effort to schedule the conference at a time that is convenient with the participants, attorneys and mediator. In the absence of agreement, the mediator shall select the date for the conference.

(b) Duties of Mediator.

- (1) The mediator shall define and describe the following at the beginning of the conference:
 - (A) The process of mediation;
 - (B) The differences between mediation and other forms of conflict resolution;
 - (C) The costs of the mediated settlement conference;
 - (D) The fact that the mediated settlement conference is not a hearing, the mediator is not a judge, and the parties retain their right to a hearing if they do not reach settlement;
 - (E) The circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person;
 - (F) Whether and under what conditions communications with the mediator will be held in confidence during the conference;
 - (G) The inadmissibility of conduct and statements as provided by Rule 408 of the North Carolina Rules of Evidence;
 - (H) The duties and responsibilities of the mediator and the participants; and
 - (I) The fact that any agreement reached will be reached by mutual consent.
- (2) Disclosure. The mediator shall be impartial and advise all participants of any

- circumstances bearing on possible bias, prejudice or partiality.
- (3) **Declaring Impasse.** It is the duty of the mediator to determine that an impasse exists, and that the conference should end.
 - (4) **Reporting Results of Conference.** The mediator shall file a written report with the parties and presiding Administrative Law Judge within 10 days as to whether or not agreement was reached by the parties. If an agreement was reached, the report shall state whether the action will be concluded by consent judgment, voluntary dismissal, or withdrawal of petition and shall identify the persons designated to file such pleadings. The mediator's report shall inform the presiding Administrative Law Judge of the absence of any party, attorney, or insurance representative known to the mediator to have been absent from the mediated settlement conference without permission.
 - (5) **Scheduling and Holding the Conference.** The mediator shall schedule the conference and conduct it prior to the conference completion deadline set out in the Chief Administrative Law Judge's order. Deadlines for completion of the conference shall be observed by the mediator unless said time limit is changed by a written order of the presiding Administrative Law Judge.

History Note: Authority G.S. 7A-751(a); 150B-23.1; Eff. February 1, 1994; Amended Eff. October 1, 2009; April 1, 2001.

26 NCAC 03 .0207 COMPENSATION OF THE MEDIATOR

- (a) **By Agreement.** When the mediator is stipulated to by the parties, compensation shall be as agreed upon between the parties and the mediator.
- (b) **By Order.** When the mediator is appointed by the Office of Administrative Hearings, the mediator shall be compensated by the parties at the uniform hourly rate and a one-time, per contested case, administrative fee, due upon appointment, as set by the Chief Administrative Law Judge except as provided by Paragraph (d) of this Rule. The Chief Administrative Law Judge shall set the rate at the same rate set by Rule 7 of the Rules of the North Carolina Supreme Court Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions.
- (c) **Change of Appointed Mediator.** Pursuant to Rule .0202 of this Section, the parties have 21 days to select a mediator. Parties who fail to select a mediator within that time frame and then desire a substitution after the presiding Administrative Law Judge has appointed a mediator, shall obtain approval from the presiding Administrative Law Judge for the substitution. If the presiding Administrative Law Judge approves the substitution,

the parties shall pay the presiding Administrative Law Judge's original appointee the one time, per case administrative fee provided for in Paragraph (b) of this Rule.

(d) **Indigent Cases.** No party found to be indigent by the presiding Administrative Law Judge shall be required to pay a mediator fee. Any mediator conducting a settlement conference pursuant to these Rules shall waive the payment of fees from parties found by the presiding Administrative Law Judge to be indigent. Any party may move the presiding Administrative Law Judge for a finding of indigence and to be relieved of the obligation to pay that party's share of the mediator's fee. Such motion shall be heard subsequent to the completion of the conference or, if the parties do not settle their contested case, subsequent to the conclusion of the contested case hearing but prior to the issuance of the Administrative Law Judge's decision. In ruling upon such motions, the presiding Administrative Law Judge shall apply the criteria enumerated in G.S. 1-110(a), but shall take into consideration the outcome of the contested case, and whether a decision was rendered in movant's favor. The presiding Administrative Law Judge shall enter an order granting or denying a party's request.

(e) **Postponement and Fees.** As used in this Paragraph, the term "postponement" shall mean reschedule or not proceed with a settlement conference once a date for the settlement conference has been scheduled by the mediator. After a settlement conference has been scheduled for a specific date, a party may not unilaterally postpone the conference. A conference session may be postponed by the mediator for good cause beyond the control of the moving participant(s) only after notice by the movant to all parties of the reason for the postponement, and a finding of good cause by the mediator. Without a finding of good cause, a mediator may also postpone a scheduled conference session with the consent of all parties. Postponement fees shall be paid by the party requesting the postponement unless otherwise agreed to between the parties. Postponement fees are in addition to the one time, per case administrative fee provided for in Paragraph (b) of this Rule. The Chief Administrative Law Judge will set the rate at the same rate set by Rule 7 of the Rules of the North Carolina Supreme Court Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions.

(f) **Payment of Compensation by Parties.** Unless otherwise agreed to by the parties or ordered by the presiding Administrative Law Judge, mediator's fee shall be paid in equal shares by the parties. For purposes of this Rule, multiple parties shall be considered one party when they are represented by the same counsel. Parties obligated to pay a share of the costs shall pay them equally. Payment shall be due upon completion of the conference unless there is a pending motion for determination of indigency. In such case, payment shall be due upon a ruling on the motion.

History Note: Authority G.S. 7A-751(a); 150B-23.1; Eff. February 1, 1994; Amended Eff. October 1, 2009; April 1, 2001.

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

RULES REVIEW COMMISSION MEMBERS**Appointed by Senate**

Jim R. Funderburk - 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

November 19, 2009 December 17, 2009
January 21, 2010 February 18, 2009

RULES REVIEW COMMISSION**October 15, 2009****MINUTES**

The Rules Review Commission met on Thursday, October 15, 2009, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Jerry Crisp, Jim Funderburk, Jeff Gray, Jennie Hayman, Clarence Horton, John Lewis, David Twiddy, and Ralph Walker.

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

The following people were among those attending the meeting:

Bob Hensley	Social Services Commission
Lisa Johnson	Social Services Commission
Jan Withers	DHHS/Division of Services For the Deaf and Hard of Hearing
Tom Gale	DHHS/Division of Services For the Deaf and Hard of Hearing
Connie Brower	DENR/Division of Water Quality
Sandra Moore	DENR/Division of Water Quality
Carolyn Edmonds	DHHS/Division of Services For the Deaf and Hard of Hearing
Chris Carlson	DENR/Division of Forest Resources
Michael Huffman	DENR/Division of Forest Resources
Reed Fountain	Young Moore
Mike Abraczinskas	DENR/Division of Air Quality
Patrick Knowlson	DENR/Division of Air Quality
John Hoomani	Department of Labor
Erin Gould	Department of Labor
Craig Smith	DHHS/Division of Health Service Regulation
Nadine Pfeiffer	DHHS/Division of Health Service Regulation
Michael Scott	Department of Environment and Natural Resources
Nancy Pate	Department of Environment and Natural Resources

APPROVAL OF MINUTES

The meeting was called to order at 9:03 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 September 17, 2009 meeting. There were none and the minutes were approved as distributed.

FOLLOW-UP MATTERS

15A NCAC 13B .0833 – Commission for Public Health. The Commission approved the rewritten rule submitted by the agency.
15A NCAC 13B .0835, .0836, .0841, .0842 – Commission for Public Health. No rewritten rules have been submitted and no action was taken.

LOG OF FILINGS

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

All permanent rules were approved unanimously with the following exceptions:

10A NCAC 17D .0205: Division of Services for the Deaf and Hard of Hearing - The Commission objected to this rule based on ambiguity. In (b)(8), it is not clear when the Division would consider an individual to be "qualified." While G.S. 90-294 sets out who is exempt from the provisions of Article 22 of Chapter 90 of the General Statutes, it does not otherwise tell who is "qualified."

10A NCAC 17D .0206: Division of Services for the Deaf and Hard of Hearing - The Commission objected to this rule based on ambiguity. In (b)(2)(B) and (D), it is not clear when an individual will be considered "qualified." In (b)(2)(F), it is not clear what is meant by "equivalent training and experience."

10A NCAC 27G .0810: Division of Mental Health - The Commission objected to this rule based on lack of statutory authority. Paragraph (f) of is not consistent with the Open Meetings Law (G.S. 143, Article 33C). G.S. 143-318.9 makes it the public policy in North Carolina that actions of public bodies be conducted openly. G.S. 143-318.10(a) requires, with limited exceptions not applicable here, that each official meeting of a public body be open to the public. "Public body" as defined in G.S. 143-318.10(b) includes any appointed committee or other body of the State "that (i) is composed of two or more members and (ii) exercises...a...quasi-judicial [or] administrative...function." "Official meeting" as defined by G.S. 143-318.10(d) includes a "meeting...of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon...the public business within the jurisdiction...of the public body." There is no authority cited for this panel to meet in closed session.

10A NCAC 27G .0811: Division of Mental Health - The Commission objected to this rule based on lack of statutory authority. The last sentence in Paragraph (j) is not consistent with the Public Records Law. A tape of the proceedings would appear to be a public record pursuant to G.S. 132-1(a). The statute includes as public records "sound recordings...made...pursuant to law...in connection with the transition of public business by any agency of North Carolina government..." Agency includes any public office, public officer or official. That would appear to include this panel. G.S. 132-3(a) prohibits the destruction of any public record, and makes the destruction a class 3 misdemeanor.

10A NCAC 27G .0812: Division of Mental Health – The Commission objected to this rule based on lack of statutory authority. Paragraph (a) is not consistent with the Open Meetings Law (G.S. 143, Article 33C). The Panel appears to be a public body whose meetings are required to be public.

10A NCAC 70E .0708: Social Services Commission - The Commission objected this rule based on lack of statutory authority. In (e), there is no authority cited for the licensing authority to revoke or deny licensure to an applicant who is merely being investigated for an action that if found would result in him being placed on the Health Care Personnel Registry or The Sex Offender and Public Protection Registry.

15A NCAC 02Q .0521: Environmental Management Commission - The Commission objected to this rule based on ambiguity and failure to comply with the Administrative Procedure Act (APA). The language added to Paragraph (c) after publication in the Register appears to be a substantial change. Prior to the addition of this language, there was nothing in the Rule about a Division report to the Environmental Management Commission. The agency did not republish the Rule as required by G.S. 150B-21(g). It is also not clear what type study is to be reported on.

15A NCAC 09C .1249: Department of Environment and Natural Resources - The Commission objected to this rule based on lack of statutory authority and ambiguity. It is unclear what is meant by or what would constitute a prohibited action that would "annoy, disturb, or frighten" forest users in this rule or what standards will be used to make that determination. It is unclear why the agency would permit any "noises, amplified speech, music or other sounds" that would "annoy, disturb or frighten" forest users as the rule seemingly provides with the exception in line 5. Even if they desire to do that it is unclear what standards the agency would use in granting that exemption. G.S. 150B-19(6) requires the agency to set out "specific guidelines" it will use in granting any waiver or exemption to a rule. There is no authority for the agency to set any of these standards outside rulemaking.

15A NCAC 09C .1253: Department of Environment and Natural Resources - The Commission objected to this rule based on lack of statutory authority and ambiguity. It is unclear what standards the agency shall use to decide whether to "withdraw the right of a person...to remain on...State Forest" land. There is no authority to set those standards outside rulemaking.

15A NCAC 09C .1257: Department of Environment and Natural Resources - The Commission objected to this rule based on lack of statutory authority. Although the agency does have fee setting authority, there is no authority cited to set these fees outside rulemaking, as (e) seems to allow. G.S. 12-3.1 makes it clear that setting fees is a rule. G.S. 150B-18 states that "unless a rule is adopted in substantial compliance" with Chapter 150B it is not a valid rule." Fees set outside the rulemaking procedures of Chapter 150B are not adopted in substantial compliance with the chapter.

15A NCAC 09C .1260: Department of Environment and Natural Resources - The Commission objected to this rule based on ambiguity and lack of necessity. It is unclear who is to "construe" these rules. It is unclear what is required or prohibited by (b). It is unclear what constitutes an "act" under this rule, especially since it refers to a "requirement or prohibition" of any "act." That would make it seem that an "act" was actually a "rule." But in the following clause it refers to "causing or procuring...any act." That does not seem like a reference to a "rule." Since most of this rule appears to be a legal conclusion or attempt to dictate what is already the law, it is probably unnecessary.

Commissioners Crisp, Funderburk, Horton, Lewis, Twiddy, and Walker voted for the motion to object to 15A NCAC 09C .1249, .1253, .1257, .1260 and to approve the remainder of the rules from the Department of Environment and Natural Resources. Commissioner Gray voted against the motion.

21 NCAC 50 .0505: Board of Examiners for Plumbing, Heating and Fire Sprinkler Contractors - The Commission objected to this rule based on lack of statutory authority. The Board has not cited authority for the provision in (f) lines 32-34 where the Board requires a licensed contractor to take action that would normally be matters for a court to determine, i.e. whether a contractor was negligent or whether the contract was performed according to the terms of the contract, and what the appropriate remedy is for the negligence or breach of contract. It seems that this is a matter within the general negligence or contract law of the State and is a matter for the General Assembly through the General Statutes to regulate unless the Board can cite specific authority for it to mandate the remedy for either negligence or breach of contract by one of its licensees. The Board's authority appears to be limited to licensing and disciplining its licensees. It has not cited authority to order its licensees to perform work normally perceived as contractual work. In effect the Board sets itself up as replacing the NC General Court of Justice. The Board could specify that such an action constitutes negligence or gross negligence or some other violation of its statutes or rules.

TEMPORARY RULES

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

All temporary rules were unanimously approved by the Commission.

COMMISSION PROCEDURES AND OTHER BUSINESS

The Commission discussed having a business meeting either prior to or after the regular monthly meeting in November.

The meeting adjourned at 10:04 a.m.

The next scheduled meeting of the Commission is Thursday, November 19, 2009 at 9:00 a.m.

Respectfully Submitted,

Dana Vojtko
Publications Coordinator

**LIST OF APPROVED PERMANENT RULES
October 15, 2009 Meeting**

HHS - HEALTH SERVICE REGULATION, DIVISION OF

<u>Performance Standards</u>	10A NCAC 14C .1403
<u>Information Required of Applicant</u>	10A NCAC 14C .1902
<u>Performance Standards</u>	10A NCAC 14C .1903
<u>Support Services</u>	10A NCAC 14C .1904
<u>Staffing and Staff Training</u>	10A NCAC 14C .1905
<u>Information Required of Applicant</u>	10A NCAC 14C .2002
<u>Performance Standards</u>	10A NCAC 14C .2103
<u>Definitions</u>	10A NCAC 14C .2701

HHS - DEAF AND HARD OF HEARING, DIVISION OF SERVICES FOR THE

<u>Certification of Impairment</u>	10A NCAC 17D .0207
<u>Financial Eligibility</u>	10A NCAC 17D .0210

PUBLIC HEALTH, COMMISSION FOR

<u>Infection Prevention - Health Care Settings</u>	10A NCAC 41A .0206
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SOCIAL SERVICES COMMISSION

<u>Responsibility</u>	10A NCAC 70E .0702
<u>New Licenses</u>	10A NCAC 70E .0703
<u>Relicensure and Renewal</u>	10A NCAC 70E .0704
<u>Termination</u>	10A NCAC 70E .0707
<u>Foster Home</u>	10A NCAC 70E .1001
<u>Medication</u>	10A NCAC 70E .1102
<u>Criteria for the Family</u>	10A NCAC 70E .1104
<u>Conflict of Interest</u>	10A NCAC 70E .1105
<u>Relationship to Supervising Agency</u>	10A NCAC 70E .1107
<u>Fire and Building Safety</u>	10A NCAC 70E .1108
<u>Training Requirements</u>	10A NCAC 70E .1117
<u>Governance</u>	10A NCAC 70F .0201
<u>Responsibilities of the Governing Body</u>	10A NCAC 70F .0202
<u>Personnel Policies</u>	10A NCAC 70F .0206
<u>Placement Services</u>	10A NCAC 70G .0503
<u>Out-of-Home Family Services Agreement for Children Receiv...</u>	10A NCAC 70G .0504
<u>Physical Restraint Holds, Behavior Management and Discipline</u>	10A NCAC 70G .0512
<u>Critical Incidents</u>	10A NCAC 70G .0513
<u>Preplacement Assessment</u>	10A NCAC 70H .0405
<u>Services to Adoptive Applicants and Families</u>	10A NCAC 70H .0407
<u>Governance</u>	10A NCAC 70I .0301
<u>Discipline and Behavior Management</u>	10A NCAC 70I .0613
<u>Application of Physical Plant Requirements</u>	10A NCAC 70I .0901
<u>Design and Construction</u>	10A NCAC 70I .0902
<u>Vehicles Used for Transportation of Children</u>	10A NCAC 70I .0918
<u>Applicability</u>	10A NCAC 70J .0101

<u>Personnel</u>	10A NCAC 70K .0201
<u>Program of Care</u>	10A NCAC 70K .0204
<u>Design and Construction</u>	10A NCAC 70K .0302
<u>Kitchen</u>	10A NCAC 70K .0307
<u>Vehicles Used for Transportation of Residents</u>	10A NCAC 70K .0318
<u>Approval Criteria</u>	10A NCAC 71L .0102

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Ozone</u>	15A NCAC 02D .0405
<u>PM10 Particulate Matter</u>	15A NCAC 02D .0409
<u>PM2.5 Particulate Matter</u>	15A NCAC 02D .0410
<u>Groundwater Quality Standards</u>	15A NCAC 02L .0202
<u>Final Action</u>	15A NCAC 02Q .0518

COASTAL RESOURCES COMMISSION

<u>Cama Land Use Plan Amendments</u>	15A NCAC 07B .0901
<u>Coastal Wetlands</u>	15A NCAC 07H .0205

ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF

<u>Purpose</u>	15A NCAC 09C .0701
<u>Construction</u>	15A NCAC 09C .0703
<u>Permits</u>	15A NCAC 09C .0705
<u>Hunting</u>	15A NCAC 09C .0707
<u>Fishing</u>	15A NCAC 09C .0708
<u>Trespass</u>	15A NCAC 09C .0709
<u>Firearms</u>	15A NCAC 09C .0710
<u>Explosives</u>	15A NCAC 09C .0711
<u>Disposal of Refuse, Garbage, Etc.</u>	15A NCAC 09C .0712
<u>Flowers, Plants, Minerals, Etc.</u>	15A NCAC 09C .0713
<u>Warming Fires</u>	15A NCAC 09C .0721
<u>Enforcement</u>	15A NCAC 09C .0726
<u>Criminal Penalty</u>	15A NCAC 09C .0727
<u>Definitions</u>	15A NCAC 09C .0802
<u>Construction</u>	15A NCAC 09C .0803
<u>Territorial Scope</u>	15A NCAC 09C .0804
<u>Permits</u>	15A NCAC 09C .0805
<u>Animals at Large</u>	15A NCAC 09C .0814
<u>Boating</u>	15A NCAC 09C .0815
<u>Camping</u>	15A NCAC 09C .0816
<u>Sporting and Game</u>	15A NCAC 09C .0817
<u>Horses</u>	15A NCAC 09C .0818
<u>Bicycles</u>	15A NCAC 09C .0819
<u>Hunting and Fishing</u>	15A NCAC 09C .0820
<u>Explosives</u>	15A NCAC 09C .0821
<u>Firearms</u>	15A NCAC 09C .0822
<u>Fires</u>	15A NCAC 09C .0823

<u>Disorderly Conduct</u>	15A NCAC 09C .0825
<u>Intoxicating Beverages and Drugs</u>	15A NCAC 09C .0827
<u>Commercial Enterprises</u>	15A NCAC 09C .0828
<u>Purpose</u>	15A NCAC 09C .1201
<u>Definitions of Terms</u>	15A NCAC 09C .1202
<u>Permits</u>	15A NCAC 09C .1203
<u>Rock or Cliff Climbing and Rappelling</u>	15A NCAC 09C .1204
<u>Bathing or Swimming</u>	15A NCAC 09C .1205
<u>Hunting</u>	15A NCAC 09C .1206
<u>Fishing</u>	15A NCAC 09C .1207
<u>Animals at Large</u>	15A NCAC 09C .1208
<u>Boating</u>	15A NCAC 09C .1209
<u>Camping</u>	15A NCAC 09C .1210
<u>Sporting and Games</u>	15A NCAC 09C .1211
<u>Horses</u>	15A NCAC 09C .1212
<u>Bicycles</u>	15A NCAC 09C .1213
<u>Explosives</u>	15A NCAC 09C .1214
<u>Firearms</u>	15A NCAC 09C .1215
<u>Fires</u>	15A NCAC 09C .1216
<u>Disorderly Conduct</u>	15A NCAC 09C .1217
<u>Intoxicating Beverages</u>	15A NCAC 09C .1218
<u>Commercial Enterprises</u>	15A NCAC 09C .1219
<u>Noise Regulations</u>	15A NCAC 09C .1220
<u>Meetings and Exhibitions</u>	15A NCAC 09C .1221
<u>ALMS and Contributions</u>	15A NCAC 09C .1222
<u>Aviation</u>	15A NCAC 09C .1223
<u>Expulsion</u>	15A NCAC 09C .1224
<u>Motorized Vehicles: Where Prohibited</u>	15A NCAC 09C .1225
<u>Flowers, Plants, Minerals, Etc.</u>	15A NCAC 09C .1226
<u>Fees and Charges</u>	15A NCAC 09C .1227
<u>Scope</u>	15A NCAC 09C .1228
<u>Definitions of Terms</u>	15A NCAC 09C .1229
<u>Permits</u>	15A NCAC 09C .1230
<u>Rock or Cliff Climbing and Repelling</u>	15A NCAC 09C .1231
<u>Bathing or Swimming</u>	15A NCAC 09C .1232
<u>Hunting</u>	15A NCAC 09C .1233
<u>Fishing</u>	15A NCAC 09C .1234
<u>Animals at Large</u>	15A NCAC 09C .1235
<u>Boating</u>	15A NCAC 09C .1236
<u>Camping</u>	15A NCAC 09C .1237
<u>Sports and Games</u>	15A NCAC 09C .1238
<u>Horses</u>	15A NCAC 09C .1239
<u>Bicycles</u>	15A NCAC 09C .1240
<u>Skates, Blades and Boards</u>	15A NCAC 09C .1241
<u>Explosives</u>	15A NCAC 09C .1242
<u>Firearms</u>	15A NCAC 09C .1243

<u>Fires</u>	15A NCAC 09C .1244
<u>Disorderly Conduct</u>	15A NCAC 09C .1245
<u>Intoxicating Beverages and Drugs</u>	15A NCAC 09C .1246
<u>Damage to Buildings, Structures and Signs</u>	15A NCAC 09C .1247
<u>Commercial Enterprises</u>	15A NCAC 09C .1248
<u>Meetings and Exhibitions</u>	15A NCAC 09C .1250
<u>ALMS and Contributions</u>	15A NCAC 09C .1251
<u>Aviation</u>	15A NCAC 09C .1252
<u>Motorized Vehicles</u>	15A NCAC 09C .1254
<u>Flowers, Plants, Minerals, Etc.</u>	15A NCAC 09C .1255
<u>Trash and Debris</u>	15A NCAC 09C .1256
<u>Hours of Operation</u>	15A NCAC 09C .1258
<u>Enforcement</u>	15A NCAC 09C .1259

PUBLIC HEALTH, COMMISSION FOR

<u>Septage Management Firm Permits</u>	15A NCAC 13B .0833
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PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS, BOARD OF EXAMINERS FOR

<u>Obtaining Forms</u>	21 NCAC 50 .0202
<u>Qualifications Determined by Examination</u>	21 NCAC 50 .0301
<u>Applications: Issuance of License</u>	21 NCAC 50 .0306
<u>Refund of Deposit</u>	21 NCAC 50 .0307
<u>Review of Examinations</u>	21 NCAC 50 .0308
<u>Expanding Scope of License</u>	21 NCAC 50 .0309
<u>Application for Licensure by Reciprocity</u>	21 NCAC 50 .0310
<u>Permits</u>	21 NCAC 50 .0402
<u>Active Employment</u>	21 NCAC 50 .0404
<u>Multiple Licenses</u>	21 NCAC 50 .0405
<u>Change of Trade Name</u>	21 NCAC 50 .0408
<u>Air Conditioning Further Defined</u>	21 NCAC 50 .0501
<u>Minor Repairs and Alterations</u>	21 NCAC 50 .0506
<u>Heating: Group 3 License Required</u>	21 NCAC 50 .0508
<u>Fire Sprinkler Inspection Technician License</u>	21 NCAC 50 .0513
<u>Fire Sprinkler Inspection Contractor License</u>	21 NCAC 50 .0514
<u>Fire Sprinkler Maintenance Technician License</u>	21 NCAC 50 .0515
<u>Residential Fire Sprinkler Installation License</u>	21 NCAC 50 .0516
<u>Informal Procedures</u>	21 NCAC 50 .1006
<u>License Fees</u>	21 NCAC 50 .1102
<u>Fees for Copies or Records and Returned Checks</u>	21 NCAC 50 .1104
<u>Continuing Education Requirements</u>	21 NCAC 50 .1401
<u>Exemptions and Credits</u>	21 NCAC 50 .1402
<u>Course Requirements and Limitations</u>	21 NCAC 50 .1404
<u>Approval of Courses</u>	21 NCAC 50 .1405

LIST OF APPROVED TEMPORARY RULES
October 15, 2009 Meeting

LABOR, DEPARTMENT OF

<u>Registration of Apprentice and Agreement</u>	13 NCAC 14 .0303
<u>Certificate of Completion</u>	13 NCAC 14 .0309
<u>De-Registration or Cancellation of Agreement</u>	13 NCAC 14 .0508
<u>Apprenticeship Registration and Annual Fees</u>	13 NCAC 14 .0901

AGENDA
RULES REVIEW COMMISSION
Thursday, November 19, 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. DHHS-Division of Services for the Deaf and Hard of Hearing – 10A NCAC 17D .0205, .0206 (Bryan)
 - B. DHHS-Division of Mental Health – 10A NCAC 27G .0810, .0811, .0812 (Bryan)
 - C. Social Services Commission – 10A NCAC 70E .0708 (Bryan)
 - D. Environmental Management Commission – 15A NCAC 02Q .0521 (Bryan)
 - E. Department of Environment and Natural Resources – 15A NCAC 09C .1249, .1253, .1257, .1260 (DeLuca)
 - F. Commission for Public Health – 15A NCAC 13B .0835, .0836, .0841, .0842 (DeLuca)
 - G. Board of Examiners for Plumbing, Heating and Fire Sprinkler Contractors – 21 NCAC 50 .0505 (DeLuca)
 - IV. Review of Log of Permanent Rule filings for rules filed between September 22, 2009 and October 20, 2009 (attached)
 - V. Review of Temporary Rules
 - VI. Commission Business
 - Next meeting: December 17, 2009
-

Commission Review
Log of Permanent Rule Filings
September 22, 2009 through October 20, 2009

PRIVATE PROTECTIVE SERVICES BOARD

The rules in Subchapter 7D cover general provisions (.0100); licenses and trainee permits (.0200); guard dog services (.0300); counterintelligence (.0400); polygraphs (.0500); psychological stress evaluators (PSE) (.0600); unarmed and armed security guards (.0700-.0800); firearms certificate (.0900); recovery funds (.1000); private investigator associates (.1100); firearms instructor trainers (.1200); and continuing education (.1300).

<u>Records</u>	12	NCAC 07D .0109
Amend/*		

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

The rules in Chapter 9 are from the Criminal Justice Education and Training Standards Commission. This Commission has primary

responsibility for setting statewide education, training, employment, and retention standards for criminal justice personnel (not including sheriffs).

The rules in Subchapter 9B cover minimum standards for: employment (.0100); schools and training programs (.0200); criminal justice instructors (.0300); completion of training (.0400); school directors (.0500); and certification of post-secondary criminal justice education programs (.0600).

<u>Admission of Trainees</u>	12	NCAC	09B	.0203
Amend/*				
<u>Criminal Justice Instructor Training</u>	12	NCAC	09B	.0209
Amend/*				
<u>Specialized Subject Control Arrest Techniques</u>	12	NCAC	09B	.0232
Amend/*				
<u>Specialized Physical Fitness Instructor Training</u>	12	NCAC	09B	.0233
Amend/*				

The rules in Subchapter 9E relate to the law enforcement officers' in-service training program.

<u>Required Annual In-Service Training Topics</u>	12	NCAC	09E	.0102
Amend/*				
<u>Minimum Training Specifications: Annual In-Service Training</u>	12	NCAC	09E	.0105
Amend/*				

The rules in Subchapter 9H concern the firearms qualification certification program for qualified retired law enforcement officers.

<u>Instructors</u>	12	NCAC	09H	.0103
Amend/*				

LABOR, DEPARTMENT OF

The rules in Chapter 7 are from the Commissioner of Labor and cover the Occupational and Safety Health Act (OSHA).

The rules in Subchapter 7F cover specific OSHA standards for various industries: general (.0100); construction (.0200); agriculture (.0300); shops fabricating structural steel and steel plate (.0400); maritime (.0500); communication towers (.0600); blasting and use of explosives (.0700); and cranes and derricks standards (.0900).

<u>Scope</u>	13	NCAC	07F	.0901
Adopt/*				

ALCOHOL LAW ENFORCEMENT

The rules in Chapter 12 are from the boxing authority section of the alcohol law enforcement division including purpose (.0100); drugs and foreign substances (.0200); physical examination (.0300); permits, licensing and contracts (.0400); boxing (.0500); kickboxing (.0600); toughman (.0700); and mixed martial arts (.0800).

<u>Duties of Promoters and Matchmakers</u>	14A	NCAC	12	.0404
Amend/*				

ELECTRICAL CONTRACTORS, BOARD OF EXAMINERS FOR

The rules in Chapter 18 are from the State Board of Examiners of Electrical Contractors.

The rules in Chapter 18B are from the Board of Electrical Contractors including general provisions (.0100); examinations and qualifications (.0200); terms and definitions applicable to licensing (.0300); licensing requirements (.0400); reciprocal licensing agreements with other states (.0700); special restricted licenses (.0800); violations and contested case hearings (.0900); forms, certificates, and publications of the board (.1000); and continuing education courses and requirements (.1100).

<u>Requirements for All Examination Applicants</u> Amend/*	21	NCAC 18B .0201
<u>Experience</u> Amend/*	21	NCAC 18B .0202
<u>General Provisions</u> Amend/*	21	NCAC 18B .0801
<u>Scope of SP-FA/LV License</u> Amend/*	21	NCAC 18B .0804
<u>Exemption of Certain Low Voltage Wiring Systems</u> Amend/*	21	NCAC 18B .0805
<u>Applicants Convicted of Crimes</u> Amend/*	21	NCAC 18B .0901
<u>Continuing Education Requirements: Listed Qualified Indiv...</u> Amend/*	21	NCAC 18B .1101
<u>Minimum Requirements for Course Sponsor Approval</u> Amend/*	21	NCAC 18B .1102

MESSAGE AND BODYWORK THERAPY, BOARD OF

The rules in Chapter 30 concern the Board of Massage and Bodywork Therapy and include organization and general provisions (.0100); application for licensure (.0200); licensing (.0300); business practices (.0400); standards of professional conduct (.0500); massage and bodywork therapy schools (.0600); continuing education (.0700); rules (.0800); and complaints, disciplinary action and hearings (.0900).

<u>License by Reciprocity</u> Repeal/*	21	NCAC 30 .0304
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MEDICAL BOARD

The rules in Chapter 32 are from the Board of Medical Examiners.

The rules in Subchapter 32M concern approval of nurse practitioners (.0100).

<u>Definitions</u> Amend/*	21	NCAC 32M .0101
<u>Process for Approval to Practice</u> Amend/*	21	NCAC 32M .0104
<u>Education and Certification Requirements for Registration...</u> Amend/*	21	NCAC 32M .0105
<u>Annual Renewal</u> Amend/*	21	NCAC 32M .0106
<u>Continuing Education</u> Amend/*	21	NCAC 32M .0107
<u>Inactive Status</u> Amend/*	21	NCAC 32M .0108
<u>Quality Assurance Standards for a Collaborative Practice ...</u> Amend/*	21	NCAC 32M .0110
<u>Practice During a Disaster</u> Amend/*	21	NCAC 32M .0116

NURSING, BOARD OF

The rules in Chapter 36 are from the Board of Nursing and include rules relating to general provisions (.0100); licensure (.0200);

<u>Definitions</u>	21	NCAC	36	.0801
Amend/*				
<u>Process for Approval to Practice</u>	21	NCAC	36	.0804
Amend/*				
<u>Education and Certification Requirements for Registration...</u>	21	NCAC	36	.0805
Amend/*				
<u>Annual Renewal</u>	21	NCAC	36	.0806
Amend/*				
<u>Continuing Education (CE)</u>	21	NCAC	36	.0807
Amend/*				
<u>Inactive Status</u>	21	NCAC	36	.0808
Amend/*				
<u>Quality Assurance Standards for a Collaborative Practice ...</u>	21	NCAC	36	.0810
Amend/*				
<u>Practicing During a Disaster</u>	21	NCAC	36	.0814
Amend/*				

OCCUPATIONAL THERAPY, BOARD OF

The rules in Chapter 38 cover organization and general provisions (.0100); application for license (.0200); licensing (.0300); business conduct (.0400); provisions concerning rulemaking (.0500); administrative hearing procedures (.0600); professional corporations (.0700); continuing competence activity (.0800); supervision, supervisory roles, and clinical responsibilities of occupational therapist and occupational therapy assistants (.0900); supervision of limited permittees (.1000); and supervision of unlicensed personnel (.1100).

<u>Code of Ethics</u>	21	NCAC	38	.0308
Adopt/*				
<u>Delineation of Clinical Responsibilities</u>	21	NCAC	38	.0905
Amend/*				

BUILDING CODE COUNCIL

<u>NC Building Code - Stairway to Roof</u>	1009.11
Amend/*	
<u>NC Fire Code - Group R</u>	903.2.7
Amend/*	
<u>NC Fuel Gas Code - CSST Bonding</u>	310.2
Amend/*	

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 Selina Brooks Melissa Owens Lassiter Don Overby	Randall May A. B. Elkins II Joe Webster
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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>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
NC Alcoholic Beverage Control Commission v. Ciro Maya Maya, T/A Carolina Sports Arena	08 ABC 2411	Overby	06/29/09	
N.C. Alcoholic Beverage Control Commission v. Du Cong Phan T/A Good Food Market	09 ABC 0565	May	05/18/09	
North Carolina Alcoholic Beverage Control Commission v. Mayra Leticia Rodriguez, T/A La Perla Del Pacifico	09 ABC 0975	Gray	07/28/09	
N.C. Alcoholic Beverage Control Commission v. Roberta White Bridges T/A Christina Restaurant and Catering	09 ABC 1899	May	07/28/09	
<u>CRIME VICTIMS COMPENSATION</u>				
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 Personnel Registry Sec	07 DHR 0302	Lassiter	07/14/09	
Envisions of Life LLC v. Hearing Office – 05 Division of Medical Assistance	08 DHR 0967	Lassiter	07/01/09	
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
Abundant 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 DHR MHL	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

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

DEPARTMENT OF JUSTICE

Tamika Richardson v. North Carolina Sheriff's Education and Training Standards Commission	08 DOJ 2403	Elkins	05/07/09	24:07 NCR 437
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	

CONTESTED CASE DECISIONS

UNC HOSPITALS

Carlos A Perez-Sanchez v. UNC Hospitals	09 UNC 1294	Overby	06/03/09
Bobbie Perlow v. UNC Hospitals	09 UNC 1606	Brooks	07/15/09
Nicole Bryant v. UNC Hospitals	09 UNC 2022	Lassiter	06/16/09
Cynthia K. Yellock v. UNC Hospitals	09 UNC 2298	Mann	07/21/09
Jennifer Jacobs v. UNC Hospitals	09 UNC 2409	Mann	07/21/09
Ryan Rockey v. UNC Hospitals	09 UNC 2587	May	07/15/09
Mary Ann Strickland v. UNC Hospitals	09 UNC 2712	Overby	06/04/09
John C. Presley v. UNC Hospitals	09 UNC 4020	Gray	07/21/09