

NORTH CAROLINA REGISTER

VOLUME 24 • ISSUE 14 • Pages 1104 - 1204

January 15, 2010

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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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NORTH CAROLINA REGISTER
 Publication Schedule for January 2010 – December 2010

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
24:13	01/04/10	12/09/09	01/19/10	03/05/10	03/22/10	05/01/10	05/12/10	10/01/10
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24:15	02/01/10	01/08/10	02/16/10	04/05/10	04/20/10	06/01/10	01/26/11	10/29/10
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25:12	12/15/10	11/22/10	12/30/10	02/14/11	02/21/11	04/01/11	05/2012	09/11/11

EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

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

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

NOTICE OF TEXT

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

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

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

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

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 31

IMMEDIATE ELIGIBILITY FOR UNEMPLOYMENT BENEFITS IN WAKE OF MAJOR INDUSTRIAL DISASTER IN WAKE COUNTY

WHEREAS, on June 9, 2009, a major industrial disaster occurred in Wake County at the facility of ConAgra Foods that substantially destroyed the physical facilities of the ConAgra Foods plant; and

WHEREAS, the State has worked to assist ConAgra Foods and its employees after this difficult event; and

WHEREAS, I have designated the Rapid Response Team of the Employment Security Commission and the Department of Commerce to serve as my task force to coordinate state assistance to ConAgra Foods and its employees; and

WHEREAS, compensation from ConAgra for numerous employees ended the week of November 9, 2009, through November 14, 2009.


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

1. I hereby direct and authorize the Employment Security Commission to waive the "waiting week," as provided in N.C. Gen. Stat. §96-13(c1), for the receipt of unemployment insurance benefits for employees affected by the ConAgra Foods industrial disaster.
2. I hereby direct and authorize the Employment Security Commission to implement regulations prescribing the procedure for the waiver of the waiting period week in accordance with G.S. §96-4(b).

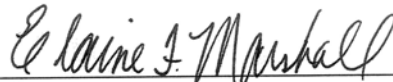
This Executive Order is effective immediately and shall remain in effect until November 24, 2010.

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 twenty-fourth day of November 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 NUMBER 32

GOVERNOR'S LOGISTICS TASK FORCE

WHEREAS, North Carolina's ability to create jobs and to recruit and retain business and industry depends on an integrated system of transportation and commerce assets that enables people and goods to move swiftly and safely across our State; and

WHEREAS, North Carolina has many existing transportation assets, including its highways, airports, ports, inland ports, and rail facilities; and

WHEREAS, these assets serve an increasingly global market and diverse economy, ranging from traditional manufacturing to new knowledge-based enterprises; and

WHEREAS, the volume of freight in the United States is expected to double in the next twenty years, and the number of highway miles traveled is increasing across the country; and

WHEREAS, many ports and intermodal rail facilities in the Southeast and across the country are already at or near capacity; and

WHEREAS, North Carolina is poised to make significant transportation infrastructure decisions in the coming years to support key industries and continued economic growth; and

WHEREAS, these decisions must be guided by a strategic plan to maximize existing assets and prioritize new investments so that North Carolina gains a competitive advantage and emerges as a leader in transportation logistics.

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

Section 1. Establishment

The Governor's Logistics Task Force (hereinafter the "Task Force") is hereby established. Task Force members shall be appointed by the Governor and shall serve at the pleasure of the Governor. The Task Force shall consist of at least 25 members, but no more than 40 members. The Governor shall appoint a Chair and a Vice Chair of the Task Force.

Section 2. Meetings

The Task Force shall meet bi-monthly or at the call of the Governor or the Chair.

Section 3. Duties

The Task Force shall have the following duties:

- a. Conduct a thorough inventory and evaluation of existing public and private transportation and commerce assets, including ports, inland ports, airports, highways, railroads, major distribution centers, and business and industrial parks.
- b. Report on the current system for moving goods and people, including the condition of the system, its overall performance, and its safety.
- c. Project future needs for the state's multi-modal transportation system and explore challenges and opportunities in meeting those needs.
- d. Identify relevant research and best practices in transportation and logistics from other states.
- e. Inventory current laws, rules, policies, processes, and organizational structures that affect the movement of people and goods across the state and make recommendations for changes to improve the efficiency and safety of our transportation system.
- f. Explore innovative ideas in transportation and economic development that can help support the state's logistics capacity, including public private partnerships.
- g. Make additional short-term and long-term recommendations to create an integrated logistics plan for North Carolina.

The Task Force shall report its progress, findings, and recommendations to the Governor every six months, or more frequently, if warranted.

Section 4. Administration

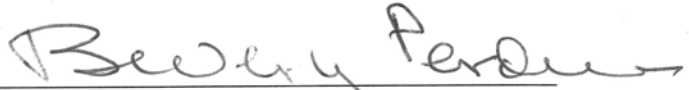
- a. The Department of Transportation shall provide clerical support and other services required by the Task Force.
- b. No per diem allowance shall be paid to members of the Task Force. Members of the Task Force and staff may receive necessary travel and subsistence expenses in accordance with State law and the policies and regulations of the Office of State Budget and Management.

Section 5. Duration

This Executive Order shall be effective immediately and shall remain in effect until December 7, 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 eighth day of December 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 NUMBER 33

ESTABLISHMENT OF THE NORTH CAROLINA COMPLETE COUNT COMMITTEE

WHEREAS, Article I, Section 2 of the United States Constitution mandates that the nation undertake a census of population every ten years; and

WHEREAS, the next Census is to take place on April 1, 2010; and

WHEREAS, it is vitally important that all households complete a Census form; and

WHEREAS, the Census will determine how the national government distributes \$400 billion annually to fund critical community services and generate jobs; and

WHEREAS, the Census will also determine how many seats North Carolina will have in the United States House of Representatives; and

WHEREAS, North Carolina received an additional Congressional district following the 2000 census by a margin of fewer than 1,000 residents counted; and

WHEREAS, it is essential that accurate data comes from populations that are historically difficult to count, including non-native English speakers, low income households, and children; and

WHEREAS, in order to ensure that the Census is as accurate as possible, strategic planning is required to effectively account for these populations in the most efficient manner possible; and

WHEREAS, the United States Census bureau encourages all states to form a Complete Count Committee with the goals of heightening awareness about the 2010 Census and encouraging the populace to participate in the United States Census of Population.

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

Section 1. Establishment and Membership

The North Carolina Complete Count Committee (hereafter the "Committee") is hereby established. The Committee shall be comprised of at least 35 members and no more than 50 members who shall

represent the diverse geographic, economic, racial, cultural, gender, and occupational makeup of the State. Committee members shall serve at the pleasure of the Governor. The Governor shall appoint a Chair of the Committee from the Committee's membership.

Section 2. Duties

The Committee shall have the following duties and functions:

- a. Advise the Governor on Census activities in the State;
- b. Promote and advertise the 2010 Census;
- c. Respond to the population's questions and concerns about the Census;
- d. Focus on and reach out to traditionally hard-to-count areas and populations; and
- e. Work to ensure the highest participation rate possible.

Section 3. Meetings

The Committee shall meet upon the call of the Chair or the Governor. A simple majority of the Committee members shall constitute a quorum for the purpose of transacting the business of the Committee.

Section 4. Administration

The Office of the Governor shall provide staff and administrative support services for the Committee. No per diem allowance, travel expenses, or subsistence shall be paid to members of the Task Force.

Section 5. Effect and Duration

This Executive Order is effective immediately and shall remain in effect until December 31, 2010, 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 ninth day of December 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

Beverly Eaves Perdue
Governor

ATTEST:

Elaine F. Marshall

Elaine F. Marshall
Secretary of State



EXECUTIVE ORDER NUMBER 34

ETHICS AND ATTENDANCE STANDARDS FOR
GUBERNATORIAL APPOINTEES TO BOARDS

WHEREAS, the Governor appoints members to various boards, commissions, committees, councils, and similar entities (hereinafter "boards"); and

WHEREAS, it is essential for the public and the Governor to have confidence in the members of boards and the work done by such boards; and

WHEREAS, gubernatorial appointees to boards must maintain the highest ethical and board attendance standards; and

WHEREAS, the failure of appointees to maintain high ethical standards erodes public confidence in the actions of boards; and

WHEREAS, the excessive absences of appointees from board meetings diminishes the effectiveness of the entire board.

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. In transacting board business, each person appointed by the Governor shall act always in the best interest of the public without regard for her or his financial interests. To this end, each appointee must recuse herself or himself from voting on any matter on which the appointee has a financial interest.
2. No person appointed by the Governor to serve on a board shall accept a gift from any contractors, subcontractors, or suppliers of the appointee's board. This provision does not prohibit an appointee from accepting a gift that would be permitted under the State Ethics Act, regardless of whether the appointee is covered by the State Ethics Act.

3. If any person appointed by the Governor to serve on a board is indicted for a felony by a state or federal grand jury or fails to fully cooperate in an investigation conducted by a state or federal agency pursuant to law, such action shall constitute grounds for removal from the board for misfeasance, malfeasance, or nonfeasance pursuant to N.C. Gen. Stat. § 143B-13(d), N.C. Gen. Stat. § 143B-16, or other applicable statutes or regulations.
4. All persons appointed by the Governor to serve on a board shall attend at least 75 percent of all regularly scheduled meetings of the board during the board's calendar year. Failure of a board member to attend board meetings in a manner consistent with this Order shall constitute grounds for removal from the board for misfeasance, malfeasance, or nonfeasance pursuant to N.C. Gen. Stat. § 143B-13(d), N.C. Gen. Stat. § 143B-16, or other applicable statutes or regulations.

This Executive Order shall be effective immediately and shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this ninth day of December 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. 35

ETHICS STANDARDS FOR CERTAIN BOARDS

WHEREAS, the General Assembly, Governor, other state officials, or state agencies have established numerous boards, commissions, councils, committees, task forces, or similar entities (hereinafter "boards") to assist the State in its work for the citizens of North Carolina; and

WHEREAS, to provide the expertise necessary to perform the complex advisory and other functions of such boards, the membership of such boards may include persons who have professional or economic interests that relate to the functions of the board; and

WHEREAS, the General Assembly has concluded that the State Government Ethics Act does not cover public entities that have only advisory authority, and the State Ethics Commission has determined that the boards subject to this Order have only advisory authority; and

WHEREAS, it is nevertheless important that such boards exercise their advisory responsibilities in a transparent manner so that the Governor and citizens will have full knowledge of the professional and economic interests of the board members as the State evaluates their expert advice provided to their boards; and

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. This Executive Order shall apply to the following boards (hereinafter "covered boards"):
 - a. North Carolina Aeronautics Council
 - b. Advisory Committee on Cancer Coordination and Control
 - c. North Carolina Community Development Council
 - d. State Criminal Justice Partnership Advisory Board
 - e. North Carolina Council for the Deaf and Hard of Hearing
 - f. Energy Policy Council
 - g. North Carolina Film Council
 - h. North Carolina Travel and Tourism Board
 - i. North Carolina Forestry Council
 - j. Economic Development Board

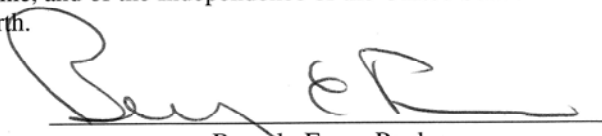
- k. Information Technology Advisory Board
 - l. State Water Infrastructure Commission
 - m. Interagency Coordinating Council for Children from Birth to Five with Disabilities and Their Families
 - n. School Technology Commission
 - o. Domestic Violence Commission
 - p. Budget Reform and Accountability Commission
 - q. StreetSafe Task Force
2. The members of the covered boards shall always act in the best interests of the public and shall bring their particular knowledge and experience to the covered board to serve the public interest.
3. The following process shall be observed for all meetings at which the covered board or any subcommittee of such board takes any action:
- a. At the beginning of each meeting, the Chair shall remind all members of their duty to act always in the best interest of the public without regard for their financial or other interests and that they should recuse themselves from voting on any matter on which they cannot meet this standard.
 - b. Prior to conducting any business, each member shall disclose any financial benefit he or she may derive from any matter coming before the covered board or subcommittee for action at that meeting. A member derives a financial benefit from a matter under consideration if the person or his or her spouse (i) has an ownership interest in an entity that is directly affected by the matter under consideration; (ii) will derive any income or commission as a direct result of action on the matter under consideration; or (iii) will acquire property as a direct result of action on the matter under consideration. When any member indicates that he or she will derive a financial benefit from a matter coming before the covered board or any subcommittee, the member shall recuse himself or herself from voting on the matter, unless the chair determines that the member's financial benefit is so remote or insignificant that a reasonable person would conclude that the member's ability to perform his or her official duties would not be compromised.
 - c. Prior to conducting any business, each member also shall disclose any other interest(s) he or she may have, in any matter coming before the covered board or subcommittee for action at that meeting, that might cause a reasonable person to question the member's impartiality due to such interest. The Chair will determine if the member needs to recuse himself or herself from voting on the matter in order to ensure the integrity of the actions of the covered board or subcommittee.
 - d. A member who has recused himself or herself from voting is not prohibited from deliberating on the matter unless the Chair determines, after review, that participation by the member in deliberations would impair the integrity of the actions of the covered board or subcommittee.

- e. The minutes of the covered board and its subcommittees will reflect all disclosures and recusals made pursuant to this section, and such minutes will be provided to the state official or entity with authority over the board for review with any recommendations from the board.
 - f. A challenge to a member's participation in a vote on issues under this Executive Order may be raised only by a member of the covered board or a state employee who regularly works with the covered board. In such case where a challenge is made, the Chair, in consultation with the covered board's legal counsel, shall determine whether the challenge is valid and the action that should be taken.
 - g. For the purposes of this Executive Order, the term "Chair" means the Chair of a covered board or the Chair of any subcommittee of a covered board. In the absence of the Chair or if the financial or other interests of the Chair must be reviewed pursuant to this section, then the Vice-Chair of the covered board or subcommittee shall make the determinations required by this section.
- 4. No member of a covered board shall improperly influence or attempt to influence state employees in performing their responsibilities to the covered board for any action in which the member has a direct, conflicting financial or other interest.
 - 5. This Executive Order is for the Governor's and other state officials' purposes in reviewing and approving or amending proposals or recommendations of the covered boards. This Order does not and should not be construed to create any rights, nor create claims under the State Ethics Act or other laws of this State.
 - 6. Any covered board under this Executive Order that is subsequently determined to be subject to the State Ethics Act will no longer be subject to this Executive Order.

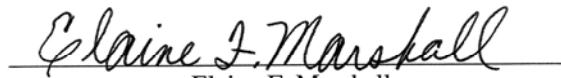
This Executive Order is effective immediately and shall remain in effect until rescinded in writing.

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 ninth day of December 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. 36

DESIGNATION OF CERTAIN STATE EMPLOYEES AND APPOINTEES AS COVERED PUBLIC SERVANTS UNDER THE STATE GOVERNMENT ETHICS ACT

WHEREAS, the State Government Ethics Act (hereinafter the "Act"), codified in Chapter 138A of the North Carolina General Statutes, designates certain State employees and appointees as "public servants" who are covered by the provisions of the Act; and

WHEREAS, Section 138A-3(30)g of the Act authorizes the Governor to designate additional state employees and appointees as "public servants" under the Act; and

WHEREAS, I have determined that the persons identified in this Executive Order should be designated as "public servants" who are covered by the provisions of the Act.

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

The following state employees or appointees are designated as covered "public servants" under the State Government Ethics Act:

1. Linda Coleman, State Personnel Director
2. David McCoy, State Controller
3. Gerald Fralick, State Chief Information Officer, Office of Information Technology Services (ITS)
4. George J. Bakolia, ITS Senior Deputy Chief Information Officer
5. Sharon Hayes, ITS Deputy Chief Information Officer
6. John McShane, ITS Deputy Chief Information Officer/Chief Financial Officer and Controller
7. William Sam Byassee, ITS General Counsel
8. Lawrence J. Wheeler, Director of the State Museum of Art
9. Ivy Hoffman, Executive Director of the Agency for Public Telecommunication
10. Mike Robertson, Commissioner of Motor Vehicles
11. Joseph A. Smith, Jr., Commissioner of Banks
12. Mark Pearce, Chief Deputy Commissioner of the Banking Commission

13. Raymond E. Grace, Deputy Commissioner of the Banking Commission
14. Bob Kucab, Executive Director of the NC Housing Finance Agency
15. David W. Joyner, Executive Director of the NC Turnpike Authority
16. Grady Rankin, Chief Financial Officer of the NC Turnpike Authority
17. Jim Eden, Chief Operating Officer of the NC Turnpike Authority
18. Members of the Governor's Crime Commission

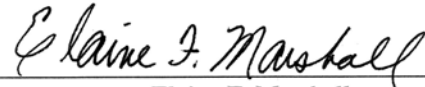
This Order is effective immediately and shall remain in effect until rescinded. This Order rescinds Executive Order No. 116, dated January 26, 2007, and Executive Order No. 117, dated March 6, 2007.

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 ninth day of December 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



U.S. Department of Justice
Civil Rights Division

CC:RPL:JDH:tst
DJ 166-012-3
2009-3558

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

December 1, 2009

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

Dear Mr. Holec:

This refers to the annexation (Ordinance No. 09-37 (2009)) and its designation to District I of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on October 14, 2009.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher Coates".

Christopher Coates
Chief, Voting Section

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

concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Agriculture intends to adopt the rule cited as 02 NCAC 52B .0608, amend the rules cited as 02 NCAC 52B .0502, .0603 and repeal the rules cited as 02 NCAC 52B .0210, .0505.

Fiscal Impact:

- State
- Local
- Substantial Economic Impact (≥\$3,000,000)
- None

Proposed Effective Date: May 1, 2010

CHAPTER 52 - VETERINARY DIVISION

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 January 30, 2010, to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

SUBCHAPTER 52B - ANIMAL DISEASE

SECTION .0200 - ADMISSION OF LIVESTOCK TO NORTH CAROLINA

Reason for Proposed Action: These rules establish requirements for importation of avian species into the State. The proposed changes will consolidate and clarify these requirements by rewriting existing rules, and repealing unnecessary rules and requirements.

02 NCAC 52B .0210 IMPORTATION REQUIREMENTS: AVIAN SPECIES

~~Members of the avian species, other than chickens, turkeys, or other domestic poultry, entering into North Carolina shall be accompanied by a permit from the State Veterinarian of North Carolina or his authorized representative and be accompanied by an official interstate health certificate issued within five days of shipment. Ratites (ostriches, rheas, emus, cassowaries and kiwis) must have a negative test for Avian Influenza (AI) within 30 days prior to entry.~~

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

~~Note: For chickens, turkeys or other domestic poultry, see 2 NCAC 52B .0600.~~

Comments may be submitted to: David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001, phone (919)733-7125 x. 238, fax (919)716-0090, email david.mcleod@ncagr.gov

Authority G.S. 106-539; 106-540; 106-543.

SECTION .0500 - POULTRY DISEASES

Comment period ends: March 16, 2010

02 NCAC 52B .0502 HEALTH REGULATIONS FOR POULTRY EXHIBITIONS

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

(a) Persons conducting and participating in poultry exhibitions shall comply with the following:

- (1) ~~All chickens and turkeys poultry, excluding doves and pigeons,~~ for exhibition in North Carolina shall originate from U.S. pullorum-typhoid clean or equivalent flocks, or have a negative pullorum-typhoid test within 90 days (30 days for out-of-state birds) of the date of exhibition. All North Carolina owned birds must be tested by agents of the North Carolina Department of Agriculture. For North Carolina Birds and for out-of-state birds from U.S. pullorum-typhoid clean states, these test requirements may be satisfied by a negative test conducted by a North Carolina

Department of Agriculture agent at the time of entry. The fee for pullorum-typhoid testing at the exhibition will be eight ~~cents (\$0.08)~~ ten cents (\$0.10) per bird with a minimum fee of one dollar (\$1.00) per exhibitor.

- (2) Poultry for exhibition shall not have been vaccinated with a live virus vaccine within the last 30 days preceding the exhibition.
- (3) Each bird must be identified with a "tamper-proof" band at the time of pullorum-typhoid test. A copy of the pullorum-typhoid test chart must accompany birds to exhibition.
- (4) Birds are subject to examination (including blood test and swabs) by a representative of the North Carolina Department of Agriculture. Birds will not be accepted which are infected with or showing any clinical signs of a contagious disease, or are infested with lice or mites.
- (5) Out-of-state birds will be admitted provided they are from an area that is not under quarantine for an infectious disease ~~and satisfy the requirements of this Rule. and have a negative antigen detection test for Avian Influenza performed within 21 days prior to presenting for exhibition.~~
- (6) The secretary of each show will furnish the representative of the State Veterinarian with a list of names and addresses of all exhibitors at the time of the exhibition.
- (7) The secretary of each show will have these requirements printed in the show catalog or premium list.

(b) The Commissioner may, when in the public interest to prevent disease, suspend any poultry exhibition in North Carolina.

Authority G.S. 106-540.

02 NCAC 52B .0505 AVIAN INFLUENZA (H5N2)

~~(a) The purpose of this Rule is to prevent the spread of Avian Influenza (H5N2) into North Carolina.~~

~~(b) Poults, chicks, or eggs may be brought into North Carolina only under the following conditions:~~

- ~~(1) No poults, chicks, or eggs from counties in which a confirmed diagnosis of AI (H5N2) has been made shall be admitted into North Carolina for a period ending six months after the elimination of every positive flock.~~
- ~~(2) Poults, chicks, or eggs entering North Carolina from other counties in states with infected counties:~~
 - ~~(A) shall be accompanied by a health certificate stating:~~
 - ~~(i) the source of all hatching eggs;~~

~~(ii) that supply flocks have tested negative every two weeks;~~

~~(iii) that supply flocks records have been checked every two weeks for death loss and production drop; and~~

~~(B) shall be reported by the consignee within 48 hours to the State Veterinarian. Consignee shall submit at least 10 birds to a laboratory operated by the Veterinary Division of the North Carolina Department of Agriculture for testing whenever there has been a diagnosis of H5N2 anywhere in the United States within the previous six months.~~

~~(e) All other poultry, other than for slaughter, may be brought into North Carolina only under the following conditions:~~

~~(1) No live poultry will be admitted into North Carolina from counties in which a confirmed diagnosis of H5N2 has been made for a period of six months following the elimination of every positive flock.~~

~~(2) Poultry entering North Carolina from other counties in states with infected counties:~~

~~(A) shall be accompanied by a health certificate stating that the birds have tested negative for H5N2 within ten days of shipment; and~~

~~(B) shall be reported by the consignee within 48 hours to the State Veterinarian whenever there is a diagnosis of H5N2 anywhere in the United States within the previous six months.~~

~~(d) Slaughter poultry from any state with a confirmed diagnosis of AI (H5N2) within the last six months may be imported into North Carolina when the following conditions have been met:~~

~~(1) Birds have tested negative for Avian Influenza within ten days prior to entry.~~

~~(2) A certificate of veterinary inspection has been completed by the state vet of the state of origin or his designated representative, for each intended shipment within five days of that shipment.~~

~~(e) Persons transporting live poultry shall comply with the following requirements for cleaning and disinfecting:~~

~~(1) No person, firm, or corporation shall re-use for transporting live poultry, any coop, crate, or other container that has been used previously for live poultry, unless said coop, crate, or other container has been thoroughly cleaned and properly disinfected. No person, firm, or corporation shall transport on the public highways of this state any empty coop, crate, or other container that has been used previously for live poultry, except to transport~~

~~such coop, crate, or other container to a designated point for cleaning and disinfecting.~~

- ~~(2) Any truck, trailer, or other conveyance used in transporting live poultry shall be thoroughly cleaned and disinfected after the hauling of each lot of live poultry.~~
- ~~(3) Disinfectants acceptable for use under this Regulation are limited to the chemicals approved in 9 CFR 71.10, 71.11, and 71.12.~~
- ~~(4) This Rule shall only apply to conveyances or containers that have been in AI infected counties.~~

Authority G.S. 106-307.5.

**SECTION .0600 - POULTRY: HATCHERIES:
PULLORUM DISEASE**

02 NCAC 52B .0603 ENTRY OF AVIAN SPECIES INTO THE STATE OF NORTH CAROLINA

~~(a) Every shipment of poultry and poultry products entering this State shall be accompanied by a certificate or official label showing the name and address of the shipper and the authority for the testing for pullorum control, fowl typhoid, and Mycoplasma Gallisepticum control and eradication class of the products, said certificate or label to be approved by the official state agency or the livestock sanitary official of the state of origin except that poultry enroute to a North Carolina Department of Agriculture approved show or exhibition and accompanied by the required certificate from the state of origin need not comply with the provisions of this Rule.~~

(a) Every shipment of poultry and hatching eggs entering this State shall be accompanied by a certificate or label showing the name and address of the shipper and the NPIP Disease Program Status of the flock of origin. The certificate or label must be approved by the duly authorized agency of the state of origin.

(b) For the purposes of this Rule, "shipment" does not include any group of poultry or poultry products entering this State where:

- (1) there is no change in ownership of said poultry or poultry products; and
- (2) said poultry or poultry products are grown or produced within 50 miles of the point in N.C. to which the same are shipped, subject to the provisions of N.C.G.S. 106-544.

Note: The National Poultry Improvement Plan defines poultry products as poultry breeding stock and hatching eggs, baby poultry, and started poultry.

(b) Hatching Eggs, Chicks, or Poults, and any poultry under 16 weeks of age shall:

- (1) Originate from a Pullorum-Typhoid (PT) clean flock, accompanied by a Certificate of Veterinary Inspection (CVI) or VS 9-3 NPIP form from the state of origin; and
- (2) Originate from a flock certified NPIP US H5/H7 Avian Influenza (AI) Clean or US AI Clean. Source hatcheries must handle only eggs from NPIP US AI Clean or US H5/H7 AI Clean parent flocks.

(c) Poultry and Ratites, including chickens, turkeys, guineas, pea fowl, ostriches, emus, rheas, rheas, cassowaries, waterfowl and upland game birds 16 weeks of age and older shall:

- (1) Originate from a P-T clean flock and have CVI or VS 9-3 NPIP form from state of origin, or negative P-T test within 30 days prior to entry.
- (2) Originate from flock certified NPIP H5/H7 AI Clean or US AI Clean, with CVI (issued within five days of entry) or VS 9-3 NPIP form from state of origin, or birds must present records of a negative antigen detection AI test within 21 days prior to entering the state. (If flock has more than 500 birds in number and is being tested for AI prior to entry, must test 30 samples per flock and at least 10 per house, all pens and houses represented)

Ratites shall also have a permit number from the NC State Veterinarians Office.

(d) Poultry entering NC for slaughter must be compliant with NPIP pre-slaughter guidelines for AI testing within 21 days of entry (11 samples per flock for chickens, and six samples for flock for turkeys). Pre-slaughter AI test records must accompany the flock on an official NPIP-approved laboratory form.

(e) All other Avian species, including pigeons, doves, birds of prey, psitticines, and song birds shall:

- (1) have a permit number from the NC State Veterinarian's office; and
- (2) be accompanied by a CVI issued within five days of entry.

(f) No hatching eggs, chicks, poults or adult domestic poultry or ratites may enter NC which originates in counties or areas under quarantine for H5/H7 Avian Influenza. Entry is not allowed for at least six weeks following last AI positive test.

(g) For conveyances or containers that have been in AI-infected counties:

- (1) No person, firm, or corporation shall re-use for transporting live poultry, any coop, crate, or other container that has been used previously for live poultry, unless said coop, crate, or other container has been cleaned and properly disinfected. No person, firm, or corporation shall transport on the public highways of this state any empty coop, crate, or other container that has been used previously for live poultry, except to transport such coop, crate, or other container to a designated point for cleaning and disinfecting.
- (2) Any truck, trailer, or other conveyance used in transporting live poultry shall be cleaned and disinfected after the hauling of each lot of live poultry.
- (3) Disinfectants acceptable for use under this Rule are limited to the chemicals listed in 9 CFR 71.10, 71.11 and 71.12.

Authority G.S. 106-539; 106-540; 106-543.

02 NCAC 52B .0608 POULTRY AND RATITE DEALERS: LICENSING AND RECORDS

A poultry or ratite dealer, as defined in G.S. 106-541(3), shall register with the Department of Agriculture and Consumer Services on or before July 1 of each year on a form furnished by the Department.

A poultry or ratite dealer shall keep records of purchases and sales of poultry and ratites, showing the date of each purchase or sale, the number of birds and the name and address of the seller or purchaser on a form provided by the Department. A poultry dealer shall also keep records of any disease testing performed on birds under his control that are subject to the requirements of this Section. These records must be available for examination upon request by the Department and shall be kept for three years.

Authority G.S. 106-540; 106-547.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Child Care Commission intends to adopt the rules cited as 10A NCAC 09 .2901-.2905 and amend the rules cited as 10A NCAC 09 .0505, .2318.

Proposed Effective Date: July 1, 2010

Public Hearing:

Date: February 4, 2010

Time: 1:30 p.m.

Location: Division of Child Development, 319 Chapanoke Road, Suite 120, Room 300, Raleigh, NC

Reason for Proposed Action: *The NC Child Care Commission is proposing to adopt rules regarding Developmental Day Services. During the 2009 Legislative Session, the NC General Assembly passed H 1046, which transferred the rule-making authority from the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to the NC Child Care Commission. In accordance to G.S. 110-88(14), the NC Child Care Commission is proposing to adopt rules for certified Developmental Day Centers, and for child care centers that are requesting to be certified as a Developmental Day Center. Rule .2318 is being amended to make the retention schedule for Family Child Care Homes consistent with the schedule for Child Care Centers. These amendments will simplify the record retention time periods by reducing the number of different retention rules, and will combine all retention schedules into one rule.*

Procedure by which a person can object to the agency on a proposed rule: *Anyone wishing to comment on these proposed rules or to request copies of the rules should contact Dedra Alston, Rule-making Coordinator, NC Division of Child Development, 2201 Mail Service Center, Raleigh, NC 27699-2201, at (919)890-7060 or Dedra.Alston@dhhs.nc.gov. Written*

comments will be accepted through March 16, 2010. Oral comments may be made during the public hearing. The Commission Chairperson may impose time limits for oral remarks.

Comments may be submitted to: *Dedra Alston, Rule-making Coordinator, NC Division of Child Development, 2201 Mail Service Center, Raleigh, NC 27699-2201, at (919)890-7060 or Dedra.Alston@dhhs.nc.gov*

Comment period ends: *March 16, 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 09 - CHILD CARE RULES

SECTION .0500 - AGE APPROPRIATE ACTIVITIES FOR CENTERS

10A NCAC 09 .0505 DEVELOPMENTAL DAY CENTERS

~~Child care centers which meet the criteria for developmental day centers, as defined in 10A NCAC 09 .2901, 27G .2401 (contained in APSM 30-1, Rules for Mental Health, Developmental Disabilities and Substance Abuse Facilities and Services, published by the Division of Mental Health, Developmental Disabilities and Substance Abuse Services), shall be deemed to be in compliance with the provisions of Rules. 0508 through .0511 of this Section by complying with the requirements for activities for developmental day centers set forth in 10A NCAC 09 .2904, 27G .2403.~~

Authority G.S. 110-85; 110-88(14); 110-91(2),(12); 143B-168.3.

SECTION .2300 - FORMS

10A NCAC 09 .2318 RETENTION OF FORMS AND REPORTS BY A CHILD CARE OPERATOR

Each child care center operator must retain records as specified in Items (1) through (6) of this Rule.

- (1) All children's records as required in this Chapter, except the Medication Permission Slip as referenced in Rule .0803(13) of this Chapter, shall be maintained on file for at least one year from the date the child is no longer enrolled in the center.
- (2) All personnel records as required in this Chapter shall be maintained on file at least one year from the date the employee is no longer employed.
- (3) Current program records shall be maintained on file for as long as the license remains valid. Prior versions shall be maintained based on the time frame in the following charts:
 - (A) A minimum of 30 days from the revision or replacement date:

Record	Rule
Activity Plan	.0508 (a)
Allergy Postings	.0901(e)
Feeding Schedule	.0902
Menu	.0901(b)
SIDS Sleep Chart/Visual Check	.0606(a)(7)

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

Record	Rule
Attendance	.0302(d)(3) and .1504
Daily Schedule	.0508(a)
Emergency Medical Care Plan	.0802(a)
Field Trip/Transportation Permission	<u>.2507 and .0512</u>
Fire Drill Log	.0302(d)(4)
Fire Evacuation Procedures	<u>.0604(o)</u>
Incident Log	.0802(e)
Playground Inspection	.0604(q)
Safe Arrival and Departure Procedures	.1003(b)

- (4) All building, fire, sanitation and pool inspections as referenced in G.S. 110-91, and Rules .0302 and .1403 of this Chapter shall remain on file at the center for as long as the license remains valid.
- (5) Records may be maintained in a paper format or electronically, except that records that require a signature of a staff person or parent shall be maintained in a paper format.

- (6) All records required in this Chapter shall be available for review by a representative of the Division.

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

SECTION .2900 - DEVELOPMENTAL DAY SERVICES

10A NCAC 09 .2901 SCOPE

(a) The rules in this Section apply to all certified Developmental Day Centers, or to all child care centers requesting to be certified as a Developmental Day Center. A Developmental Day Center offers specialized developmental day services to children who are:

- (1) diagnosed with developmental delays or developmental disabilities, or
- (2) have been identified with a diagnosed physical or mental condition which has a high probability of resulting in a developmental delay as defined in 10A NCAC 43G .0110(c).

(b) The diagnosis or identification shall be completed by a licensed professional through a comprehensive clinical assessment. Developmental day services are designed to meet individualized needs of children in the following skill areas:

- (1) Self-help,
- (2) Physical (gross/fine motor),
- (3) Language and speech, and
- (4) Cognitive and psychosocial skills.

(c) A team of health and education professionals puts a detailed plan of care in place for each child who is diagnosed with, or at risk for, a developmental delay, developmental disabilities or atypical development. The goal is to assist exceptional children in preparing for ongoing growth and learning in less restrictive, inclusive environments. All rules in this Chapter apply except as provided in this Section. Nothing in this Section would preclude the enrollment of typically developing children in a Developmental Day Center.

Authority G.S. 110-85; 110-88(14).

10A NCAC 09 .2902 LICENSE

(a) Developmental Day Centers shall maintain a four or five star rated license with an average score of 5.0 on the appropriate environment rating scale in each classroom evaluated.

(b) A child care center with a temporary license may receive certification status if all rules in this Section are met, except for Paragraph (a) of this Rule, and an application for a two to five star rated licensed has been submitted. At the end of the temporary license period the child care center must receive a four or five star rated license as specified in Paragraph (a) of this Rule. Failure to receive a four or five star rated license shall result in the removal of certification status as a Developmental Day Center.

(c) The license shall indicate certification as a Developmental Day Center.

(d) The center shall comply with the staff-child ratio and maximum group size as follows:

PROPOSED RULES

<u>AGE</u>	<u>RATIO STAFF/CHILDREN</u>	<u>MAXIMUM GROUP SIZE</u>
0-12 Months	1/4	8
1 to 2 Years	1/5	10
2 Years and Older	1/6	18

(e) A minimum of two staff members shall be on site at all times while children are in attendance at the facility.

(f) A child care center may appeal the removal of certification status in accordance with G.S. 110-94; however, an appeal would not preclude a Local Education Agency from removing contracted children from the program before a final decision on the appeal is reached.

Authority G.S. 110-85; 110-88(14).

10A NCAC 09 .2903 STAFF QUALIFICATIONS

(a) Each center serving children ages birth to three years shall have a minimum of one staff who holds a Infant Toddler Family Specialist certification issued from the North Carolina Division of Public Health, or Birth-through-Kindergarten (B-K) Standard Professional I licensure or provisional licensure in B-K issued from the Department of Public Instruction. This staff shall provide program oversight and supervision for any caregivers in classrooms with children ages birth to three years.

(b) During the 10 month school year (as defined by the State Board of Education), each group of preschool children aged three and older shall have at least one lead teacher who holds Birth-through-Kindergarten (B-K) Standard Professional I licensure or provisional licensure in B-K, or Preschool Add-on licensure issued from the Department of Public Instruction. During the time when school is not in session, each group of preschool children shall have at least one lead teacher with a minimum of an A.A.S. degree in early childhood education or child development or an A.A.S. degree in any major with 12 semester hours in early childhood education or child development.

(c) During the 10 month school year, (as defined by the State Board of Education), each group of school-age children shall have at least one teacher who holds State certification as a Special Education Teacher. During the time when school is not in session, each group of school-age children shall have at least one teacher who has completed at least two semester hours of school-age care related coursework and has completed or is enrolled in at least two additional semester hours of school-age related coursework.

(d) Center administrators shall have a Level III North Carolina Early Childhood Administration Credential and two years of verifiable work experience with children with developmental delays or disabilities.

Authority G.S. 110-85; 110-88(14).

10A NCAC 09 .2904 PROGRAM REQUIREMENTS

(a) Children shall participate in daily activities outlined in a plan of care such as an Individualized Family Service Plan (IFSP), Individualized Education Program (IEP), Person Centered Plan (PCP), or for children who are typically developing, an activity plan developed by the center. Activities shall allow children to participate in whole group, as part of a group, or independently.

(b) In addition to the restrictions specified in 10A NCAC 09 .0713 regarding ages and grouping of children, preschool children aged three and older shall not be grouped with school aged children except for special events or activities. Children aged birth to five years may be cared for in groups with older children for the first and last operating hour of the day provided the staff/child ratio for the youngest child in the group is maintained.

(c) During the 10 month school year (as defined by the State Board of Education), seventy-five percent or more of classrooms with preschool children aged three and older, shall maintain an enrollment capacity of 50 percent or more typically developing children.

Authority G.S. 110-85; 110-88(14).

10A NCAC 09 .2905 FAMILY SERVICES

The center shall facilitate family involvement as evidenced by meeting at least four of the following six activities:

- (1) Providing quarterly parent education sessions;
- (2) Holding parent/teacher conferences at least twice a year;
- (3) Communicating on an individual basis with parents via daily notes, progress reports or surveys;
- (4) Having parents as members of a center advisory board;
- (5) Providing opportunities for parent volunteers to assist with special classroom activities, field trips and other learning experiences for children; or
- (6) Providing parents with referral information about other community programs and resources serving young children.

Authority G.S. 110-85; 110-88(14).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to amend the rules cited as 10A NCAC 70F .0202-.0203, .0207; 70G .0501, .0506; 70H .0401; 70I .0302, .0404-.0405.

Proposed Effective Date: May 1, 2010

Public Hearing:

Date: March 17, 2010

Time: 10:00 a.m.

Location: Albermarle Building, Room 819-B (8th Floor) 325 Salisbury Street, Raleigh, NC 27603

Reason for Proposed Action: *Changes in rules governing child-placing agencies, residential child-care and residential maternity care became effective October 1, 2008. During the last Legislative session, HB 1271 was passed giving the Social Services Commission authority to set qualifications for staff of residential child-care facilities, maternity homes and child-placing agencies. These proposed amended rules established educational and work experience requirements for staff of these agencies that are comparable to requirements of staff of county departments of social services. These proposed amended rules also establish guidelines related to criminal histories and convictions of potential staff members of these agencies.*

Procedure by which a person can object to the agency on a proposed rule: *Submit your objections in writing to Lisa Johnson, Division of Social Services, 2401 Mail Service Center, Raleigh, NC 27699-2401 or email lisa.johnson@dhhs.nc.gov and by telephone (919)334-1003.*

Comments may be submitted to: *Lisa Johnson, APA Rulemaking Coordinator, Division of Social Services, 2401 Mail Service Center, Raleigh, NC 27699-2401, phone (919)334-1003, fax (919)334-1018, email lisa.johnson@dhhs.nc.gov*

Comment period ends: March 17, 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

SUBCHAPTER 70F – CHILD PLACING AGENCIES AND RESIDENTIAL MATERNITY HOMES

SECTION .0200 – ORGANIZATION AND ADMINISTRATION

10A NCAC 70F .0202 RESPONSIBILITIES OF THE GOVERNING BODY

(a) The governing body shall provide leadership for the agency and shall approve the agency's policies and programs.

(b) The governing body shall employ an executive director who is located in the administrative office within the geographical boundaries of North Carolina and delegate responsibility to that person for the administration and operation of the agency, including the employment and discharge of all agency staff.

(c) The governing body shall require the executive director provide a signed statement that the executive director has no criminal, social or medical history that would adversely affect his or her capacity to work with children and adults. The governing body shall ensure that the criminal histories of an executive director are checked prior to employment and based on the criminal history, a determination is made concerning the individual's fitness for employment. The governing body shall ensure that searches of the North Carolina Sex Offender and Public Protection Registry and the North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-256) are completed prior to employment, and based on these searches, a determination is made concerning the individual's fitness for employment. The governing body shall submit authorization to the licensing authority to search the Responsible Individuals List as defined in 10A NCAC 70A .0102 to determine if the executive director has had child protective services involvement resulting in a substantiation of child abuse or serious neglect, and based on this search, a determination is made concerning the individual's fitness for employment. The governing body shall require that the executive director provide a signed statement prior to employment that he or she has not abused or neglected a child or has been a respondent in a juvenile court proceeding that resulted in the removal of a child or has had child protective services involvement that resulted in the removal of a child. The governing body shall require that the executive director provide a signed statement that he or she has not abused, neglected or exploited a disabled adult and that he or she has not been a domestic violence perpetrator. Agencies or applicants that do not have a governing body shall provide this information directly to the licensing authority.

(d) The executive director shall not be convicted of a felony involving:

- (1) child abuse or neglect;
- (2) spouse abuse;
- (3) a crime against a child or children (including child pornography); or
- (4) a crime involving violence, including rape, sexual assault, or homicide but not including other physical assault or battery.

(e) Within the last five years the executive director shall not have been convicted of a felony involving:

- (1) physical assault;
- (2) battery; or
- (3) a drug-related offense.

~~(d)~~(f) The governing body shall annually evaluate the executive director's performance except a sole proprietor or partner is exempt from this Rule if he or she serves as executive director.

~~(e)~~(g) The governing body shall approve the annual budget of anticipated income and expenditures necessary to provide the services described in its statement of purpose. Child-placing agencies and residential maternity homes receiving foster care ~~maintenance payments of state funds~~ or state maternity home funds shall submit an annual audit of their financial statements to the Department of Health and Human Services, Controller's Office ~~Office, Rate Setting Branch~~ in compliance with 10A NCAC 70D .0105(a)(5).

~~(f)~~(h) The governing body shall annually evaluate the agency's services. This evaluation shall include the agency's interaction with other community agencies to serve its clients.

~~(g)~~(i) The governing body shall establish in writing ~~the confidentiality policies and procedures for control and access to and receipt, use, or release of information about its clients.~~

~~(h)~~(j) The governing body of child-placing agencies providing foster care services shall develop a written disaster plan that is provided to agency personnel and foster parents. The disaster plan shall be prepared and updated at least annually. The governing body of residential maternity homes shall comply with 10A NCAC 70K .0315(g).

~~(i)~~(k) The governing body, in the event of the closing of the agency, shall develop a plan for the retention and storage of client records. The specifics of this plan shall be submitted to the licensing authority before the actual closing of the agency.

Authority G.S. 131D-1; 131D-10.5; 131D-10.6; 143B-153.

10A NCAC 70F .0203 FINANCES, FEES AND INSURANCE

(a) Child-placing agencies and residential maternity homes shall have a plan of financing which assures sufficient funds to enable them to carry out their defined purposes and provide proper care and services for clients.

(b) Child-placing agencies shall develop adequate resources and manage them prudently in order to obtain the revenues that support its programs and prevent the interruption of needed care and services to clients.

~~(a)~~(c) Child-placing agencies and residential maternity homes shall have a written line item budget, showing planned expenditures and revenues available to operate the agency for a 12 month period. A copy of the budget shall be submitted to the licensing authority prior to initial licensure and biennially thereafter.

~~(b)~~(d) Child-placing agencies and residential maternity homes receiving foster care maintenance payments of state funds or state maternity home funds shall submit an annual audit of their financial statements to the Department of Health and Human Services, Controller's Office in compliance with 10A NCAC 70D .0105(a)(5).

~~(e)~~(e) Child-placing agencies and residential maternity homes shall have a written policy on fees for services which shall be inclusive of all fees and charges. No cost beyond the written policy shall be imposed. The agency policy shall describe the relationship between fees and services provided and the conditions under which fees are charged or waived. The agency

shall make the policy available to applicants for services at the time an application for service is made and to the public upon request.

~~(d)~~(f) Adoption agencies that provide international adoption services shall inform prospective adoptive parents of the estimated or actual expenses associated with an international adoption that includes:

- (1) application fees;
- (2) preplacement assessment (homestudy) fees;
- (3) pre-adoption service fees;
- (4) government and facilitator fees;
- (5) placement service fees;
- (6) post-placement and post-adoption service fees;
- (7) travel and other costs and fees in the child's country of origin; and
- (8) additional costs associated with the adoption.

~~(e)~~(g) Child-placing agencies and residential maternity homes shall notify the licensing authority, parents, guardian, and legal custodian (if applicable) of its status related to liability insurance for the agency and staff to applicants for services at the time an application for service is made.

(h) The executive director shall report to the governing body at least quarterly or more frequently, if requested by any member of the governing body, on present financial status and anticipated problems.

Authority G.S. 131D-1; 131D-10.5; 143B-153.

10A NCAC 70F .0207 STAFF

(a) The agency shall verify prior to employment the personal qualifications of employees through at least three references.

(b) The agency shall require that each applicant provide a signed statement that the applicant has no criminal, social or medical history which would adversely affect the applicant's capacity to work with children and adults. Prior to employment, the agency shall submit authorization to the licensing authority to search the Responsible Individuals List as defined in 10A NCAC 70A .0102 to determine if the applicant has had child protective services involvement resulting in a substantiation of child abuse or serious neglect, and based on this search, a determination is made concerning the individual's fitness for employment. The agency shall require that each applicant provide a signed statement that the applicant has not abused or neglected a child or has been a respondent in a juvenile court proceeding that resulted in the removal of a child or has had child protective services involvement that resulted in the removal of a child. Prior to employment, a certified criminal record check for the applicant shall be obtained, and a search conducted of the North Carolina Sex Offender and Public Protection Registry and North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-256), and based on these findings, a decision is made concerning the individual's fitness for employment. The agency shall require that each applicant provide a signed statement that the applicant has not abused, neglected, or exploited a disabled adult, and has not been a domestic violence perpetrator.

(c) Employees shall not be convicted of a felony involving:

- (1) child abuse or neglect;
- (2) spouse abuse;

- (3) a crime against a child or children (including child pornography); or
- (4) a crime involving violence, including rape, sexual assault, or homicide but not including other physical assault or battery.

(d) Within the last five years, employees shall not have been convicted of a felony involving:

- (1) physical assault;
- (2) battery; or
- (3) a drug-related offense.

~~(e)~~(e) The agency shall employ staff qualified to perform administrative, supervisory, direct care, social work, therapeutic, and placement services.

~~(f)~~(f) The agency shall have staff to keep correspondence, records, bookkeeping and files current and in good order. The staff shall maintain strict confidentiality concerning contents of the case records.

~~(g)~~(g) The agency shall maintain a roster of members of the staff listing position, title, and qualifications and a current organizational chart showing administrative structure and staffing, including lines of authority. The organizational chart shall be submitted prior to initial licensure and biennially thereafter.

~~(h)~~(h) An agency which uses volunteers and interns as unpaid staff to work directly with clients shall:

- (1) have written job descriptions and select only those persons qualified to meet the requirements of those jobs;
- (2) require three references relevant to the role and responsibilities to be assumed;
- (3) designate a staff member to supervise and evaluate volunteers and interns;
- (4) develop and implement a plan for the orientation and training of volunteers and interns in the philosophy of the agency and the needs of the clients and their families; and
- (5) require that each volunteer and intern provide a signed statement that they have no criminal, social or medical history that would adversely affect their capacity to work with children and adults. The agency shall submit authorization to the licensing authority to search the Responsible Individuals List as defined in 10A NCAC 70A .0102 to determine if the intern or volunteer has had child protective services involvement resulting in a substantiation of child abuse or serious neglect, and based on this search, a determination is made concerning the individual's fitness to serve as a volunteer or intern. Prior to beginning volunteer or intern duties, a certified criminal record check shall be obtained and a search conducted of the North Carolina Sex Offender and Public Protection Registry and North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-256), and based on these findings, a decision is made concerning the individual's fitness to serve as a volunteer or intern. The agency shall require that each

volunteer or intern provide a signed statement that the volunteer or intern has not abused or neglected a child, been a respondent in a juvenile court proceeding that resulted in the removal of a child, or had child protective services involvement that resulted in the removal of a child. The agency shall require that each volunteer or intern provide a signed statement that the volunteer or intern has not abused, neglected, or exploited a disabled adult and has not been a domestic violence perpetrator.

(i) Volunteers or interns shall not have been convicted of a felony involving:

- (1) child abuse or neglect;
- (2) spouse abuse;
- (3) a crime against a child or children (including child pornography); or
- (4) a crime involving violence, including rape, sexual assault, or homicide but not including other physical assault or battery.

(j) Within the last five years, volunteers or interns shall not have been convicted of a felony involving:

- (1) physical assault;
- (2) battery; or
- (3) a drug-related offense.

Authority G.S. 131D-1; 131D-10.5; 131D-10.6; 143B-153.

**SUBCHAPTER 70G – CHILD PLACING AGENCIES:
FOSTER CARE**

SECTION .0500 - MINIMUM LICENSING STANDARDS

10A NCAC 70G .0501 PERSONNEL

(a) The executive director is responsible for the general management and administration of the agency in accordance with licensing requirements and policies of the governing body. ~~The executive director shall have a bachelor's degree from a college or university listed in the most current edition of the Higher Education Directory, which can be obtained by calling Higher Education Publications, Inc. at 1-888-349-7715. The~~ executive director shall meet the requirements of a Social Services Program Administrator I as defined by the North Carolina Office of State Personnel. A copy of these requirements can be obtained by contacting the Division of Social Services at 828-669-3388 or by reviewing the following web _____ site: (http://www.osp.state.nc.us/CLASS_SPECS/Spec Folder 0310 0-04099/PDF Files/04077.pdf). ~~The college or university degree shall be from a college or university listed in the most current edition of the Higher Education Directory, which can be obtained by calling Higher Education Publications, Inc. at 1-888-349-7715.~~

(b) The social work supervisor is responsible for supervising, evaluating, and monitoring the work and progress of the social work staff. ~~The social work supervisor shall have a bachelor's degree from a college or university listed in the most current edition of the Higher Education Directory. The social work~~

supervisor shall meet the requirements of a Social Work Supervisor II as defined by the North Carolina Office of State Personnel. A copy of these requirements can be obtained by contacting the Division of Social Services at 828-669-3388 or by reviewing the following web site: (http://www.osp.state.nc.us/CLASS_SPECS/Spec_Folder_0310_0-04099/PDF_Files/04016.pdf). The college or university degree shall be from a college or university listed in the most current edition of the Higher Education Directory. Social work supervisors shall receive 24 hours of continuing education annually.

(c) The social worker is responsible for intake services, providing casework or group work services for children and their families, conducting home-finding and assessment studies related to foster parents and planning and coordinating the services and resources affecting children and their families. ~~The social worker shall have a bachelor's degree from a college or university listed in the most current edition of the Higher Education Directory.~~ The social worker shall meet the requirements of a Social Worker II as defined by the North Carolina Office of State Personnel. A copy of these requirements can be obtained by contacting the Division of Social Services at 828-669-3388 or by reviewing the following web site:

(http://www.osp.state.nc.us/CLASS_SPECS/Spec_Folder_0310_0-04099/PDF_Files/04012.pdf). The college or university degree shall be from a college or university listed in the most current edition of the Higher Education Directory. Social workers shall receive 24 hours of continuing education annually.

(d) Social workers or case managers serving children in family foster homes shall serve no more than 15 children. Social workers or case managers serving children in therapeutic foster homes shall serve no more than 12 children. Social workers providing foster home licensing services (licensing workers) shall serve no more than 32 foster families. Agencies providing family foster care services may combine the duties of the social worker or case manager and licensing worker and serve no more than ten children and ten foster families. Agencies providing therapeutic foster care services may combine the duties of the social worker or case manager and licensing worker and serve no more than eight children and eight foster families.

(e) Supervision of social workers or case managers shall be assigned as follows:

Supervisors Required	Social Workers Or Case Managers
0	0-4 (Executive Director Serves As Social Work Supervisor)
1	5
2	6-11
3	12-17
There Shall Be One Additional Supervisor For Every One To Five Additional Social Workers.	

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70G .0506 CLIENT RECORDS

- (a) The agency shall maintain an individual record for each child receiving foster care services which contains:
 - (1) an application for services that includes:
 - (A) demographic information about the child, including name, address, sex, race, birth date, birth place, educational information, medical information and client record number;
 - (B) demographic information about the parents or guardian of the child, including names, addresses, telephone numbers, birth dates, races, religion and marital status;
 - (C) demographic information about the siblings and other relatives of the child, including names, addresses, and telephone numbers;
 - (D) the reasons the child was removed from the home of his or her parents;
 - (E) a record of the child's prior placements with names and addresses of foster parents and other caregivers and dates of care provided by each foster parent or caregiver, and
 - (F) the services the agency shall provide the child and his or her parents or guardian.
 - (2) legal documents of importance to the child including a birth certificate and any court dispositions;
 - (3) pre-admission medical examination report or a medical examination report completed within two weeks of admission (unless the child's health status indicates the completion of a medical examination report sooner) and copies of subsequent medical examination reports;
 - (4) medical reports including medical history, cumulative health history, immunization records, and available psychological and psychiatric reports; and if applicable:
 - (A) documentation of mental illness, developmental disabilities or substance abuse diagnosis coded according to the Diagnostic and Statistical Manual of Mental Disorders-Fourth Edition-Revised DSM IV;
 - (B) documentation of screening and assessment;
 - (C) medication orders and Medication Administration Record (MAR);
 - (D) documentation of medication administration errors;
 - (E) documentation of adverse drug reactions; and
 - (F) orders and copies of lab tests;
 - (5) educational assessments, records and reports of school-age children;

- (6) intake study which includes initial social assessment and background of parents or guardian and the circumstances leading to the decision to place the child;
 - (7) signed out-of-home family services agreement or person-centered plan along with out-of-home family services agreement or person-centered plan reviews which reflect the status of the child, parents or guardian in relation to the out-of-home family services agreement or person-centered plan and any progress or lack of progress in the goals of the out-of-home family services agreement or person-centered plan;
 - (8) documentation of services provided;
 - (9) documentation which reflects the dates and content of social worker's or case manager's visits with the child;
 - (10) documentation of the agency's involvement with the parents, guardian or legal custodian, including services offered, delivered, or rejected;
 - (11) documentation which includes the content of any administrative or service reviews;
 - (12) a visitation and contact plan that specifies the child's contacts with parents, guardian, siblings and other family members and individuals who may have contact with the child;
 - (13) consents for release of information;
 - (14) a signed statement from the parents, guardian or legal custodian, granting permission to seek emergency care from a hospital or licensed medical provider;
 - (15) emergency information for each child that shall include the name, address and telephone number of the person to be contacted in case of sudden illness or accident and the name, address and telephone number of the child's preferred licensed medical provider;
 - (16) authorization from the parents, guardian, legal custodian or licensed medical provider to administer non-prescription medications;
 - (17) consents for overnight travel and other travel consents based on the requirements of the parents, guardian or legal custodian;
 - (18) consents for time-limited audio-visual recordings signed by the parents, guardian or legal custodian, and child, if 12 years of age or older;
 - (19) documentation of searches for drugs, weapons, contraband or stolen property, including date and time of the search, action taken by foster parents and the agency, name of foster parent informing the agency, the date and time the agency is informed of the search, the date and time of the notification to the child's parents, guardian or legal custodian; and
 - (20) discharge summary including date and time of discharge, the name, address, telephone number, and relationship of the person or agency to whom the child was discharged, a summary of services provided during care, needs which remain to be met, and plans for the services needed to meet these goals.
- (b) If the agency maintains a separate record on the parents and guardians of children whom they place into care, the parents' or guardians' record shall contain:
 - (1) demographic information including names, addresses, birth dates, races, religion, family composition;
 - (2) social histories, including any psychological or psychiatric reports and medical histories;
 - (3) strengths and needs of the parents or guardian and the services required;
 - (4) signed agreements between the agency and parents or guardian;
 - (5) summary of dates of contacts and progress toward goals;
 - (6) case review reports; and
 - (7) discharge summary.
 - (c) Documentation shall be entered into the child's, parents' or guardian's records within five days of occurrence.
 - (d) The agency shall keep separate records for each family foster home which contains:
 - (1) application;
 - (2) mutual home assessment;
 - (3) medical examination reports;
 - (4) fire inspection safety report;
 - (5) environmental conditions checklist;
 - (6) proof of high school diploma or GED;
 - (7) dates and content of worker's contacts with the foster family;
 - (8) training record that includes all required and ongoing training;
 - (9) foster parent agreement signed by foster parents and agency representative;
 - (10) discipline agreement signed by foster parents and agency representative;
 - (11) three references relevant to the role and responsibilities of a foster parent;
 - (12) annual assessment of strengths and needs of the foster family in providing foster care to children;
 - (13) chronological record of all placements of children receiving care in the home, including the dates of their care and an assessment of the care;
 - (14) written approval letter from executive director or his or her designee authorizing foster parents to administer physical restraint holds, if applicable;
 - (15) signed statement by the foster parents and adult members of the household that they have not been found to have abused or neglected a child or have not been a respondent in a juvenile court proceeding that resulted in the removal of a child or has had child protective

- services involvement that resulted in the removal of a child.
- (16) signed statement by the foster parents and adult members of the household that they have not been confirmed or substantiated for abusing, neglecting or exploiting a disabled adult;
 - (17) documentation of the results of the search of the Responsible Individual's List as defined in 10A NCAC 70A .0102 for all adult members of the household that indicate they have not had child protective services involvement resulting in a substantiation of child abuse or serious neglect;
 - (18) signed statement by the foster parents and adult members of the household that they have not been a domestic violence perpetrator;
 - (19) documentation of the results of the search of the North Carolina Sex Offender and Public Protection Registry of all adult members of the household;
 - ~~(20) documentation of the results of the search of the North Carolina Nurse Aide Registry pursuant to G. S. 131E-255 of all adult members of the household;~~
 - ~~(20)(21)~~ documentation of the results of the search of the North Carolina Health Care Personnel Registry pursuant to G.S. 131E-256 of all adult members of the household;
 - ~~(21)(22)~~ copies of waivers, as specified in 10A NCAC 70L .0102; and
 - ~~(22)(23)~~ when closed, a summary containing reasons for the closing of the home and an assessment of the strengths and needs of the foster family in providing foster care to children.

degree shall be from a college or university listed in the most current edition of the Higher Education Directory, which can be obtained by calling Higher Education Publications, Inc. at 1-888-349-7715.

(b) ~~The social work supervisor is responsible for supervising, evaluating, and monitoring the work and progress of the social work staff. The social work supervisor shall have a bachelor's degree from a college or university listed in the most current edition of the Higher Education Directory.~~ The social work supervisor shall meet the requirements of a Social Work Supervisor II as defined by the North Carolina Office of State Personnel. A copy of these requirements can be obtained by contacting the Division of Social Services at 828-669-3388 or by reviewing the following web site:

(http://www.osp.state.nc.us/CLASS_SPECS/Spec_Folder_0310_0-04099/PDF_Files/04016.pdf). The college or university degree shall be from a college or university listed in the most current edition of the Higher Education Directory. Social work supervisors shall receive 24 hours of continuing education annually.

(c) ~~The social worker is responsible for intake services, providing casework or group work services for children and their families, conducting home-finding and assessment studies related to foster parents and planning and coordinating the services and resources affecting children and their families. The social worker shall have a bachelor's degree from a college or university listed in the most current edition of the Higher Education Directory.~~ The social worker shall meet the requirements of a Social Worker II as defined by the North Carolina Office of State Personnel. A copy of these requirements can be obtained by contacting the Division of Social Services at 828-669-3388 or by reviewing the following web site:

(http://www.osp.state.nc.us/CLASS_SPECS/Spec_Folder_0310_0-04099/PDF_Files/04012.pdf). The college or university degree shall be from a college or university listed in the most current edition of the Higher Education Directory. Social workers shall receive 24 hours of continuing education annually.

(d) Social workers counseling birth families, preparing and assessing adoptive applicants for infant placements and supporting these families shall serve no more than 50 families.

(e) Social workers preparing children ages six and above or children having special needs shall serve no more than 15 children.

(f) Social workers preparing and assessing adoptive applicants for the placement of children ages six and above or children who have special needs shall serve no more than 20 families.

(g) Social workers preparing and assessing families for international adoptions shall serve no more than 35 families.

(h) Supervision of adoption social workers shall be assigned as follows:

Supervisors Required	Social Workers
0	0-4 (Executive Director Serves As Social Work Supervisor)
1	5
2	6-11

Authority G.S. 131D-10.5; 143B-153.

**SUBCHAPTER 70H - CHILD-PLACING AGENCIES:
ADOPTION**

SECTION .0400 – MINIMUM LICENSING STANDARDS

10A NCAC 70H .0401 PERSONNEL

(a) The executive director is responsible for the general management and administration of the agency in accordance with licensing requirements and policies of the governing body. ~~The executive director shall have a bachelor's degree from a college or university listed in the most current edition of the Higher Education Directory, which can be obtained by calling Higher Education Publications, Inc. at 1-888-349-7715. The executive director shall meet the requirements of a Social Services Program Administrator I as defined by the North Carolina Office of State Personnel. A copy of these requirements can be obtained by contacting the Division of Social Services at 828-669-3388 or by reviewing the following web site:~~ (http://www.osp.state.nc.us/CLASS_SPECS/Spec_Folder_0310_0-04099/PDF_Files/04077.pdf). The college or university

3	12-17
There Shall Be One Additional Supervisor For Every One To Five Additional Social Workers.	

(i) Staff members of the adoption agency may maintain dual employment or serve as volunteers with maternity homes or crisis pregnancy centers as long as the adoption agency does not provide services to the clients of the maternity home or crisis pregnancy center or accept or arrange releases for adoption for the children of the clients of the maternity home or crisis pregnancy center. Staff members, owners, officers and directors of the adoption agency may serve on the board of directors of maternity homes or crisis pregnancy centers as long as the adoption agency does not provide services to the clients of the maternity home or crisis pregnancy center or accept or arrange releases for adoption for the children of the clients of the maternity home or crisis pregnancy center.

Authority G.S. 131D-10.5; 143B-153.

**SUBCHAPTER 70I - MINIMUM LICENSING
STANDARDS FOR RESIDENTIAL CHILD-CARE**

**SECTION .0300 - ORGANIZATION AND
ADMINISTRATION**

**10A NCAC 70I .0302 RESPONSIBILITIES OF THE
GOVERNING BODY**

The governing body shall:

- (1) adopt administrative, personnel, and program policies which are reviewed at least every two years;
- (2) review and approve a budget prior to the beginning of the fiscal year;
- (3) establish and review policies on fundraising and investment management at least every two years;
- (4) annually review and accept the financial audit, in the case of a private residential child-care facility;
- (5) employ an executive director (CEO, director, president, superintendent) and delegate authority to that person to employ and dismiss staff, implement board policies, and manage day-to-day operation of the facility;
- (6) ensure that the criminal history of the executive director is checked prior to employment, and based on the criminal history, a determination is made concerning the individual's fitness for employment. The governing body shall ensure that searches of the North Carolina Sex Offender and Public Protection Registry and the North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-256) are completed prior to employment, and based on these searches, a determination is made concerning the individual's fitness for employment. The governing body shall submit authorization to

the licensing authority to search the Responsible Individuals List, as defined in 10A NCAC 70I .0102, to determine if the executive director has had child protective services involvement resulting in a substantiation of child abuse or serious neglect, and based on this search, a determination is made concerning the individual's fitness for employment. The governing body shall require that the executive director provide a signed statement prior to employment that he/she has not abused or neglected a child or has been a respondent in a juvenile court proceeding that resulted in the removal of a child or has had child protective services involvement that resulted in the removal of a child. The governing body shall require that the executive director provide a signed statement that the executive director has not abused, neglected or exploited a disabled adult and that the executive director has not been a domestic violence perpetrator. Agencies or applicants that do not have a governing body shall provide this information directly to the licensing authority.

- ~~(7)~~ employ an executive directors who has not been convicted of a felony involving:
 - (A) child abuse or neglect;
 - (B) spouse abuse;
 - (C) a crime against a child or children (including child pornography); or
 - (D) a crime involving violence, including rape, sexual assault, or homicide but not including other physical assault or battery.
- ~~(8)~~ employ an executive directors who has not been convicted of a felony within the last five years involving:
 - (A) physical assault;
 - (B) battery; or
 - (C) a drug-related offense.
- ~~(7)(9)~~ permit the executive director or his or her designee to attend all meetings of the governing body and committees with the exception of those held for the purpose of reviewing his performance, status, or compensation;
- ~~(8)(10)~~ annually evaluate and document the executive director's performance through specific criteria and objectives;
- ~~(9)(11)~~ initiate and review an annual evaluation of services and direct needed changes based on the evaluation;
- ~~(10)(12)~~ annually review facility needs related to risk management; and
- ~~(11)(13)~~ maintain a long range plan and review annually.

Authority G.S. 131D-10.5; 131D-10.6; 143B-153.

SECTION .0400 – PERSONNEL

10A NCAC 70I .0404 PERSONNEL QUALIFICATIONS

(a) ~~Criminal Records Check by the Residential Child Care Facility.~~ Applicants, employees, volunteers or interns who have a history of criminal convictions that would adversely affect their capacity and ability to provide care, safety and security for the children in residence shall not be employed or utilized as volunteers or interns. A signed statement shall be obtained attesting that the applicant, employee, volunteer or intern does not have such a record prior to beginning employment, volunteer duties or internships. Prior to employment or before beginning volunteer duties or internships, a certified criminal record check for the applicant, volunteer or intern shall be obtained, and a search conducted of the North Carolina Sex Offender and Public Protection Registry and the North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-256), and based on these searches, a decision shall be made concerning the individual's fitness to serve as an employee, volunteer or intern. The agency shall submit authorization to the licensing authority to search the Responsible Individuals List, as defined in 10A NCAC 70A .0102, to determine if the applicant, employee, volunteer or intern has had child protective services involvement resulting in a substantiation of child abuse or serious neglect, and based on this search, a determination shall be made concerning the individual's fitness to serve as an employee, volunteer or intern. The agency shall require that each applicant, employee, volunteer or intern provide a signed statement that the applicant, employee, volunteer or intern has not abused or neglected a child or has been a respondent in a juvenile court proceeding that resulted in the removal of a child or has had child protective services involvement that resulted in the removal of a child. A signed statement shall be obtained attesting that the applicant, employee, volunteer or intern has not abused, neglected or exploited a disabled adult and has not been a domestic violence perpetrator.

(b) Applicants, employees, volunteers and interns are not eligible for employment, volunteer or intern positions if they have been convicted of a felony involving:

- (1) child abuse or neglect;
- (2) spouse abuse;
- (3) a crime against a child or children (including child pornography); or
- (4) a crime involving violence, including rape, sexual assault, or homicide but not including other physical assault or battery.

(c) Applicants, employees, volunteers and interns are not eligible for employment, volunteer or intern positions if within the last five years they have been convicted of a felony involving:

- (1) physical assault;
- (2) battery; or
- (3) a drug-related offense.

~~(b) Child Abuse. Employees, volunteers or interns who have a criminal conviction of child abuse shall not be permitted any contact with children.~~

~~(e)(d) Driver's License. Employees, volunteers or interns driving a residential child-care facility vehicle shall possess a~~

valid North Carolina driver's license appropriate for the type of vehicle used.

Authority G.S. 131D-10.5; 131D-10.6; 143B-153.

10A NCAC 70I .0405 PERSONNEL POSITIONS

(a) Executive Director. There shall be a full-time executive director for an agency with one or more facilities licensed for 20 or more children. At a minimum, there shall be a part-time executive director for an agency with one or more facilities licensed for less than 20 children.

(b) The executive director ~~employed after July 1, 2008,~~ shall meet the requirements of a Social Services Program Administrator I as defined by the North Carolina Office of State Personnel. A copy of these requirements can be obtained by contacting the Division of Social Services at 828-669-3388 or by reviewing the following web site: (http://www.osp.state.nc.us/CLASS_SPECS/Spec_Folder_0310_0-04099/PDF_Files/04077.pdf). The college or university degree shall be at a minimum a bachelor's degree from a college or university listed in the most current edition of the Higher Education Directory, which can be obtained by calling Higher Education Publications, Inc. at 1-888-349-7715.

(c) The executive director shall:

- (1) be responsible for the general management and administration of the residential child-care facility in accordance with policies established by the governing board and licensing requirements;
- (2) explain licensing standards, residential child-care standards and the residential child-care facility's services to the board, the facility's constituency, other human service agencies and the public;
- (3) initiate and carry out the program of residential child-care as approved by the governing board;
- (4) report to the governing board on all phases of operation at least quarterly;
- (5) delegate authority and responsibility to staff qualified to ensure the maintenance of the residential child-care facility's operations;
- (6) establish and oversee fiscal practices, present the annual operating budget and quarterly reports to the governing board;
- (7) evaluate, at least annually, the training needs of the staff; plan and implement staff training and consultation to address identified needs;
- (8) employ and discharge staff and meet on a regular basis with administrative and management staff to review, discuss and formulate policies and procedures;
- (9) supervise staff who report directly to the executive director; and
- (10) conduct an annual individual written evaluation of each staff member who reports directly to the executive director. This evaluation shall contain both a review of job

responsibilities and goals for future job performance.

(d) Clerical, Maintenance and Other Support Personnel. The residential child-care facility shall employ or contract personnel qualified to perform all clerical, support and maintenance duties.

(e) Business and Financial Personnel. The residential child-care facility shall employ or contract personnel to perform all business, accounting and financial functions.

(f) Direct Care Service Personnel. Any staff member who assumes the duties of direct care service personnel in the living unit shall comply with all the standards for direct care services personnel in the living unit.

(1) Direct care service ~~personnel~~personnel, hired after October 1, 2008, shall:

(A) have a high school diploma or GED;

(B) complete a medical history form prior to assuming the position;

(C) have a medical examination by a licensed medical provider 12 months prior to assuming the position and biennially thereafter. This report shall include a statement indicating the presence of any communicable disease which may pose a risk of transmission in the residential child-care facility. After the initial examination, the cost of the medical examinations as required by licensure shall be at the expense of the facility;

(D) have a TB skin test or chest x-ray, unless the medical provider advises against this test, prior to assuming the position;

(E) be 21 years of age.

(2) Standards for direct care service personnel in the living unit:

(A) There shall be one direct care staff personnel assigned to every six children during waking hours and one direct care staff personnel assigned to every ten children during overnight hours.

(B) A residential child-care facility shall ensure that a staff member trained in cardiopulmonary resuscitation (CPR) and first aid, such as those provided by the American Red Cross, the American Heart Association or equivalent organizations, is always available to the children in care; and that direct care service personnel shall receive training in first aid and CPR within the first thirty days of employment. Training in CPR shall be appropriate for the ages of children in care. First aid and CPR training shall be updated as required by the American Red Cross, the American

Heart Association or equivalent organizations.

(C) A residential child-care facility shall ensure that direct care service personnel receive supervision and training in the areas of child development, permanency planning methodology, group management, preferred discipline techniques, family relationships, human sexuality, health care and socialization, leisure time and recreation. In addition, the residential child-care facility shall provide training to direct care service personnel in accordance with the needs of the client population, including, training in child sexual abuse. Direct care service personnel shall receive 24 hours of continuing education annually.

(D) A residential child-care facility shall ensure that direct care service personnel receive supervision in food preparation and nutrition when meals are prepared in the living unit.

(E) Any duties other than direct care services duties assigned to direct care service personnel shall be specified in writing and assigned in accordance with the residential child-care program.

(3) Direct care service supervisory ~~personnel~~personnel, hired after October 1, 2008, shall have a high school diploma or ~~GED~~GED and be 21 years of age.

(4) Standards for direct care service supervisory personnel:

(A) There shall be at least one supervisor for every 15 direct care service personnel.

(B) Supervisory staff shall be selected on the basis of the knowledge, experience and competence required to manage direct care personnel.

(C) Direct care service supervisory personnel shall receive 24 hours of continuing education annually.

(g) Social work supervisors shall be employed by the residential child-care facility to supervise, evaluate and monitor the work and progress of the social work staff.

(1) Social work supervisors shall meet the requirements of a Social Work Supervisor II as defined by the North Carolina Office of State Personnel. A copy of these requirements can be obtained by contacting the Division of Social Services at 828-669-3388 or by reviewing the following web site: [24:14](http://www.osp.state.nc.us/CLASS_SPECS/S</u></p></div>
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pec Folder 03100-4099/PDF Files/04016.pdf. ~~have at a minimum a bachelor's degree~~ The college or university degree shall be from a college or university listed in the most current edition of the Higher Education Directory. Social work supervisors shall receive 24 hours of continuing education annually.

- (2) Supervision of social workers shall be assigned as follows:

Supervisors Required	Social Workers Employed
0	0-4 (executive director serves as social work supervisor)
1	5
2	6-10
3	11-15
There shall be one additional supervisor for every one to five additional social workers.	

(h) Social workers shall be employed by the residential child-care facility to provide social work services to the children in care and their families in accordance with the out-of-home family services agreement.

- (1) Social workers shall meet the requirements of a Social Worker II as defined by the North Carolina Office of State Personnel. A copy of these requirements can be obtained by contacting the Division of Social Services at 828-669-3388 or by reviewing the following web site: (http://www.osp.state.nc.us/CLASS_SPECS/S_pec Folder 03100-04099/PDF Files/04012.pdf). ~~have at a minimum a bachelor's degree~~ The college or university degree shall be from a college or university listed in the most current edition of the Higher Education Directory. Social workers shall receive 24 hours of continuing education annually.
- (2) There shall be at least one social worker assigned for every 15 children.
- (3) A residential child-care facility shall ensure that social workers receive supervision and training in the areas of child development, permanency planning methodology, group dynamics, family systems and relationships, and child sexual abuse.
- (4) Social workers shall be familiar with community resources for children and their families in addition to the agency's services.
- (5) Any duties other than social work duties assigned to staff employed as social workers shall be specified in writing and assigned in accordance with the residential child-care program.

Authority G.S. 131D-10.5; 143B-153.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Alarm Systems Licensing Board intends to amend the rules cited as 12 NCAC 11 .0204, .0306, 0503.

Proposed Effective Date: May 1, 2010

Public Hearing:

Date: February 1, 2010

Time: 2:00 p.m.

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

Reason for Proposed Action:

12 NCAC 11 .0204, .0306 – are proposed for amendment to comply with G.S. 93B-15.

12 NCAC 11 .0503 – is proposed for amendment to enable the Board's Education and Training Committee to conduct further review of an online CE course by requiring an access code for computer login to be furnished with the application from the course sponsor to allow the Committee to review the online course and any associated test.

Procedure by which a person can object to the agency on a proposed rule:

Written comments shall be submitted prior to the expiration date of the comment period and shall be addressed to Director Terry Wright, ASLB, 1631 Midtown Place, Suite 104, Raleigh, NC 27609.

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

Comment period ends: March 16, 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 11 - NORTH CAROLINA ALARM SYSTEMS LICENSING BOARD

SECTION .0200 - PROVISIONS FOR LICENSEES

12 NCAC 11 .0204 RENEWAL OR RE-ISSUE OF LICENSE

(a) Each applicant for a license renewal shall complete a renewal form provided by the Board. This form shall be submitted to the administrator not less than 30 days prior to expiration of the applicant's current license and shall be accompanied by:

- (1) two recent head and shoulders color photographs of applicant of acceptable quality for identification one inch by one inch in size;
- (2) statements of the result of a local criminal history records search by the City/County Identification Bureau or Clerk of Superior Court in each county where the applicant has resided within the immediately preceding 24 months;
- (3) the applicant's renewal fee; and
- (4) proof of liability insurance pursuant to G.S. Sec. 74D-9.

(b) Applications for renewal shall be submitted not less than 30 days before the expiration date of the license. In no event will renewal be granted more than 90 days after the date of expiration of a license. Renewals shall be dated on the next day following expiration of the prior license.

(c) Applications for renewal submitted after the expiration date of the license shall be accompanied by the late renewal fee established by 12 NCAC Chapter 11 .0203 and must be submitted not later than 90 days after the expiration date of the license.

(d) The administrator shall approve or deny all applications for renewal. Any denials will be submitted to the Board for a final board decision.

(e) Members of the armed forces whose license is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted that same extension of time to pay the license renewal fee and to complete the continuing education requirements prescribed by 12 NCAC 11 .0500. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue must be furnished to the Board.

Authority G.S. 74D-2(a); 74D-5.

SECTION .0300 - PROVISIONS FOR REGISTRANTS

12 NCAC 11 .0306 RENEWAL OR REREGISTRATION OF REGISTRATION

(a) Each applicant for renewal of a registration identification card or his employer, shall complete a form provided by the Board. This form shall be submitted not less than 30 days prior to expiration of the applicant's current card and shall be accompanied by:

- (1) two recent head and shoulders color photographs of applicant of acceptable quality for identification one inch by one inch in size; and
- (2) statements of the result of a local criminal history records search by the City/County Bureau or Clerk of Superior Court in each county where the applicant has resided within the immediately preceding 24 months; and
- (3) the applicant's renewal fee.

(b) Each licensee shall provide each applicant for registration or re-registration an application form provided by the Board. This form shall be submitted to the Board and accompanied by:

- (1) two recent head and shoulders photographs of applicant of acceptable quality for identification one inch by one inch in size; and
- (2) the applicant's reregistration fee.

(c) The employer of each applicant for a registration renewal or reregistration shall give the applicant a copy of the application which will serve as a record of application for renewal and shall retain a copy of the applicant's renewal application in the individual's personnel file in the employer's office.

(d) Members of the armed forces whose registration is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted that same extension of time to pay the registration renewal fee and to complete the continuing education requirements prescribed by 12 NCAC 11 .0500. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue must be furnished to the Board.

Authority G.S. 74D-7; 74D-8.

SECTION .0500 - CONTINUING EDUCATION FOR LICENSEES

12 NCAC 11 .0503 ACCREDITATION STANDARDS

(a) CE courses may obtain the sanction of the Alarm Systems Licensing Board by submitting the following information to the Board for consideration:

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

(b) To determine if a course will receive sanctioning from the Alarm Systems Licensing Board, the Board shall complete the following review:

- (1) The matter will be referred to the Education and Training Committee for the appointment of a sub-committee that shall review the course under consideration. The sub-committee shall consist of at least one member of the Education and Training Committee, one member of the Board's staff, and one industry licensee who has no vested interest in the course. Other members of the sub-committee may be appointed at the discretion of the Education and Training Committee Chairman.

- (2) The sub-committee shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objectives.
- (3) When the sub-committee completes its review, it shall report to the Education and Training Committee. The Education and Training Committee shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objective. The Education and Training Committee shall then report the findings with a recommendation of acceptance or denial to the Alarm Systems Licensing Board.
- (4) For any online course being reviewed by the Committee, the course sponsor shall allow the Committee to review the online course and any associated test and shall include with the application instructions and an access code for computer login.

(c) Upon receipt of the Education and Training Committee report, the Alarm Systems Licensing Board will determine by majority vote if the course will be sanctioned for continuing education credits. In making its determination, the Board shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objective.

(d) Each approved course shall remain a validly approved course for four years from the date of approval by the Board.

Authority G.S. 74D-2; 74D-5.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rules cited as 15A NCAC 02B .0225, .0307.

Proposed Effective Date: July 1, 2010

Public Hearing:

Date: February 1, 2010

Time: 6:30 p.m.

Location: Cafeteria, 626 Ashe Central School Road, Jefferson, NC

Reason for Proposed Action: *From a review of available data for the North Fork New River Watershed (Ashe and Watauga counties, New River Basin), DWQ staff determined the ORW classification to be suitable for recognizing existing uses. These waters are currently classified as Class C+, C Trout (TR) + and C TR High Quality Water (HQW), and are proposed to be reclassified to Class C ORW, C TR ORW and C TR #. The # symbol represents waters that did not meet the ORW criteria. These waters are Little Buffalo Creek and Claybank Creek. These # waters will be managed in the same way as the designated ORW waters in order to protect the excellent*

downstream water quality. The proposed reclassification consists of the entire watershed of the North Fork New River, from its source to the New River. The purpose of this rule amendment would be to provide protection for the resources and quality of the subject waters. DWQ staff determined that the subject waters meet class ORW criteria because these waters have excellent water quality, as confirmed by the most current 2008 and 2009 benthic macroinvertebrate sampling, and have several records of State and Federal special concern species, the Hellbender Salamander and the Spike Freshwater mussel. Approximately 325 miles of named waterbodies exist in the subject watershed, and the watershed itself measures 159,342 acres. If reclassified, regulations that affect several activities and operations, including development and prohibiting new National Pollutant Discharge Elimination System (NPDES) wastewater dischargers would apply. There are four NPDES wastewater facilities in the proposed ORW, which will be allowed to expand provided certain water quality standards and limits are followed. There are not any known planned dischargers or developments in the proposed ORW per local government officials. The ORW classification requires development projects requiring a Sedimentation and Erosion Control Plan to control stormwater runoff, through either the low density development option or the high density development option. The Low Density Option caps development at one dwelling unit per acre or twelve percent built upon area (BUA). It also requires a thirty-foot vegetated buffer along perennial streams. The High Density Option applies to development that exceeds 12% BUA, and requires the installation of stormwater controls, for example a wet detention basin, which will control the first inch of stormwater runoff from a rainfall event. Forestry, crop and agriculture activities will not be affected.

Procedure by which a person can object to the agency on a proposed rule: *You may submit written comments, data or other relevant information by March 16, 2010. The EMC is very interested in all comments pertaining to the proposed reclassification. All persons interested and potentially affected by the proposal are strongly encouraged to read this entire notice and make comments on the proposed reclassification. The EMC may not adopt a rule that differs substantially from the text of the proposed rule published in this notice unless the EMC publishes the text of the proposed different rule and accepts comments on the new text (see General Statute 150B 21.2 (g)). Written comments on the proposed reclassification may be submitted to Jamie McNees of the Water Quality Planning Section at the postal address, e-mail address, or fax number listed in this notice.*

Comments may be submitted to: *Jamie McNees, DENR/Division of Water Quality, Planning Section, 1617 Mail Service Center, Raleigh, NC 27699-1617, phone (919)807-6421, fax (919)807-6497, email Jamie.mcnees@ncdenr.gov*

Comment period ends: *March 16th 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 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02B - SURFACE WATER AND WETLAND STANDARDS

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

15A NCAC 02B .0225 OUTSTANDING RESOURCE WATERS

(a) General. In addition to the existing classifications, the Commission may classify unique and special surface waters of the state as outstanding resource waters (ORW) upon finding that such waters are of exceptional state or national recreational or ecological significance and that the waters have exceptional water quality while meeting the following conditions:

- (1) that the water quality is rated as excellent based on physical, chemical or biological information;
- (2) the characteristics which make these waters unique and special may not be protected by the assigned narrative and numerical water quality standards.

(b) Outstanding Resource Values. In order to be classified as ORW, a water body must exhibit one or more of the following values or uses to demonstrate it is of exceptional state or national recreational or ecological significance:

- (1) there are outstanding fish (or commercially important aquatic species) habitat and fisheries;
- (2) there is an unusually high level of water-based recreation or the potential for such recreation;
- (3) the waters have already received some special designation such as a North Carolina or National Wild and Scenic River, Native or Special Native Trout Waters or National Wildlife Refuge, which do not provide any water quality protection;

- (4) the waters represent an important component of a state or national park or forest; or
- (5) the waters are of special ecological or scientific significance such as habitat for rare or endangered species or as areas for research and education.

(c) Quality Standards for ORW

(1) Freshwater: Water quality conditions shall be maintained to protect the outstanding resource values of waters classified ORW. Management strategies to protect resource values shall be developed on a site specific basis during the proceedings to classify waters as ORW. No new discharges or expansions of existing discharges shall be permitted, and stormwater controls for all new development activities requiring an Erosion and Sedimentation Control Plan in accordance with rules established by the NC Sedimentation Control Commission or an appropriate local erosion and sedimentation control program shall be required to follow the stormwater provisions as specified in 15A NCAC 02H .1000. Specific stormwater requirements for ORW areas are described in 15A NCAC 02H .1007.

(2) Saltwater: Water quality conditions shall be maintained to protect the outstanding resource values of waters classified ORW. Management strategies to protect resource values shall be developed on a site-specific basis during the proceedings to classify waters as ORW. New development shall comply with the stormwater provisions as specified in 15A NCAC 02H .1000. Specific stormwater management requirements for saltwater ORWs are described in 15A NCAC 02H .1007. New non-discharge permits shall meet reduced loading rates and increased buffer zones, to be determined on a case-by-case basis. No dredge or fill activities shall be allowed if those activities would result in a reduction of the beds of submerged aquatic vegetation or a reduction of shellfish producing habitat as defined in 15A NCAC 03I .0101(b)(20)(A) and (B), except for maintenance dredging, such as that required to maintain access to existing channels and facilities located within the designated areas or maintenance dredging for activities such as agriculture. A public hearing is mandatory for any proposed permits to discharge to waters classified as ORW.

Additional actions to protect resource values shall be considered on a site specific basis during the proceedings to classify waters as ORW and shall be specified in Paragraph (e) of this Rule. These actions may include anything within the powers of the Commission. The Commission shall also consider local actions which have been taken to protect a water body in determining the appropriate state protection options. Descriptions of

boundaries of waters classified as ORW are included in Paragraph (e) of this Rule and in the Schedule of Classifications (15A NCAC 02B .0302 through 02B .0317) as specified for the appropriate river basin and shall also be described on maps maintained by the Division of Water Quality.

(d) Petition Process. Any person may petition the Commission to classify a surface water of the state as an ORW. The petition shall identify the exceptional resource value to be protected, address how the water body meets the general criteria in Paragraph (a) of this Rule, and the suggested actions to protect the resource values. The Commission may request additional supporting information from the petitioner. The Commission or its designee shall initiate public proceedings to classify waters as ORW or shall inform the petitioner that the waters do not meet the criteria for ORW with an explanation of the basis for this decision. The petition shall be sent to:

Director
DENR/Division of Water Quality
1617 Mail Service Center
Raleigh, North Carolina 27699-1617

The envelope containing the petition shall clearly bear the notation: RULE-MAKING PETITION FOR ORW CLASSIFICATION.

(e) Listing of Waters Classified ORW with Specific Actions
Waters classified as ORW with specific actions to protect exceptional resource values are listed as follows:

- (1) Roosevelt Natural Area [White Oak River Basin, Index Nos. 20-36-9.5-(1) and 20-36-9.5-(2)] including all fresh and saline waters within the property boundaries of the natural area shall have only new development which complies with the low density option in the stormwater rules as specified in 15A NCAC 2H .1005(2)(a) within 575 feet of the Roosevelt Natural Area (if the development site naturally drains to the Roosevelt Natural Area).
- (2) Chattooga River ORW Area (Little Tennessee River Basin and Savannah River Drainage Area): the following undesignated waterbodies that are tributary to ORW designated segments shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section. However, expansions of existing discharges to these segments shall be allowed if there is no increase in pollutant loading:
 - (A) North and South Fowler Creeks;
 - (B) Green and Norton Mill Creeks;
 - (C) Cane Creek;
 - (D) Ammons Branch;
 - (E) Glade Creek; and
 - (F) Associated tributaries.
- (3) Henry Fork ORW Area (Catawba River Basin): the following undesignated waterbodies that are tributary to ORW designated segments shall comply with Paragraph (c) of this Rule in order to protect

the designated waters as per Rule .0203 of this Section:

- (A) Ivy Creek;
 - (B) Rock Creek; and
 - (C) Associated tributaries.
- (4) South Fork New and New Rivers ORW Area [New River Basin (Index Nos. 10-1-33.5 and 10)]: the following management strategies, in addition to the discharge requirements specified in Subparagraph (c)(1) of this Rule, shall be applied to protect the designated ORW areas:
- (A) Stormwater controls described in Subparagraph (c)(1) of this Rule shall apply to land within one mile of and that drains to the designated ORW areas;
 - (B) New or expanded NPDES permitted wastewater discharges located upstream of the designated ORW (for the North Fork New River ORW area; see Subparagraph (e)(13) of this Rule) shall be permitted such that the following water quality standards are maintained in the ORW segment:
 - (i) the total volume of treated wastewater for all upstream discharges combined shall not exceed 50 percent of the total instream flow in the designated ORW under 7Q10 conditions, which are defined in Rule .0206(a)(1) of this Section;
 - (ii) a safety factor shall be applied to any chemical allocation such that the effluent limitation for a specific chemical constituent shall be the more stringent of either the limitation allocated under design conditions (pursuant to 15A NCAC 02B .0206) for the normal standard at the point of discharge, or the limitation allocated under design conditions for one-half the normal standard at the upstream border of the ORW segment;
 - (iii) a safety factor shall be applied to any discharge of complex wastewater (those containing or potentially containing toxicants) to protect for chronic toxicity in the ORW segment by setting the whole effluent

- toxicity limitation at the higher (more stringent) percentage effluent determined under design conditions (pursuant to 15A NCAC 02B .0206) for either the instream effluent concentration at the point of discharge or twice the effluent concentration calculated as if the discharge were at the upstream border of the ORW segment;
- (C) New or expanded NPDES permitted wastewater discharges located upstream of the designated ORW (for the North Fork New River ORW area: see Subparagraph (e)(13) of this Rule) shall comply with the following:
- (i) Oxygen Consuming Wastes: Effluent limitations shall be as follows: BOD = 5 mg/l, and NH₃-N = 2 mg/l;
 - (ii) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 10 mg/l for trout waters and to 20 mg/l for all other waters;
 - (iii) Emergency Requirements: Failsafe treatment designs shall be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs;
 - (iv) Nutrients: Where nutrient overenrichment is projected to be a concern, effluent limitations shall be set for phosphorus or nitrogen, or both.
- (5) Old Field Creek (New River Basin): the undesignated portion of Old Field Creek (from its source to Call Creek) shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section.
- (6) In the following designated waterbodies, no additional restrictions shall be placed on new or expanded marinas. The only new or expanded NPDES permitted discharges that shall be allowed shall be non-domestic, non-process industrial discharges. The Alligator River Area (Pasquotank River Basin)
- extending from the source of the Alligator River to the U.S. Highway 64 bridge including New Lake Fork, North West Fork Alligator River, Juniper Creek, Southwest Fork Alligator River, Scouts Bay, Gum Neck Creek, Georgia Bay, Winn Bay, Stumpy Creek Bay, Stumpy Creek, Swann Creek (Swann Creek Lake), Whipping Creek (Whipping Creek Lake), Grapevine Bay, Rattlesnake Bay, The Straits, The Frying Pan, Coopers Creek, Babbitt Bay, Goose Creek, Milltail Creek, Boat Bay, Sandy Ridge Gut (Sawyer Lake) and Second Creek, but excluding the Intracoastal Waterway (Pungo River-Alligator River Canal) and all other tributary streams and canals.
- (7) In the following designated waterbodies, the only type of new or expanded marina that shall be allowed shall be those marinas located in upland basin areas, or those with less than 10 slips, having no boats over 21 feet in length and no boats with heads. The only new or expanded NPDES permitted discharges that shall be allowed shall be non-domestic, non-process industrial discharges.
- (A) The Northeast Swanquarter Bay Area including all waters northeast of a line from a point at Lat. 35E 23N 51O and Long. 76E 21N 02O thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential Proclamation) to Drum Point.
 - (B) The Neuse-Southeast Pamlico Sound Area (Southeast Pamlico Sound Section of the Southeast Pamlico, Core and Back Sound Area); (Neuse River Basin) including all waters within an area defined by a line extending from the southern shore of Ocracoke Inlet northwest to the Tar-Pamlico River and Neuse River basin boundary, then southwest to Ship Point.
 - (C) The Core Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin), including all waters of Core Sound and its tributaries, but excluding Nelson Bay, Little Port Branch and Atlantic Harbor at its mouth, and those tributaries of Jarrett Bay that are closed to shellfishing.
 - (D) The Western Bogue Sound Section of the Western Bogue Sound and Bear Island Area (White Oak River Basin) including all waters within an area defined by a line from Bogue Inlet to

- the mainland at SR 1117 to a line across Bogue Sound from the southwest side of Gales Creek to Rock Point, including Taylor Bay and the Intracoastal Waterway.
- (E) The Stump Sound Area (Cape Fear River Basin) including all waters of Stump Sound and Alligator Bay from marker Number 17 to the western end of Permuda Island, but excluding Rogers Bay, the Kings Creek Restricted Area and Mill Creek.
 - (F) The Topsail Sound and Middle Sound Area (Cape Fear River Basin) including all estuarine waters from New Topsail Inlet to Mason Inlet, including the Intracoastal Waterway and Howe Creek, but excluding Pages Creek and Futch Creek.
- (8) In the following designated waterbodies, no new or expanded NPDES permitted discharges and only new or expanded marinas with less than 10 slips, having no boats over 21 feet in length and no boats with heads shall be allowed:
- (A) The Swanquarter Bay and Juniper Bay Area (Tar-Pamlico River Basin) including all waters within a line beginning at Juniper Bay Point and running south and then west below Great Island, then northwest to Shell Point and including Shell Bay, Swanquarter and Juniper Bays and their tributaries, but excluding all waters northeast of a line from a point at Lat. 35E 23N 51O and Long. 76E 21N 02O thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential Proclamation) to Drum Point and also excluding the Blowout Canal, Hydeland Canal, Juniper Canal and Quarter Canal.
 - (B) The Back Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin) including that area of Back Sound extending from Core Sound west along Shackelford Banks, then north to the western most point of Middle Marshes and along the northwest shore of Middle Marshes (to include all of Middle Marshes), then west to Rush Point on Harker's Island, and along the southern shore of Harker's Island back to Core Sound.
 - (C) The Bear Island Section of the Western Bogue Sound and Bear Island Area (White Oak River Basin) including all waters within an area defined by a line from the western most point on Bear Island to the northeast mouth of Goose Creek on the mainland, east to the southwest mouth of Queen Creek, then south to green marker No. 49, then northeast to the northern most point on Huggins Island, then southeast along the shoreline of Huggins Island to the southeastern most point of Huggins Island, then south to the northeastern most point on Dudley Island, then southwest along the shoreline of Dudley Island to the eastern tip of Bear Island.
 - (D) The Masonboro Sound Area (Cape Fear River Basin) including all waters between the Barrier Islands and the mainland from Carolina Beach Inlet to Masonboro Inlet.
- (9) Black and South Rivers ORW Area (Cape Fear River Basin) [Index Nos. 18-68-(0.5), 18-68-(3.5), 18-68-(11.5), 18-68-12-(0.5), 18-68-12-(11.5), and 18-68-2]: the following management strategies, in addition to the discharge requirements specified in Subparagraph (c)(1) of this Rule, shall be applied to protect the designated ORW areas:
- (A) Stormwater controls described in Subparagraph (c)(1) of this Rule shall apply to land within one mile of and that drains to the designated ORW areas;
 - (B) New or expanded NPDES permitted wastewater discharges located one mile upstream of the stream segments designated ORW (upstream on the designated mainstem and upstream into direct tributaries to the designated mainstem) shall comply with the following discharge restrictions:
 - (i) Oxygen Consuming Wastes: Effluent limitations shall be as follows: BOD = 5 mg/l and NH₃-N = 2 mg/l;
 - (ii) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 20 mg/l;
 - (iii) Emergency Requirements: Failsafe treatment designs shall be employed, including stand-by power capability for entire treatment works, dual train design for all

- treatment components, or equivalent failsafe treatment designs;
- (iv) Nutrients: Where nutrient overenrichment is projected to be a concern, effluent limitations shall be set for phosphorus or nitrogen, or both.
 - (v) Toxic substances: In cases where complex discharges (those containing or potentially containing toxicants) may be currently present in the discharge, a safety factor shall be applied to any chemical or whole effluent toxicity allocation. The limit for a specific chemical constituent shall be allocated at one-half of the normal standard at design conditions. Whole effluent toxicity shall be allocated to protect for chronic toxicity at an effluent concentration equal to twice that which is acceptable under flow design criteria (pursuant to 15A NCAC 02B .0206).
- (10) Lake Waccamaw ORW Area (Lumber River Basin) [Index No. 15-2]: all undesignated waterbodies that are tributary to Lake Waccamaw shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section.
- (11) Swift Creek and Sandy Creek ORW Area (Tar-Pamlico River Basin) [portion of Index No. 28-78-(0.5) and Index No. 28-78-1-(19)]: all undesignated waterbodies that drain to the designated waters shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section and to protect outstanding resource values found in the designated waters as well as in the undesignated waters that drain to the designated waters.
- (12) Fontana Lake North Shore ORW Area (Little Tennessee River Basin and Savannah River Drainage Area) [Index Nos. 2-96 through 2-164 (excluding all waterbodies that drain to the south shore of Fontana Lake) consists of the entire watersheds of all creeks that drain to the north shore of Fontana Lake between Eagle and Forney Creeks, including Eagle and Forney Creeks. In addition to the requirements specified in Subparagraph (c)(1) of this Rule, any person conducting development activity disturbing greater than or equal to 5,000 square feet of land area in the designated ORW area shall undertake the following actions to protect the outstanding resource values of the designated ORW and downstream waters:
- (A) investigate for the presence of and identify the composition of acid-producing rocks by exploratory drilling or other means and characterize the net neutralization potential of the acid-producing rocks prior to commencing the land-disturbing activity;
 - (B) avoid areas to the maximum extent practical where acid-producing rocks are found with net neutralization potential of -5 or less;
 - (C) establish background levels of acidity and mineralization prior to commencing land-disturbing activity, and monitor and maintain baseline water quality conditions for the duration of the land-disturbing activity and for any period thereafter not less than two years as determined by the Division as part of a certification issued in accordance with 15A NCAC 02H .0500 or stormwater permit issued pursuant to this Rule;
 - (D) obtain a National Pollutant Discharge Elimination System permit for construction pursuant to Rule 15A NCAC 02H .0126 prior to initiating land-disturbing activity;
 - (E) design stormwater control systems to control and treat stormwater runoff generated from all surfaces generated by one inch of rainfall in accordance with 15A NCAC 02H. 1008; and
 - (F) replicate pre-development runoff characteristics and mimic the natural and unique hydrology of the site, post development.
- (13) North Fork New River ORW Area (New River Basin) [Index Nos. 10-2-(1), 10-2-(12)]: In addition to requirements specified in Subparagraph (c)(1) of this Rule, the following management strategies shall be applied to protect the designated ORW areas:
- (A) Expansion of existing NPDES permitted wastewater dischargers in their existing locations shall be allowed if there is no increase in pollutant loading and will be permitted such that water quality standards and limits described in Parts (e)(4)(B) and (C) of this Rule are maintained.

(B) Waters in the North Fork New River watershed that did not qualify for ORW designation will be managed in the same way as the downstream designated ORW areas. These waters, designated by "#", are listed as follows: Little Buffalo Creek and Claybank Creek [New River Basin (Index Nos. 10-2-20-1 and 10-2-20-1-1)].

Authority G.S. 143-214.1; S.L. 2005-97.

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

15A NCAC 02B .0307 NEW RIVER BASIN

(a) The New River Basin Schedule of Classifications and Water Quality Standards may be inspected at the following places:

- (1) the Internet at <http://h2o.enr.state.nc.us/csu/>; and
- (2) the North Carolina Department of Environment and Natural Resources:
 - (A) Asheville Regional Office
2090 US Highway 70
Swannanoa, North Carolina
 - (B) Winston-Salem Regional Office
585 Waughtown Street
Winston-Salem, North Carolina
 - (C) Division of Water Quality
Central Office
512 North Salisbury Street
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering the State of Tennessee are classified "C."

(c) The New River Basin Schedule of Classifications and Water Quality Standards was amended effective:

- (1) August 10, 1980;
- (2) April 1, 1983;
- (3) February 1, 1986;
- (4) August 1, 1989;
- (5) August 1, 1990;
- (6) August 3, 1992;
- (7) February 1, 1993;
- (8) August 1, 1998;
- (9) November 1, ~~2007~~-2007;
- (10) July 1, 2010.

(d) The Schedule of Classifications and Water Quality Standards for the New River Basin was amended effective July 1, 1989 as follows:

- (1) South Fork New River [Index No. 10-1-(30)] from Dog Creek to New River and all tributary waters were reclassified from Class C-trout and Class C to Class B-trout and B.

(e) The Schedule of Classifications and Water Quality Standards for the New River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-

III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 02B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(f) The Schedule of Classifications and Water Quality Standards for the New River Basin has been amended effective February 1, 1993 as follows:

- (1) the South Fork New River (Index No. 10-1-33.5) from Dog Creek to the New River was reclassified from Class B HQW to Class B ORW;
- (2) the New River (Index No. 10) from the confluence of the North And South Fork New Rivers to the last point at which it crosses the North Carolina/Virginia State line was reclassified from Class C HQW to Class C ORW; and
- (3) Old Field Creek (Index No. 10-1-22) from Call Creek to the South Fork New River, and Call Creek (Index No. 10-1-22-1) from its source to Old Field Creek were reclassified from Class WS-IV Trout to Class WS-IV Trout ORW.

(g) The Schedule of Classifications and Water Quality Standards for the New River Basin was amended effective August 1, 1998 with the revision to the primary classification for a portion of the South Fork New River [Index No. 10-1 (20.5)] from Class WS-IV to Class WS-V.

(h) The Schedule of Classifications and Water Quality Standards for the New River Basin was amended effective November 1, 2007 with the reclassification of Bluff Mountain Fen near Buffalo Creek [Index No. 10-2-20] to Class WL UWL as defined in 15A NCAC 02B .0101. The North Carolina Division of Water Quality maintains a Geographic Information Systems data layer of the UWL.

(i) The Schedule of Classifications and Water Quality Standards for the New River Basin was amended effective July 1, 2010 as follows:

- (1) the North Fork New River [Index Nos. 10-2-(1), 10-2-(12)] and all of its tributaries was reclassified from C+, C+ Trout and C Trout HQW to C ORW, C Trout ORW and C Trout #;
- (2) expansion of existing NPDES permitted wastewater dischargers in their existing locations shall be allowed if there is no increase in pollutant loading and will be permitted such that the water quality standards and limits described in Rule 15A NCAC 02B .0225(e)(4)(B) and (C) are maintained; and
- (3) waters in the North Fork New River watershed that did not qualify for ORW designation will be managed in the same way as the downstream designated ORW areas. These

waters, designated by "#", are listed as follows: Little Buffalo Creek and Claybank Creek (Index Nos. 10-2-20-1 and 10-2-20-1-1).

Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rule cited as 15A NCAC 02D .1212 and amend the rule cited as 15A NCAC 02D .1205.

Proposed Effective Date: July 1, 2010

Public Hearing:

Date: March 2, 2010

Time: 2:00 p.m.

Location: DENR – Wilmington Regional Office, 127 Cardinal Drive Extension, Wilmington, NC

Reason for Proposed Action: The purpose of the proposed amendments to Rule 15A NCAC 02D .1205, Large Municipal Waste Combustors, and adoption of Rule 15A NCAC 02D .1212, Small Municipal Waste Combustors, is to update North Carolina's responsibilities under section 111(d) of the Clean Air Act to reflect the revised 40 CFR 60 and 62 Subparts that reduce permitted emissions and clarifies testing requirements; operating training and certification; and monitoring, recordkeeping, and reporting requirements.

Procedure by which a person can object to the agency on a proposed rule: If you have any objections to the proposed rule, please mail a letter including your specific reasons to: Mr. Michael Abraczinskas, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641.

Comments may be submitted to: Michael Abraczinskas, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641, (919) 715-3473, fax (919) 715-7476, and email michael.abraczinskas@ncdenr.gov

Comment period ends: March 16, 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 (≥\$3,000,000)
None

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .1200 - CONTROL OF EMISSIONS FROM INCINERATORS

15A NCAC 02D .1205 LARGE MUNICIPAL WASTE COMBUSTORS

- (a) Applicability. This Rule applies to:
(1) Class I municipal waste combustors, as defined in Rule .1202 of this Section; and
(2) Large large municipal waste combustors, combustors as defined in Rule .1202 of this Section.
(b) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 60.51b 40 CFR 60.31b and 40 CFR 60.1940 (except administrator means the Director of the Division of Air Quality) shall apply in addition to the definitions in Rule .1202 of this Section.
(c) Emission Standards.
(1) The emission standards in this Paragraph apply to any municipal waste combustor subject to the requirements of this Rule except where Rule .0524, .1110, or .1111 of this Subchapter applies. However, when Subparagraphs (13) or (14) of this Paragraph and Rule .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.
(2) Particulate Matter. Emissions of particulate matter from each municipal waste combustor shall not exceed 27 25 milligrams per dry standard cubic meter corrected to seven percent oxygen.
(3) Visible Emissions. The emission limit for opacity from any municipal waste combustor shall not exceed 10 percent (average of 30 6 minute averages) (6-minute average).
(4) Sulfur Dioxide.
(A) Emissions of sulfur dioxide from each class I municipal waste combustor shall be reduced by at least 75 percent by weight or volume of potential sulfur dioxide emissions or to no more than 34 29 parts per

million by volume, volume corrected to seven percent oxygen (dry basis), whichever is less stringent. Percent reduction shall be determined from continuous emissions monitoring data and according to Reference Method 19, Section 12.5.4 of 40 CFR Part 60 Appendix A-7. Compliance with either standard this emission limit is based on a 24-hour daily block geometric average of concentration percent reduction. data corrected to seven percent oxygen (dry basis), whichever is less stringent.

(B) Emissions of sulfur dioxide from each large municipal waste combustor shall be:

(i) reduced by at least 75 percent by weight or volume, or to no more than 31 parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less stringent, by August 1, 2000. Compliance with this emission limit is based on a 24 hour daily geometric mean; and

(ii) reduced by at least 75 percent by weight or volume, or to no more than 29 parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less stringent, by August 1, 2002. Compliance with this emission limit is based on a 24 hour daily geometric mean.

(5) Nitrogen Oxide.

(A) Emissions of nitrogen oxide oxides from each class I municipal waste combustor shall not exceed the emission limits in Table 3 40 CFR 60, Subpart BBBB. Table 1 to Subpart Cb of Part 60 "Nitrogen Oxide Guidelines for Designated Facilities." Nitrogen oxide emissions averaging is allowed as specified in 40 CFR 60.33b(d)(1)(i) through (d)(1)(v). If nitrogen oxide emissions averaging is used, the emissions shall not exceed Table 2 to Subpart Cb of Part 60 "Nitrogen Oxides Limits for Existing Designated Facilities Included in an Emission Averaging Plan at a Municipal Waste Combustor Plant."

(B) Emissions of nitrogen oxide from each large municipal waste combustor shall not exceed the emission limits in Table 1 of Paragraph (d) of 40 CFR 60.33b. Nitrogen oxide emissions averaging is allowed as specified in 40 CFR 60.33b(d)(1)(i) through (d)(1)(v).

(C) In addition to the requirements of Part (B) of this Subparagraph, emissions of nitrogen oxide from fluidized bed combustors located at a large municipal waste combustor shall not exceed 180 parts per million by volume, corrected to seven percent oxygen, by August 1, 2002. If nitrogen oxide emissions averaging is used as specified in 40 CFR 60.33b(d)(1)(i) through (d)(1)(V), emissions of nitrogen oxide from fluidized bed combustors located at a large municipal waste combustor shall not exceed 165 parts per million by volume, corrected to seven percent oxygen, by August 1, 2002.

(6) Odorous Emissions. Any incinerator Each municipal waste combustor subject to this Rule shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.

(7) Hydrogen Chloride.

(A) Emissions of hydrogen chloride from each class I municipal waste combustor shall be reduced by at least 95 percent percent (simultaneously at the inlet and outlet data sets with a minimum of three valid test periods, the length of each test period shall be a minimum of one-hour), by weight or volume of potential hydrogen chloride emissions or to no more than 31 parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less stringent, or shall not exceed, as determined by Reference Method 26 or 26A of 40 CFR Part 60 Appendix A-8, more than 29 parts per million volume, whichever is less stringent. Compliance with this Part Subparagraph shall be determined by averaging emissions over a one hour period. three one-hour test runs, with paired data sets for percent reduction and correction to seven percent oxygen (dry basis).

(B) Emissions of hydrogen chloride from each large municipal waste combustor shall be:

- (i) ~~reduced by at least 95 percent by weight or volume, or to no more than 31 parts per million by volume, corrected to seven percent oxygen (dry basis), whichever is less stringent, by August 1, 2000. Compliance with this emission limit shall be determined by averaging emissions over a one-hour period; and~~
- (ii) ~~reduced by at least 95 percent by weight or volume, or to no more than 29 parts per million by volume, corrected to seven percent oxygen (dry basis), whichever is less stringent, by August 1, 2002. Compliance with this emission limit shall be determined by averaging emissions over a one-hour period.~~
- (8) Mercury Emissions. Emissions of mercury from each municipal waste combustor shall be reduced by at least 85 percent by weight of potential mercury emissions (simultaneously at the inlet and outlet data sets with a minimum of three valid test periods, the length of each test period shall be a minimum of one-hour), or shall not exceed exceed, as determined by Reference Method 29 of 40 CFR Part 60 Appendix A-8 or ASTM D6784-02 (Ontario Hydro method), more than 0.08 milligrams 50 micrograms per dry standard cubic meter, ~~corrected to seven percent oxygen~~, whichever is less stringent. Compliance with this Subparagraph shall be determined by averaging emissions over ~~a one-hour period~~ three one-hour test runs corrected to seven percent oxygen (dry basis).
- (9) Lead Emissions.
- (A) Emissions of lead from each ~~class I~~ municipal waste combustor shall not ~~exceed exceed, as determined by Reference Method 29 of 40 CFR Part 60 Appendix A-8, 0.49 milligrams 400 micrograms~~ per dry standard cubic ~~meter, meter and~~ corrected to seven percent oxygen.
- (B) ~~Emissions of lead from each large municipal waste combustor shall not exceed 0.49 milligrams per dry standard cubic meter, corrected to seven percent oxygen, by August 1, 2000 and shall not exceed 0.44~~
- ~~milligrams per dry standard cubic meter, corrected to seven percent oxygen, by August 1, 2002.~~
- (10) Cadmium Emissions. Emissions of cadmium from each municipal waste combustor shall not ~~exceed exceed, as determined by Reference Method 29 of 40 CFR Part 60 Appendix A-8, 0.040 milligrams 35 micrograms~~ per dry standard cubic ~~meter, meter and~~ corrected to seven percent oxygen.
- (11) Dioxins and Furans. Emissions of dioxins and furans from each municipal waste ~~combustor~~ ~~combustor shall not exceed:~~
- (A) ~~that employs an electrostatic precipitator-based emission control system, 60 shall not exceed 35 nanograms per dry standard cubic meter (total mass) (total mass dioxins and furans), corrected to seven percent oxygen for facilities that employ an electrostatic precipitator-based emission control system; or~~
- (B) ~~that does not employ an electrostatic precipitator-based emission control system, shall not exceed 30 nanograms per dry standard cubic meter (total mass dioxins and furans), corrected to seven percent oxygen for facilities that do not employ an electrostatic precipitator-based emission control system. Compliance with this Subparagraph shall be determined by averaging emissions over three test runs with a minimum of four hour duration per test run, performed in accordance with Reference Method 23 of 40 CFR Part 60 Appendix A-7, and corrected to seven percent oxygen.~~
- (12) Fugitive Ash.
- (A) On or after the date on which the initial performance test is completed, no owner or operator of a municipal waste combustor shall cause to be discharged to the atmosphere visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) in excess of five percent of the observation period (i.e., nine minutes per three-hour block period), as determined by visible emission observations using EPA Reference Method 22 observations as specified in 40 CFR 60.58b(k), Reference Method 22 of 40 CFR 60 Appendix A-7, except as provided in Part (B) of this Subparagraph. Compliance with this Part shall be determined from at least

three 1-hour observation periods when the facility transfers ash from the municipal waste combustor to the area where the ash is stored or loaded into containers or trucks, except as provided in Part (B) of this Subparagraph.

- (B) The emission limit specified in Part (A) of this Subparagraph covers visible emissions discharged to the atmosphere from buildings or enclosures, not the visible emissions discharged inside of the building or enclosures, of ash conveying systems.
- (13) Toxic Emissions. The owner or operator of a municipal waste combustor shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700.
- (14) Ambient Standards.

(A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following are annual average ambient air quality standards, standards which are an annual average, in milligrams per cubic meter at 77 degrees F (25 degrees C) and 29.92 inches (760 mm) of mercury ~~pressure, pressure, and which are increments above background concentrations,~~ shall apply aggregately to all incinerators at a facility subject to this Rule:

- (i) arsenic and its compounds
2.3x10⁻⁷
- (ii) beryllium and its compounds
4.1x10⁻⁶
- (iii) cadmium and its compounds
5.5x10⁻⁶
- (iv) chromium (VI) and its compounds
8.3x10⁻⁸

These are increments above background concentrations and shall apply aggregately to all municipal waste combustors at a facility subject to this Rule.

(B) The owner or operator of a facility with ~~incinerators~~ municipal waste combustors subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with ~~the requirements~~ the good engineering practice stack height requirements of Rule .0533 of this Subchapter.

(C) The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with MWCs as their allowable emission limits unless Rule .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.

(15) The emission standards of Subparagraphs (1) through ~~(12)~~ (14) of this Paragraph shall apply at all times except during periods of municipal waste ~~combustion unit combustor~~ startup, shutdown, or malfunction that last no more than three hours.

(d) Operational Standards.

(1) The operational standards in this Rule do not apply to any ~~incinerator~~ municipal waste combustor subject to this Rule when applicable operational standards in Rule .0524, .1110, or .1111 of this Subchapter applies.

(2) Each municipal waste combustor shall meet the following operational standards:

(A) The concentration of carbon monoxide at the municipal waste combustor outlet shall not exceed ~~the concentration in:~~ the applicable emissions level contained in Table 3 to Subpart Cb of Part 60 "Municipal Waste Combustor Operating Guidelines."

- (i) ~~table 3 of 40 CFR 60.34b(a) for large municipal waste combustors. The municipal waste combustor technology named in this table is defined in 40 CFR 60.51b; and~~
- (ii) ~~table 5 of 40 CFR 60 Subpart BBBB. The municipal waste combustor technology named in this table is defined in 40 CFR 60.1940.~~

(B) The load level shall not exceed 110 percent of the maximum demonstrated municipal waste combustor ~~unit load (four hour block average),~~ determined from the highest 4-hour block arithmetic average achieved during four consecutive hours in the course of the most recent dioxins and furans stack test that demonstrates compliance with the emission limits of Paragraph (c) of this Rule.

(C) The combustor operating temperature~~The temperature at which~~

~~the combustor operates~~ measured at the particulate matter control device inlet shall not exceed 63 degrees F above the maximum demonstrated particulate matter control device temperature ~~(four-hour block average)~~. from the highest 4-hour block arithmetic average measured at the inlet of the particulate matter control device during four consecutive hours in the course of the most recent dioxins and furans stack test that demonstrates compliance with the emission limits of Paragraph (c) of this Rule.

- (D) The owner or operator of a municipal waste combustor with activated carbon control system to control dioxins and furans or mercury emissions shall maintain an eight-hour block average carbon feed rate at or above the highest average level established during the most recent dioxins and furans or mercury test ~~test and shall evaluate total carbon usage for each calendar quarter. The total amount of carbon purchased and delivered to the municipal waste combustor shall be at or above the required quarterly usage of carbon and shall be calculated as specified in equation four or five in 40 CFR 60.1935(f).~~
- (E) The owner or operator of a municipal waste combustor shall be exempted from limits on load level, temperature at the inlet of the particular matter control device, and carbon feed rate during:
- (i) the annual tests for dioxins and furans;
 - (ii) the annual mercury tests for carbon feed requirements only;
 - (iii) the two weeks preceding the annual tests for dioxins and furans;
 - (iv) the two weeks preceding the annual mercury tests ~~for~~ (for carbon feed rate requirements ~~only~~; only); and
 - (v) any activities to improve the performance of the municipal waste combustor or its emission control including performance evaluations and diagnostic or new technology testing.

The municipal waste combustor load limit continues to apply and remains enforceable until and unless the Director grants a waiver in writing.

- (F) The Director shall grant a waiver to exempt the owner or operator of a municipal waste combustor from limits on load level when the Director approves test activities to evaluate system performance, test new technology or control technology, perform diagnostic testing, perform other activities to improve the performance; or perform other activities to advance the state of the art for emissions controls.

- ~~(3) Except during start up where the procedure has been approved according to Rule .0535(g) of this Subchapter, waste material shall not be loaded into any incinerator subject to this Rule when the temperature is below the minimum required temperature. Start up procedures may be determined on a case by case basis according to Rule .0535(g) of this Subchapter and Subparagraph (4) of this Paragraph. Incinerators subject to this Rule shall have automatic auxiliary burners that are capable of maintaining the required minimum temperature in the secondary chamber excluding the heat content of the wastes.~~
- ~~(4) The operational standards of this Paragraph apply at all times except during periods of municipal waste combustor startup, shutdown, or malfunction that last no more than:~~
- ~~(A) three hours for Class I combustors; or~~
 - ~~(B) three hours except as specified in 40 CFR 60.58b9(a)(1)(iii) for large municipal waste combustors.~~
- (3) The operational standards of this Paragraph apply at all times except during periods of municipal waste combustor startup, shutdown, or malfunction that last no more than three hours, with the following exception: For the purpose of compliance with the carbon monoxide emission limits in Subparagraph (2) of this Paragraph, if a loss of boiler water level control (e.g., boiler waterwall tube failure) or a loss of combustion air control (e.g., loss of combustion air fan, induced draft fan, combustion grate bar failure) is determined to be a malfunction according to 15A NCAC 02D .0535, the duration of the malfunction period is limited to 15 hours per occurrence. During such periods of malfunction, monitoring data shall be dismissed or excluded from compliance calculations, but shall be recorded and reported in accordance with the provisions of Paragraph (f) of this Rule.

- (e) Test Methods and Procedures.

- (1) ~~The test methods and procedures described in Rule .0501-Section .2600 of this Subchapter and in Parts (A) through (K) in this Subparagraph shall be used to demonstrate compliance with emission rates. Method 29 of 40 CFR Part 60 shall be used to determine emission rates for metals. However, Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.~~
- (A) ~~40 CFR 60.58b(b) for continuous emissions monitoring of oxygen or carbon monoxide at each location where carbon monoxide, sulfur dioxide, or nitrogen oxides are monitored;~~
- (B) ~~40 CFR 60.58b(c) for determination of compliance with particulate and opacity emission limits. The data from the continuous opacity monitoring system are not to be used to determine compliance with the opacity limit;~~
- (C) ~~40 CFR 60.58b(d) for determination of compliance with emission limits for cadmium, lead and mercury;~~
- (D) ~~40 CFR 60.58b(e) for determination of compliance with sulfur dioxide emission limits from continuous emissions monitoring data;~~
- (E) ~~40 CFR 60.58b(f) for determination of compliance with hydrogen chloride emission limits;~~
- (F) ~~40 CFR 60.58b(g) for determination of compliance with dioxin/furan emission limits;~~
- (G) ~~40 CFR 60.58b(h) for determination of compliance with nitrogen oxides limits from continuous emission monitoring data;~~
- (H) ~~40 CFR 60.58b(i) for determination of compliance with operating requirements under Paragraph (d);~~
- (I) ~~40 CFR 60.58b(j) for determination of municipal waste combustor capacity;~~
- (J) ~~40 CFR 60.58b(k) for determination of compliance with the fugitive ash emission limit; and~~
- (K) ~~40 CFR 60.58b(m)(1) to determine parametric monitoring for carbon injection control systems.~~
- (2) ~~The owner or operator of a municipal waste combustor shall do compliance and performance testing according to 40 CFR 60.58b.~~
- (2) Method 29 of 40 CFR Part 60 Appendix A-8 shall be used to determine emission rates for metals. However, Method 29 shall be used only to collect sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.
- (3) ~~For large municipal waste combustors that achieve a dioxin and furan emission level less than or equal to 15 nanograms per dry standard cubic meter total mass, corrected to seven percent oxygen, the performance testing shall be performed according to the testing schedule specified in 40 CFR 60.58b(g)(5)(iii). For class I municipal waste combustors the performance testing shall be performed according to the testing schedule specified in 40 CFR 60.1785 to demonstrate compliance with the applicable emission standards in Paragraph (c) of this Rule.~~
- (3) The owner or operator shall conduct initial stack tests to measure the emission levels of dioxins and furans, cadmium, lead, mercury, beryllium, arsenic, chromium (VI), particulate matter, opacity, hydrogen chloride, and fugitive ash. Annual stack tests for the same pollutants except beryllium, arsenic, and chromium (VI) shall be conducted no less than nine months and no more than 15 months since the previous test and must complete five performance tests in each 5-year calendar period.
- (4) ~~The Director may require the owner or operator of any incinerator subject to this Rule to test his incinerator to demonstrate compliance with the emission standards in Paragraph (c) of this Rule.~~
- (4) The testing frequency for dioxin and furan may be reduced to the alternative testing schedule specified in 40 CFR 60.58b(g)(5)(iii) if the owner or operator notifies the Director of the intent to begin the reduced dioxin and furan performance testing schedule during the following calendar year.
- (5) ~~The owner or operator of an affected facility may request that compliance with the dioxin and furan emission limit be determined using carbon dioxide measurements corrected to an equivalent of seven percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established as specified in 40 CFR 60.58b(b)(6).~~
- (6) The Director may require the owner or operator of any incinerator subject to this Rule to test his incinerator to demonstrate compliance with the emission standards in Paragraph (c) of this Rule.
- (f) Monitoring, Recordkeeping, and Reporting.
- (1) The owner or operator of an incinerator a municipal waste combustor subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting

- requirements in Section .0600 of this Subchapter.
- (2) The owner or operator of ~~an incinerator~~ a municipal waste combustor that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems.
- (3) The owner or operator of a municipal waste combustor shall:
- (A) install, calibrate, operate, and maintain, for each municipal waste combustor, continuous emission monitors to ~~determine~~ determine the following:
- ~~(i) opacity according to 40 CFR 60.58b(e) for large municipal waste combustors and 40 CFR 60.1720 for class I municipal waste combustors;~~
 - ~~(ii) sulfur dioxide according to 40 CFR 60.58b(e) for large municipal waste combustors and 40 CFR 60.1720 for class I municipal waste combustors;~~
 - ~~(iii) nitrogen oxides according to 40 CFR 60.58b(h) for large municipal waste combustors and 40 CFR 60.1720 for class I municipal waste combustors;~~
 - ~~(iv) oxygen (or carbon dioxide) according to 40 CFR 60.58b(b) for large municipal waste combustors and 40 CFR 60.1720 for class I municipal waste combustors; and~~
 - ~~(v) temperature level in the primary chamber and, where there is a secondary chamber, in the secondary chamber;~~
 - (i) sulfur dioxide concentration;
 - (ii) nitrogen oxides concentration;
 - (iii) oxygen or carbon dioxide concentration;
 - (iv) opacity according to 40 CFR 60.58b(c); and
 - (v) carbon monoxide at the combustor outlet and record the output of the system and shall follow the procedures
- and methods specified in 40 CFR 60.58b(i)(3);
- (B) monitor the load level of each ~~class I~~ municipal waste combustor according to 40 CFR ~~60.1810; 60.58b(i)(6);~~
- (C) monitor the temperature of ~~the~~ each municipal waste combustor flue gases at the inlet of the particulate matter air pollution control device according to 40 CFR ~~60.1815; 60.58b(i)(7);~~
- (D) monitor carbon feed rate of each municipal waste combustor carbon delivery system and total plant predicted quarterly usage if activated carbon is used to abate dioxins and furans or mercury emissions according to 40 CFR ~~60.1820; 60.58b(m)(2) and (m)(3);~~
- (E) maintain records of the information listed in 40 CFR 60.59b(d)(1) through (d)(15) ~~for large municipal waste combustors and in 40 CFR 60.1840 through 1855 for class I municipal waste combustors~~ for a period of at least five years;
- ~~(F) following the initial compliance tests as required under Paragraph (e) of this Rule, submit the information specified in 40 CFR 60.59b(f)(1) through (f)(6) for large municipal waste combustors and in 40 CFR 60.1875 for class I municipal waste combustors, in the initial performance test report;~~
- ~~(G)~~(F) following the first year of municipal combustor operation, submit an annual report specified in 40 CFR 60.59b(g) for large municipal waste combustors and in 40 CFR 60.1885 for class I municipal waste combustors, as applicable, no later than February 1 of each year following the calendar year in which the data were collected. Once the ~~unit~~ municipal waste combustor is subject to permitting requirements under 15A NCAC 02Q .0500, Title V Procedures, the owner or operator of an affected facility shall submit these reports semiannually; and
- ~~(H)~~(G) submit a semiannual report specified in 40 CFR 60.59b(h) for ~~large~~ each municipal waste combustor and in 40 CFR ~~60.1900 for class I municipal waste combustors,~~ for any recorded pollutant or parameter that does not comply with the pollutant or parameter limit specified in this Section, according to

the schedule specified in 40 CFR 60.59b(h)(6).

(g) Excess Emissions and Start-up and Shut-down. All municipal waste combustors ~~subject to this Rule~~ shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.

(h) Operator ~~Training and Certification.~~

~~(1) By January 1, 2000, or six months after the date of start-up of a class I municipal waste combustor, whichever is later, and by July 1, 1999 or six months after the date of start-up of a large municipal waste combustor, whichever is later:~~

~~(A) Each facility operator and shift supervisor of a municipal waste combustor shall obtain and maintain a current provisional operator certification from the American Society of Mechanical Engineers (ASME QRO-1-1994).~~

~~(B)(1) Each facility operator and shift supervisor of a municipal waste combustor shall have completed full certification or shall have scheduled a full certification exam with the American Society of Mechanical Engineers (ASME QRO-1-1994).~~

~~(C) The owner or operator of a municipal waste combustor plant shall not allow the facility to be operated at any time unless one of the following persons is on duty at the affected facility:~~

~~(i) a fully certified chief facility operator;~~

~~(ii) a provisionally certified chief facility operator who is scheduled to take the full certification exam according to the schedule specified in Part (B) of this Subparagraph;~~

~~(iii) a fully certified shift supervisor; or~~

~~(iv) a provisionally certified shift supervisor who is scheduled to take the full certification exam according to the schedule specified in Part (B) of this Subparagraph.~~

~~(2) No owner or operator of an affected facility shall allow the facility to be operated at any time unless one of the following persons is on duty and at the affected facility:~~

~~(A) a fully certified chief facility operator;~~

~~(B) a provisionally certified chief facility operator who is scheduled to take the full certification exam within six months;~~

~~(C) a fully certified shift supervisor; or~~

(D) a provisionally certified shift supervisor who is scheduled to take the full certification exam within six months.

(3) A provisionally certified control room operator may perform the duties of the certified chief facility operator or certified shift supervisor if both are off site for 12 hours or less and no other certified operator is on site.

(A) If the certified chief facility operator and certified shift supervisor are both off site for longer than 12 hours but for two weeks or less, then the owner or operator of the affected facility must record the period when the certified chief facility operator and certified shift supervisor are off site and include that information in the annual report as specified under 60.59b(g)(5).

(B) If the certified chief facility operator and certified shift supervisor are off site for more than two weeks, and no other certified operator is on site, the provisionally certified control room operator may perform the duties of the certified chief facility operator or certified shift supervisor. However, the owner or operator of the affected facility must notify the Director in writing and state what caused the absence and actions are being taken to ensure that a certified chief facility operator or certified shift supervisor is on site as expeditiously as practicable. The notice shall be delivered within 30 days of the start date of when the provisionally certified control room operator takes over the duties of the certified chief facility operator or certified shift supervisor. A status report and corrective action summary shall be submitted to the Director every four weeks following the initial notification.

(C) If the Director provides notice that the status report or corrective action summary is disapproved, the municipal waste combustor may continue operation for 90 days, but then must cease operation. If corrective actions are taken in the 90-day period such that the Director withdraws the disapproval, municipal waste combustor operation may continue.

(D) The Director shall disapprove the status report or corrective action

- summary report, described in Part (C) of this Subparagraph, if operating permit requirements are not being met, the status and corrective action reports indicate that the effort to have a certified chief facility operator or certified shift supervisor on site as expeditiously as practicable is not being met, or the reports are not delivered in a timely manner.
- (D) If one of the persons listed in this Subparagraph leaves the large municipal waste combustor during his operating shift, a provisionally certified control room operator who is onsite at the affected facility may fulfill the requirements of this Part.
- (E) If one of the persons listed in this Subparagraph leaves the class I municipal waste combustor during his operating shift, a provisionally certified control room operator who is onsite at the affected facility may fulfill the requirements specified in 40 CFR 60.1685.
- (4) This requirement does not apply to chief facility operators, shift supervisors, and control room operators who have obtained full certification from the American Society of Mechanical Engineers on or before July 1, 1998.
- (5) A provisionally certified operator who is newly promoted or recently transferred to a shift supervisor position or a chief facility operator position at the municipal waste combustion facility may perform the duties of the certified chief facility operator or certified shift supervisor without notice to, or approval by, the Director for up to six months before taking the ASME QRO - Certification for Municipal Solid Waste Combustion Facilities Operators.
- (6) If the certified chief facility operator and certified shift supervisor are both unavailable, a provisionally certified control room operator who is scheduled to take the full certification exam, may fulfill the requirements of this Subparagraph. The referenced ASME exam (ASME QRO-1-1994), "Standard for the Qualification and Certification of Resource Recovery Facility Operators," in this Paragraph is hereby incorporated by reference and includes subsequent amendments and editions. Copies of the referenced ASME exam may be obtained from the American Society of Mechanical Engineers (ASME), 22 Law Drive, Fairfield, NJ 07007, at a cost of forty-nine dollars (\$49.00).
- (2) ~~The owner or operator of each municipal waste combustor shall develop and update on a yearly basis a site-specific operating manual that shall at the minimum address the elements of municipal waste combustor unit operation specified in 40 CFR 60.54b(e)(1) through (e)(11).~~
- (3) ~~By July 1, 1999, or six months after the date of start-up of a municipal waste combustor, whichever is later, the owner or operator of the municipal waste combustor plant shall comply with the following requirements:~~
- (A) ~~All chief facility operators, shift supervisors, and control room operators shall complete the EPA municipal waste combustor training course:~~
- (i) ~~The requirements specified in Part (A) of this Subparagraph shall not apply to chief facility operators, shift supervisors and control room operators who have obtained full certification from the American Society of Mechanical Engineers on or before July 1, 1998.~~
- (ii) ~~As provided under 40 CFR 60.39b(e)(4)(iii)(B), the owner or operator may request that the Administrator waive the requirement specified in Part (A) of this Subparagraph for the chief facility operators, shift supervisors, and control room operators who have obtained provisional certification from the American Society of Mechanical Engineers on or before July 1, 1998.~~
- (i) Training.
- (1) The owner or operator of each municipal waste combustor shall develop and update on a yearly basis a site-specific operating manual that shall at the minimum address the elements of municipal waste combustor operation specified in 40 CFR 60.54b(e)(1) through (e)(11). The operating manual shall be kept in a readily accessible location for all persons required to undergo training under Subparagraph (2) of this Paragraph. The operating manual and records of training shall be available for inspection by the personnel of the Division on request.
- (2) The owner or operator of the municipal waste combustor plant shall establish a training program to review the operating manual

according to the schedule specified in Parts (A) and (B) of this Subparagraph with each person who has responsibilities affecting the operation of the facility including chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane and load handlers:

(A) A date prior to the day when the person assumes responsibilities affecting municipal waste combustor operation; and

(B) Annually, following the initial training required by Part (A) of this Subparagraph.

(B) The owner or operator of each municipal waste combustor shall establish a training program to review the operating manual, according to the schedule specified in Subparts (i) and (ii) of this Part, with each person who has responsibilities affecting the operation of an affected facility, including the chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane load handlers.

(i) Each person specified in Part (B) of this Subparagraph shall undergo initial training no later than the date specified in Items (I) through (III) of this Subpart, whichever is later:

(I) The date six months after the date of start-up of the affected facility;

(II) July 1, 1999; or

(III) A date prior to the day when the person assumes responsibilities affecting municipal waste combustor unit operation.

(ii) Annually, following the initial training required by Subpart (i) of this Part.

(C) The operating manual required by Subparagraph (2) of this Paragraph shall be updated continually and be kept in a readily accessible location for all persons required to undergo training under Part (B) of this Subparagraph. The operating manual and records of training shall be available for inspection by the personnel of the Division on request.

(D) The operating manual of class I municipal waste combustors shall contain requirements specified in 40 CFR 60.1665 in addition to requirements of Part (C) of this Subparagraph.

(4) The referenced ASME exam in this Paragraph is hereby incorporated by reference and includes subsequent amendments and editions. Copies of the referenced ASME exam may be obtained from the American Society of Mechanical Engineers (ASME), 22 Law Drive, Fairfield, NJ 07007, at a cost of forty nine dollars (\$49.00).

(i) Compliance Schedules:

(1) The owner or operator of a large municipal waste combustor shall choose one of the following three compliance schedule options:

(A) comply with all the requirements or close before August 1, 2000;

(B) comply with all the requirements before three years following the date of issuance of a revised construction and operation permit, if permit modification is required, or after August 1, 2000, but before August 1, 2002, if a permit modification is not required. If this option is chosen, then the owner or operator of the facility shall submit to the Director measurable and enforceable incremental steps of progress towards compliance which include:

(i) a date by which contracts for the emission control system or equipment shall be awarded or orders issued for purchase of component parts;

(ii) a date by which on site construction, installation, or modification of emission control equipment shall begin;

(iii) a date by which on site construction, installation, or modification of emission control equipment shall be completed;

(iv) a date for initial start up of emissions control equipment;

(v) a date for initial performance test(s) of emission control equipment; and

(vi) a date by which the municipal waste combustor shall be in compliance with this Rule, which shall be no

- later than three years from the issuance of the permit; or
- (C) ~~close between August 1, 2000, and August 1, 2002. If this option is chosen then the owner or operator of the facility shall submit to the Director a closure agreement which includes the date of the plant closure.~~
- (2) ~~All large municipal waste combustors for which construction, modification, or reconstruction commenced after June 26, 1987, but before September 19, 1994, shall comply with the emission limit for mercury specified in Subparagraph (c)(8) of this Rule and the emission limit for dioxin and furan specified in Subparagraph (c)(11) of this Rule within one year following issuance of a revised construction and operation permit, if a permit modification is required, or by August 1, 2000, whichever is later.~~
- (3) ~~The owner or operator of a class I municipal waste combustor shall choose one of the following four compliance schedule options:~~
- (A) ~~comply with all requirements of this Rule beginning July 1, 2002;~~
- (B) ~~comply with all requirements of this Rule by July 1, 2002 whether a permit modification is required or not. If this option is chosen, then the owner or operator shall submit to the Director along with the permit application if a permit application is needed or by September 1, 2002 if a permit application is not needed a compliance schedule that contains the following increments of progress:~~
- (i) ~~a final control plan as specified in 40 CFR 60.1610;~~
- (ii) ~~a date by which contracts for the emission control system or equipment shall be awarded or orders issued for purchase of component parts;~~
- (iii) ~~a date by which onsite construction, installation, or modernization of emission control system or equipment shall begin;~~
- (iv) ~~a date by which onsite construction, installation, or modernization of emission control system or equipment shall be completed; and~~
- (v) ~~a date by which the municipal waste combustor shall be in compliance with this Rule, which shall be no~~
- later no later than December 1, 2004;
- (C) ~~comply with all requirements of this Rule by closing the combustor by July 1, 2002 and then reopening it. If this option is chosen the owner or operator shall:~~
- (i) ~~meet increments of progress specified in 40 CFR 60.1585, if the class I combustor is closed and then reopened prior to the final compliance date; and~~
- (ii) ~~complete emissions control retrofit and meet the emission limits and good combustion practices on the date that the class I combustor reopens operation if the class I combustor is closed and then reopened after the final compliance date; or~~
- (D) ~~comply by permanently closing the combustor. If this option is chosen the owner or operator shall:~~
- (i) ~~submit a closure notification, including the date of closure, to the Director by July 1, 2002 if the class I combustor is to be closed on or before September 1, 2002; or~~
- (ii) ~~enter into a legally binding closure agreement with the Director by July 1, 2002 if the class I combustor is to be closed after September 1, 2002, and the combustor shall be closed no later than December 1, 2004.~~
- (4) ~~The owner or operator of a class I municipal waste combustor that began construction, reconstruction or modification after June 26, 1987 shall comply with the emission limit for mercury specified in Subparagraph (c)(8) of this Rule and the emission limit for dioxin and furan specified in Part (c)(11)(B) of this Rule by July 1, 2002.~~
- (5) ~~The owner or operator of any municipal waste combustor shall certify to the Director within five days after the deadline, for each increment of progress, whether the required increment of progress has been met.~~

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(4),(5); 40 CFR 60.35b; 40 CFR 60.34e; 40 CFR 60.1515.

15A NCAC 02D .1212 SMALL MUNICIPAL WASTE COMBUSTORS

(a) Applicability. This Rule applies to Class I municipal waste combustors, as defined in Rule .1202 of this Section.

(b) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 60.1940 (except administrator means the Director of the Division of Air Quality) shall apply in addition to the definitions in Rule .1202 of this Section.

(c) Emission Standards.

- (1) The emission standards in this Paragraph apply to any municipal waste combustor subject to the requirements of this Rule except where Rule .0524, .1110, or .1111 of this Subchapter applies. However, when Subparagraphs (13) or (14) of this Paragraph and Rule .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.
- (2) Particulate Matter. Emissions of particulate matter from each municipal waste combustor shall not exceed 27 milligrams per dry standard cubic meter corrected to seven percent oxygen.
- (3) Visible Emissions. The emission limit for opacity from each municipal waste combustor shall not exceed 10 percent average during any six-minute period.
- (4) Sulfur Dioxide. Emissions of sulfur dioxide from each municipal waste combustor shall not exceed 31 parts per million by volume, dry basis, or potential sulfur dioxide emissions shall be reduced by at least 75 percent volume, dry basis, whichever is less stringent. Percent reduction shall be determined from continuous emissions monitoring data and in accordance with Reference Method 19, Section 12.5.4 of 40 CFR Part 60, Appendix A-7. Compliance with either standard is based on a 24-hour daily block geometric average of concentration data corrected to seven percent oxygen.
- (5) Nitrogen Oxide. Emissions of nitrogen oxide from each municipal waste combustor shall not exceed the emission limits in Table 3 of 40 CFR Part 60, Subpart BBBB.
- (6) Odorous Emissions. Each municipal waste combustor shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.
- (7) Hydrogen Chloride. Emissions of hydrogen chloride from each municipal waste combustor shall not exceed 31 milligrams per dry standard cubic meter (31 parts per million by weight as determined by Reference Method 26 or 26A of 40 CFR Part 60, Appendix A-8) or potential hydrogen chloride emissions shall be reduced by at least 95 percent of the mass concentration, dry basis, whichever is less

stringent. Compliance with this Part shall be determined by averaging emissions over three one-hour test runs, with paired data sets for percent reduction and correction to seven percent oxygen.

- (8) Mercury Emissions. Emissions of mercury from each municipal waste combustor shall not exceed 0.080 milligrams per dry standard cubic meter (as determined by Reference Method 29 of 40 CFR Part 60, Appendix A-8) or potential mercury emissions shall be reduced by at least 85 percent of the mass concentration, basis, whichever is less stringent. Compliance with this Part shall be determined by averaging emissions over three one-hour test runs, with paired data sets for percent reduction and correction to seven percent oxygen.
- (9) Lead Emissions. Emissions of lead from each municipal waste combustor shall not exceed 0.490 milligrams per dry standard cubic meter and corrected to seven percent oxygen (as determined by Reference Method 29 of 40 CFR Part 60, Appendix A-8).
- (10) Cadmium Emissions. Emissions of cadmium from each municipal waste combustor shall not exceed 0.040 milligrams per dry standard cubic meter, corrected to seven percent oxygen (as determined by Reference Method 29 of 40 CFR Part 60, Appendix A-8).
- (11) Dioxins and Furans. Emissions of dioxins and furans from each municipal waste combustor shall not exceed:
 - (A) 60 nanograms per dry standard cubic meter (total mass) for facilities that employ an electrostatic precipitator-based emission control system, or
 - (B) 30 nanograms per dry standard cubic meter (total mass) for facilities that do not employ an electrostatic precipitator-based emission control system.

Compliance with this Subparagraph shall be determined by averaging emissions over three test runs with a minimum four hour run duration, performed in accordance with Reference Method 23 of 40 CFR Part 60, Appendix A-7, and corrected to seven percent oxygen.
- (12) Fugitive Ash.
 - (A) On or after the date on which the initial performance test is completed, no owner or operator of a municipal waste combustor shall cause to be discharged to the atmosphere visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) in excess of five percent of the observation period

as determined by Reference Method 22 (40 CFR Part 60, Appendix A-7), except as provided in Part (B) of this Subparagraph. Compliance with this Part shall be determined from at least three 1-hour observation periods when the facility transfers ash from the municipal waste combustor to the area where the ash is stored or loaded into containers or trucks.

- (B) The emission limit specified in Part (A) of this Subparagraph covers visible emissions discharged to the atmosphere from buildings or enclosures, not the visible emissions discharged inside of the building or enclosures, of ash conveying systems.
- (13) Toxic Emissions. The owner or operator of a municipal waste combustor shall demonstrate compliance with Section .1100 of this Subchapter in accordance with 15A NCAC 02Q .0700.
- (14) Ambient Standards.
 - (A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following annual average ambient air quality standards in milligrams per cubic meter (77 degrees Fahrenheit, 25 degrees Celsius, and 29.92 inches, 760 millimeters of mercury pressure) are arsenic and its compounds (2.3×10^{-7}), beryllium and its compounds (4.1×10^{-6}), cadmium and its compounds (5.5×10^{-6}), and chromium (VI) and its compounds (8.3×10^{-8}). These are increments above background concentrations and shall apply aggregately to all municipal waste combustors at a facility.
 - (B) The owner or operator of a facility with municipal waste combustors shall demonstrate compliance with the ambient standards in Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the good engineering practice stack height requirements of Rule .0533 of this Subchapter.
 - (C) The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with MWCs as their allowable emission limits unless Rule .0524,

.1110, or .1111 of this Subchapter requires more restrictive rates.

- (15) The emission standards of Subparagraphs (1) through (14) of this Paragraph shall apply at all times except during periods of municipal waste combustor startup, shutdown, or malfunction that last no more than three hours.

(d) Operational Standards.

- (1) The operational standards in this Rule do not apply to any municipal waste combustors subject to this Rule when applicable operational standards in Rule .0524, .1110, or .1111 of this Subchapter apply.
- (2) Each municipal waste combustor shall meet the following operational standards:
 - (A) The concentration of carbon monoxide at the municipal waste combustor outlet shall not exceed the concentration in Table 5 of 40 CFR Part 60, Subpart BBBB for each municipal waste combustor. The municipal waste combustor technology named in this table is defined in 40 CFR 60.1940.
 - (B) The load level shall not exceed 110 percent of the maximum demonstrated municipal waste combustor load determined from the highest four-hour block arithmetic average achieved during four consecutive hours in the course of the most recent dioxins and furans stack test that demonstrates compliance with the emission limits of Paragraph (c) of this Rule.
 - (C) The temperature at which the combustor operates measured at the particulate matter control device inlet shall not exceed 63 degrees F (17 degrees C) above the maximum demonstrated particulate matter control device temperature determined from the highest 4-hour block arithmetic average measured at the inlet of the particulate matter control device during four consecutive hours in the course of the most recent dioxins and furans stack test that demonstrates compliance with the emission limits of Paragraph (c) of this Rule.
 - (D) The owner or operator of a municipal waste combustor with activated carbon control system to control dioxins and furans or mercury emissions shall maintain an eight-hour block average carbon feed rate at or above the highest average level established during the most recent

dioxins and furans or mercury test. Calculate the required quarterly usage of carbon using the equation in 40 CFR 60.1935(f).

(E) The owner or operator of a municipal waste combustor shall be exempted from limits on load level, temperature at the inlet of the particular matter control device, and carbon feed rate during the annual tests for dioxins and furans, the annual mercury tests (for carbon feed requirements only), the two weeks preceding the annual tests for dioxins and furans, and the two weeks preceding the annual mercury tests (for carbon feed rate requirements only).

(F) The owner or operator of a municipal waste combustor shall be exempted from limits on load level, temperature at the inlet of the particular matter control device, and carbon feed rate when the Director approves in writing any activities to evaluate system performance, test new technology or control technology, perform diagnostic testing, perform other activities to improve the performance, or perform other activities to advance the state of the art for emissions controls.

(3) The operational standards of this Paragraph apply at all times except during periods of municipal waste combustor startup, shutdown, or malfunction that last no more than three hours. For periods of municipal waste combustor startup, shutdown, or malfunction that last more than three hours emission data cannot be discarded from compliance calculations and all provisions of 40 CFR 60.11(d) apply. During all periods of municipal waste combustor startup, shutdown, or malfunction, data shall be recorded and reported in accordance with the provisions of Paragraphs (f) and (g) of this Rule.

(e) Test Methods and Procedures.

(1) References contained in Table 8 of 40 CFR Part 60, Subpart BBBB shall be used to determine the sampling location, pollutant concentrations, number of traverse points, individual test methods, and other specific testing requirements for the different pollutants.

(2) Stack tests for all the pollutants shall consist of at least three test runs, as specified in 40 CFR 60.8 and use the average of the pollutant emission concentrations from the three test runs to determine compliance with the

applicable emission limits of Paragraph (c) of this Rule.

(3) An oxygen (or carbon dioxide) measurement shall be obtained at the same time as pollutant measurements to determine diluent gas levels, as specified in 40 CFR 60.1720.

(4) The equations in 40 CFR 60.1935 shall be used to calculate emission levels at seven percent oxygen (or an equivalent carbon dioxide basis), the percent reduction in potential hydrogen chloride emissions, and the reduction efficiency for mercury emissions. Other required equations are contained in individual test methods specified in Table 6 of 40 CFR Part 60, Subpart BBBB.

(5) The owner or operator may apply to the Director for approval under 40 CFR 60.8(b) to use a reference method with minor changes in methodology, use an equivalent method, use an alternative method the results of which the Director has determined are adequate for demonstrating compliance, waive the requirement for a performance test because the owner or operator have demonstrated compliance by other means, or use a shorter sampling time or smaller sampling volume.

(6) The test methods and procedures described in Section .2600 of this Subchapter, 40 CFR Part 60, Appendix A and 40 CFR Part 61, Appendix B shall be used to determine compliance with emission standards in Paragraph (c) according to table 8 of 40 CFR Part 60, Subpart BBBB.

(7) Method 29 of 40 CFR Part 60, Appendix A-8 shall be used to determine emission rates for metals for toxic evaluations except for chromium (VI). Method 29 shall be used only to collect samples and SW 846 Method 0060 shall be used to analyze the samples of chromium (VI).

(8) The owner or operator shall conduct initial stack tests to measure the emission levels of dioxins and furans, cadmium, lead, mercury, beryllium, arsenic, chromium (VI), particulate matter, opacity, hydrogen chloride, and fugitive ash. Annual stack tests for the same pollutants except beryllium, arsenic, and chromium (VI) shall be conducted no less than nine months and no more than 15 months since the previous test and must complete five performance tests in each 5-year calendar period.

(9) The owner or operator must use results of stack tests for dioxins and furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash to demonstrate compliance with the applicable emission limits in this rule except for carbon monoxide, nitrogen oxides, and sulfur dioxide.

(10) The owner or operator must use results of continuous emissions monitoring of carbon monoxide, nitrogen oxides, and sulfur dioxide to demonstrate compliance with the applicable emission limits in this Rule. The data from the continuous opacity monitoring system are not to be used to determine compliance with the opacity limit.

(11) The testing frequency for dioxin and furan may be reduced if the conditions under 40 CFR 60.1795(b) are met.

(12) The Director may require the owner or operator of any municipal waste combustor subject to this Rule to test his municipal waste combustor to demonstrate compliance with the emission standards in Paragraph (c) of this Rule.

(f) Monitoring, Recordkeeping, and Reporting.

(1) The owner or operator shall comply with the monitoring, recordkeeping, and reporting requirements developed pursuant to Section .0600 of this Subchapter.

(2) The owner or operator that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous parametric monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems.

(3) The owner or operator shall:

(A) install, calibrate, operate, and maintain, for each municipal waste combustor, continuous emission monitors to determine opacity, sulfur dioxide emissions, nitrogen oxides emissions, carbon monoxide, and oxygen (or carbon dioxide) according to 40 CFR 60.1715 through 60.1770;

(B) monitor load level of each municipal waste combustor according to 40 CFR 60.1810 and 60.1825;

(C) monitor temperature of the flue gases at the inlet of the particulate matter air pollution control device according to 40 CFR 60.1815 and 60.1825;

(D) monitor carbon feed rate if activated carbon is used to abate dioxins and furans or mercury emissions according to 40 CFR 60.1820 and 60.1825;

(E) maintain records of the information listed in 40 CFR 60.1830 through 60.1855 for a period of at least five years;

(F) submit a semiannual report specified in 40 CFR 60.1885, no later than February 1 and August 1 each year; and

(G) submit semiannual reports specified in 40 CFR 60.1900 of any recorded pollutant or parameter that does not comply with the pollutant or parameter limit specified in this Section using the schedule specified in 40 CFR 60.1895.

(g) Excess Emissions and Start-up and Shut-down. All municipal waste combustors subject to this Rule shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.

(h) Operator Certification.

(1) Each chief facility operator and shift supervisor shall obtain and keep a current provisional certification within six months after he transfers to the municipal waste combustion facility or six months after he is hired to work at the municipal waste combustor facility.

(2) Each chief facility operator and shift supervisor shall have obtained a full certification or have scheduled a full certification exam with the American Society of Mechanical Engineers (ASME QRO-1-1994) after he transfers to the municipal waste combustor facility or six months after he is hired to work at the municipal waste combustor facility.

(3) The owner or operator of a municipal waste combustor facility shall not allow the facility to be operated at any time unless one of the following persons is on duty at the affected facility:

(A) a fully certified chief facility operator;

(B) a provisionally certified chief facility operator who is scheduled to take the full certification exam;

(C) a fully certified shift supervisor; or

(D) a provisionally certified shift supervisor who is scheduled to take the full certification exam.

(4) If the certified chief facility operator and certified shift supervisor both are unavailable, a provisionally certified control room operator at the municipal waste combustor may fulfill the certified operator requirement. Depending on the length of time that a certified chief facility operator and certified shift supervisor are away, one of three criteria shall be met:

(A) When the certified chief facility operator and certified shift supervisor are both offsite for 12 hours or less and no other certified operator is on-site, the provisionally certified control room operator may perform those duties without notice to or approval by the Director.

- (B) When the certified chief facility operator and certified shift supervisor are offsite for more than 12 hours, but for two weeks or less, and no other certified operator is on-site, the provisionally certified control room operator may perform those duties without notice to or approval by the Director. However, the owner or operator must record the periods when the certified chief facility operator and certified shift supervisor are offsite and include the information in the annual report as specified under 40 CFR 60.1885(l).
- (C) When the certified chief facility operator and certified shift supervisor are offsite for more than two weeks and no other certified operator is on-site, the provisionally certified control room operator may perform those duties without notice to or approval by the Director. However, the owner or operator shall notify the Director in writing and submit a status report and corrective action summary to the Director every four weeks following the initial notification. In the notice, the owner or operator shall state what caused the absence and what is being done to ensure that a certified chief facility operator or certified shift supervisor is on-site. If the Director notifies the owner or operator that the status report or corrective action summary is disapproved, the municipal waste combustor may continue operation for 90 days, but then shall cease operation. If corrective actions are taken in the 90-day period such that the Director withdraws the disapproval, municipal waste combustor operations may continue.
- (D) The Director shall disapprove the status report and corrective action summary report, described in Part (C) of this Subparagraph, if operating permit requirements are not being met, the status or corrective action reports indicate that the effort to have a certified chief facility operator or certified shift supervisor on site as expeditiously as practicable is not being met, or the reports are not delivered in a timely manner.

The referenced ASME exam (ASME QRO-1-1994), "Standard for the Qualification and Certification of Resource Recovery Facility Operators," in this Paragraph is hereby incorporated by

reference and includes subsequent amendments and editions. Copies of the referenced ASME exam may be obtained from the American Society of Mechanical Engineers (ASME), 22 Law Drive, Fairfield, NJ 07007.

(i) Training.

- (1) The owner or operator of each municipal waste combustor shall develop and update on a yearly basis a site-specific operating manual that shall at the minimum address:
 - (A) a summary of all applicable requirements in this Rule,
 - (B) a description of the basic combustion principles that apply to municipal waste combustors,
 - (C) procedures for receiving, handling, and feeding municipal solid waste,
 - (D) procedures to be followed during periods of startup, shutdown, and malfunction of the municipal waste combustor,
 - (E) procedures for maintaining a proper level of combustion air supply,
 - (F) procedures for operating the municipal waste combustor in compliance with the requirements contained in 40 CFR 60 Subpart JJJ,
 - (G) procedures for responding to periodic upset or off-specification conditions,
 - (H) procedures for minimizing carryover of particulate matter,
 - (I) procedures for handling ash,
 - (J) procedures for monitoring emissions from the municipal waste combustor,
 - (K) procedures for recordkeeping and reporting.

The operating manual shall be updated continually and be kept in a readily accessible location for all persons required to undergo training under Subparagraph (2) of this Paragraph. The operating manual and records of training shall be available for inspection by the personnel of the Division on request.

- (2) The owner or operator of the municipal waste combustor plant shall establish a training program to review the operating manual according to the schedule specified in Parts (A) and (B) of this Subparagraph with each person who has responsibilities affecting the operation of the facility including chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane and load handlers:
 - (A) A date prior to the day when the person assumes responsibilities affecting municipal waste combustor operation; and
 - (B) Annually, following the initial training required by Part (A) of this Subparagraph.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(4),(5); 40 CFR 60.35b; 40 CFR 60.34e; 40 CFR 60.1515.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 58 – REAL ESTATE COMMISSION

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Real Estate Commission intends to adopt the rules cited as 21 NCAC 58A .2001-.2002, .2101-.2105; 58E .0601-.0604; and amend the rules cited as 21 NCAC 58A .0108, .0110, .0112, .0114, .1705; 58B .0401; 58C .0102-.0103, .0206, .0302; 58E .0304, .0412, .0510.

Proposed Effective Date: July 1, 2010

Public Hearing:

Date: February 10, 2010

Time: 9:00 a.m.

Location: North Carolina Real Estate Commission, 1313 Navaho Drive, Raleigh, NC 27609

Reason for Proposed Action:

21 NCAC 58A .0108, .0110, .0112, .0114, .1705; 58B .0401; 58C .0102, .0103, .0206, .0302; 58E .0304, .0412, .0510 – To clarify the current rules in light of suggestions from the public, licensees and the Commission’s staff.

21 NCAC 58A .2001-.2002 – Adoption is required by G.S. 93B-2(d).

21 NCAC 58A .2101-.2105 – Adoption is required by G.S. 93B-15(b).

21 NCAC 58E .0601-.0604 – Adoption is proposed to clarify the requirements and procedures for the broker-in-charge continuing education course.

Procedure by which a person can object to the agency on a proposed rule: Any person who objects or who has comment about the proposed rule changes may submit written comments to rule-making coordinator, Thomas R. Miller, at the address listed in this notice.

Comments may be submitted to: Thomas R. Miller, 1313 Navaho Dr., Raleigh, NC 27609, phone (919) 875-3700 and fax (919) 981-5023.

Comment period ends: March 16, 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

SUBCHAPTER 58A - REAL ESTATE BROKERS

SECTION .0100 - GENERAL BROKERAGE

21 NCAC 58A .0108 RETENTION OF RECORDS

Licensees shall retain records of all sales, rental, and other transactions conducted in such capacity, whether the transaction is pending, completed, or terminated prior to its successful conclusion. The licensee shall retain such records for three five years after all funds held by the licensee in connection with the transaction have been disbursed to the proper party or parties or until the successful or unsuccessful conclusion of the transaction, whichever occurs later. Such records shall include contracts of sale, written leases, agency contracts, options, offers to purchase, trust or escrow records, earnest money receipts, disclosure documents, closing statements, brokerage cooperation agreements, declarations of affiliation, and any other records pertaining to real estate transactions. All such records shall be made available for inspection and reproduction by the Commission or its authorized representatives without prior notice.

Authority G.S. 93A-3(c); 93A-9.

21 NCAC 58A .0110 BROKER-IN-CHARGE

(a) Every real estate firm shall designate a broker to serve as the broker-in-charge at its principal office and a broker to serve as broker-in-charge at any branch office. No broker shall be broker-in-charge of more than one office at a time. If a firm shares office space with one or more other firms, one broker may serve as broker-in-charge of each firm at that location. No office or branch office of a firm shall have more than one designated broker-in-charge. A broker who is a sole proprietor shall designate himself or herself as a broker-in-charge if the broker engages in any transaction where the broker is required to deposit and maintain monies belonging to others in a trust account, engages in advertising or promoting his or her services as a broker in any manner, or has one or more other brokers affiliated with him or her in the real estate business. Maintenance of a trust or escrow account by a broker solely for holding residential tenant security deposits received by the broker on properties owned by the broker in compliance with N.C.G.S. 42-50 shall not, standing alone, subject the broker to the requirement to designate himself or herself as a broker-in-charge. A broker desiring to be a broker-in-charge shall declare

in writing his or her designation as broker-in-charge of an office to the Commission on a form prescribed by the Commission within 10 days following the broker's designation as broker in charge of any office. The broker-in-charge shall, in accordance with the requirements of G.S. 93A and the rules adopted by the Commission, assume the responsibility at his or her office for:

- (1) the retention of current license renewal pocket cards by all brokers employed at the office for which he or she is broker-in-charge; the proper display of licenses at such office in accordance with Rule .0101 of this Section; and assuring that each licensee employed at the office has complied with Rules .0503, .0504, and .0506 of this Subchapter;
- (2) the proper notification to the Commission of any change of business address or trade name of the firm and the registration of any assumed business name adopted by the firm for its use;
- (3) the proper conduct of advertising by or in the name of the firm at such office;
- (4) the proper maintenance at such office of the trust or escrow account of the firm and the records pertaining thereto;
- (5) the proper retention and maintenance of records relating to transactions conducted by or on behalf of the firm at such office, including those required to be retained pursuant to Rule .0108 of this Section;
- (6) the proper supervision of provisional brokers associated with or engaged on behalf of the firm at such office in accordance with the requirements of Rule .0506 of this Subchapter;
- (7) the proper supervision of all licensees employed at the office for which he or she is broker-in-charge with respect to adherence to agency agreement and disclosure requirements.

(b) When used in this Rule, the term:

- (1) "Branch Office" means any office in addition to the principal office of a broker which is operated in connection with the broker's real estate business; and
- (2) "Office" means any place of business where acts are performed for which a real estate license is required or where monies received by a licensee acting in a fiduciary capacity are handled or records for such trust monies are maintained.

(c) To qualify to become a broker-in-charge, a broker shall:

- (1) have a license on active status but not on provisional status;
- (2) possess at least two years of full-time real estate brokerage experience or equivalent part-time real estate brokerage experience within the previous five years or real estate education or experience in real estate transactions that the Commission finds equivalent to such experience; and

- (3) complete the Commission's 12 classroom hour broker-in-charge course either within three years prior to designation as a broker-in-charge or within 120 days following designation as a broker-in-charge.

By submission of a broker-in-charge declaration to the Commission, a broker certifies that he or she possesses the experience required to become a broker-in-charge and upon acknowledgement by the Commission of a completed declaration, the broker shall receive his or her broker-in-charge designation and be authorized to act as a broker-in-charge. Upon his or her designation as broker-in-charge and completion of the broker-in-charge course within the time period prescribed in Subparagraph ~~(b)(3)~~ (c)(3) of this Rule, the designated broker-in-charge acquires the eligibility to be re-designated as a broker-in-charge at any time in the future after a period of not actively serving as a broker-in-charge without having to again satisfy the qualification requirements for initial designation stated in this Paragraph so long as the broker continuously satisfies the requirements to retain such eligibility described in Paragraph (e) of this Rule. A broker-in-charge designation shall be immediately terminated if a broker-in-charge fails to complete the broker-in-charge course during the required time period or if the Commission finds the broker-in-charge does not possess the required experience. Upon the request of the Commission, a broker shall provide to the Commission evidence that he or she possesses the required experience. A broker who is removed as broker-in-charge for failure to timely complete the Commission's 12 hour broker-in-charge course must first complete the 12 hour broker-in-charge course before he or she may again be designated as broker-in-charge. A broker-in-charge, upon written request of the Commission or a broker who has been affiliated with the broker-in-charge within the previous five years, shall provide the Commission or broker an accurate written statement regarding the broker's work at the office of the broker-in-charge, including the dates of affiliation, average number of hours worked per week, and the number and type of properties listed, sold, bought, leased, or rented for others by the licensee during his or her affiliation with the broker-in-charge.

(d) A broker who was the broker-in-charge of a real estate office on April 1, 2006, whose broker-in-charge declaration was received by the Commission prior to that date, and who completed the Commission's broker-in-charge course prior to April 1, 2006 or within 120 days following designation as a broker-in-charge, may continue to serve as a broker-in-charge thereafter until his or her eligibility to serve as a broker-in-charge is terminated as provided in Paragraph (f) of this Rule.

(e) Once a broker has been designated as a broker-in-charge and completed the 12 hour broker-in-charge course as prescribed by Paragraph (c) of this Rule, the broker may maintain broker-in-charge eligibility by timely annual renewal of his or her broker license, completion each license year of the four hour mandatory continuing education update course prescribed for all licensees and known as the "Real Estate Update Course," and completion each license year of the four hour special continuing education course prescribed by the Commission only for brokers-in-charge and known as the "Broker-In-Charge Annual Review Course." The Broker-In-Charge Annual Review Course must be taken initially by a broker-in-charge during the first full license year

following the license year in which the broker was designated as a broker-in-charge and must be taken each license year thereafter in order for the broker to maintain broker-in-charge eligibility. The Broker-In-Charge Annual Review Course shall satisfy the broker's general continuing education elective course requirement, but the broker must also take the mandatory continuing education Real Estate Update Course each license year. The Broker-In-Charge Annual Review Course is reserved exclusively for current brokers-in-charge, and brokers who are not currently acting as a broker-in-charge but who desire to retain their broker-in-charge eligibility. Only these brokers shall receive continuing education elective credit for taking the course.

(f) A broker's broker-in-charge eligibility and, if currently designated as a broker-in-charge, his or her broker-in-charge designation shall be terminated upon the occurrence of any of the following events:

- (1) The broker's license expires or the broker's license is suspended, revoked or surrendered;
- (2) the broker's license is made inactive for any reason, including failure to satisfy the continuing education requirements described in Rule .1702 of this Subchapter;
- (3) the broker fails to complete the Broker-In-Charge Annual Review Course described in Paragraph (e) of this Rule; or
- (4) the broker is found by the Commission to have not possessed the experience required in Paragraph (c) of this Rule at the time of either initial designation as a broker-in-charge or re-designation as a broker-in-charge.

When a broker who is a former broker-in-charge desires to be re-designated as a broker-in-charge following termination of his or her broker-in-charge designation or eligibility, he or she must first have a license on active status. The broker then must satisfy the experience requirements for initial designation set forth in Paragraph (c) of this Rule, and the broker must complete the 12 hour broker-in-charge course within 120 days following re-designation, except that if the broker has taken the 12 hour broker-in-charge course within the preceding three years, he or she has the option to complete the Broker-In-Charge Annual Review Course for the current license year within 120 days following re-designation as a broker-in-charge in lieu of repeating the 12 hour broker-in-charge course. If a broker who has been re-designated as a broker-in-charge and then removed as broker-in-charge due to failure to satisfy his education requirement within 120 days following re-designation subsequently seeks another re-designation as broker-in-charge, the broker must first complete the 12 hour broker-in-charge course before he or she may again be designated as a broker-in-charge, even if the broker has completed the 12 hour broker-in-charge course within the preceding three years.

(g) A broker-in-charge shall notify the Commission in writing that he or she no longer is serving as broker-in-charge of a particular office within 10 days following any such change.

(h) A licensed real estate firm is not required to designate a broker-in-charge if it:

- (1) has been organized for the sole purpose of receiving compensation for brokerage services

furnished by its qualifying broker through another firm or broker;

- (2) is treated for tax purposes as a Subchapter S corporation by the United States Internal Revenue Service;
- (3) has no principal or branch office; and
- (4) has no person associated with it other than its qualifying broker.

(i) A broker-in-charge residing outside of North Carolina who is the broker-in-charge of a principal or branch office not located in North Carolina is not required to complete the broker-in-charge course or the special continuing education course prescribed for brokers-in-charge under Paragraph (e) of this Rule. However, if such broker-in-charge either becomes a resident of North Carolina or becomes broker-in-charge of an office located within North Carolina, then he or she must take the 12 hour broker-in-charge course within 120 days of such change, unless he or she has taken the 12 hour course within the preceding three years. Such broker-in-charge shall take the special broker-in-charge continuing education course prescribed in Paragraph (e) of this Rule during the first full license year following the change and each license year thereafter so long as the broker-in-charge remains a resident of North Carolina or continues to manage an office located in North Carolina.

(j) A nonresident commercial real estate broker licensed under the provisions of Section .1800 of this Subchapter shall not act as or serve in the capacity of a broker-in-charge of a firm or office in North Carolina.

Authority G.S. 93A-2; 93A-3(c); 93A-4; 93A-4.1; 93A-4.2; 93A-9.

21 NCAC 58A .0112 OFFERS AND SALES CONTRACTS

(a) A broker acting as an agent in a real estate transaction shall not use a preprinted offer or sales contract form unless the form describes or specifically requires the entry of the following information:

- (1) the names of the buyer and seller;
- (2) a legal description of the real property sufficient to identify and distinguish it from all other property;
- (3) an itemization of any personal property to be included in the transaction;
- (4) the purchase price and manner of payment;
- (5) any portion of the purchase price that is to be paid by a promissory note, including the amount, interest rate, payment terms, whether or not the note is to be secured, and other material terms;
- (6) any portion of the purchase price that is to be paid by the assumption of an existing loan, including the amount of such loan, costs to be paid by the buyer or seller, the interest rate and number of discount points and a condition that the buyer must be able to qualify for the assumption of the loan and must make every reasonable effort to qualify for the assumption of the loan;

- (7) the amount of earnest money, if any, the method of payment, the name of the broker or firm that will serve as escrow agent, an acknowledgment of earnest money receipt by the escrow agent, and the criteria for determining disposition of the earnest money, including disputed earnest money, consistent with Commission Rule .0107 of this Subchapter;
- (8) any loan that must be obtained by the buyer as a condition of the contract, including the amount and type of loan, interest rate and number of discount points, loan term, and who shall pay loan closing costs; and a condition that the buyer shall make every reasonable effort to obtain the loan;
- (9) a general statement of the buyer's intended use of the property and a condition that such use must not be prohibited by private restriction or governmental regulation;
- (10) the amount and purpose of any special assessment to which the property is subject and the responsibility of the parties for any unpaid charges;
- (11) the date for closing and transfer of possession;
- (12) the signatures of the buyer and seller;
- (13) the date of offer and acceptance;
- (14) a provision that title to the property must be delivered at closing by general warranty deed and must be fee simple marketable title, free of all encumbrances except ad valorem taxes for the current year, utility easements, and any other encumbrances specifically approved by the buyer, or a provision otherwise describing the estate to be conveyed, and encumbrances, and the form of conveyance;
- (15) the items to be prorated or adjusted at closing;
- (16) who shall pay closing expenses;
- (17) the buyer's right to inspect the property prior to closing and who shall pay for repairs and improvements, if any;
- (18) a provision that the property shall at closing be in substantially the same condition as on the date of the offer (reasonable wear and tear excepted), or a description of the required property condition at closing; and

- (19) a provision setting forth the identity of each real estate agent and firm involved in the transaction and disclosing the party each agent and firm represents.

(b) The provisions of this rule shall apply only to preprinted offer and sales contract forms which a broker acting as an agent in a real estate transaction proposes for use by the buyer and seller. Nothing contained in this Rule shall be construed to prohibit the buyer and seller in a real estate transaction from altering, amending or deleting any provision in a form offer to purchase or contract; nor shall this Rule be construed to limit the rights of the buyer and seller to draft their own offers or contracts or to have the same drafted by an attorney at law.

(c) A broker acting as an agent in a real estate transaction shall not use a preprinted offer or sales contract form ~~containing the provisions or terms listed in Subparagraphs (b)(1) and (2) of this Rule. A broker or anyone acting for or at the direction of the broker shall not insert or cause such provisions or terms to be inserted into any such preprinted form, even at the direction of the parties or their attorneys:~~

- (1) any provision concerning the payment of a commission or compensation, including the forfeiture of earnest money, to any broker or firm; or
- (2) any provision that attempts to disclaim the liability of a broker for his or her representations in connection with the transaction.

A broker or anyone acting for or at the direction of the broker shall not insert or cause such provisions or terms to be inserted into any such preprinted form, even at the direction of the parties or their attorneys.

Authority G.S. 93A-3(c).

21 NCAC 58A .0114 RESIDENTIAL PROPERTY DISCLOSURE STATEMENT

(a) Every owner of real property subject to a transfer of the type contemplated by Chapter 47E of the General Statutes, shall complete the following residential property disclosure statement and furnish a copy of the complete statement to a purchaser in accordance with the requirements of G.S. 47E-4. The form shall bear the seal of the North Carolina Real Estate Commission and shall read as follows:

[N.C. REAL ESTATE COMMISSION SEAL]

**STATE OF NORTH CAROLINA
RESIDENTIAL PROPERTY DISCLOSURE STATEMENT**

Instructions to Property Owners

1. G.S. 47E requires owners of residential real estate (single-family homes and buildings with up to four dwelling units) to furnish purchasers a property disclosure statement. This form is the only one approved for this purpose. A disclosure statement must be furnished in connection with the sale, exchange, option and sale under a lease with option to purchase (unless the tenant is already occupying or intends to occupy the dwelling). A disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited and transactions of residential property

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made pursuant to a lease with option to purchase where the lessee occupies or intends to occupy the dwelling. For a complete list of exemptions, see G.S. 47E-2.

2. You must check one of the boxes for each of the 24 questions on the reverse side of this form.
 - a. If you check "Yes" for any question, you must explain your answer and either describe any problem or attach a report from an engineer, contractor, pest control operator or other expert or public agency describing it. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in it so long as you were not grossly negligent in obtaining or transmitting the information.
 - b. If you check "No", you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misstatement.
 - c. If you check "No Representation", you have no duty to disclose the conditions or characteristics of the property, even if you should have known of them.
 - * If you check "Yes" or "No" and something happens to the property to make your Statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly give the purchaser a corrected Statement or correct the problem.
3. If you are assisted in the sale of your property by a licensed real estate broker, you are still responsible for completing and delivering the Statement to the purchasers; and the broker must disclose any material facts about your property which they know or reasonably should know, regardless of your responses on the Statement.
4. You must give the completed Statement to the purchaser no later than the time the purchaser makes an offer to purchase your property. If you do not, the purchaser can, under certain conditions, cancel any resulting contract (See "**Note to Purchasers**" below). You should give the purchaser a copy of the Statement containing your signature and keep a copy signed by the purchaser for your records.

Note to Purchasers

If the owner does not give you a Residential Property Disclosure Statement by the time you make your offer to purchase the property, you may under certain conditions cancel any resulting contract and be entitled to a refund of any deposit monies you may have paid. To cancel the contract, you must personally deliver or mail written notice of your decision to cancel to the owner or the owner's agent within three calendar days following your receipt of the Statement, or three calendar days following the date of the contract, whichever occurs first. However, in no event does the Disclosure Act permit you to cancel a contract after settlement of the transaction or (in the case of a sale or exchange) after you have occupied the property, whichever occurs first.

5. In the space below, type or print in ink the address of the property (sufficient to identify it) and your name. Then sign and date.

Property Address: _____	
Owner's Name(s): _____	
<i>Owner(s) acknowledge having examined this Statement before signing and that all information is true and correct as of the date signed.</i>	
Owner Signature: _____	Date _____, ____
Owner Signature: _____	Date _____, ____
<i>Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that they have examined it before signing; that they understand that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections they may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain their own inspection from a licensed home inspector or other professional.</i>	
Purchaser Signature: _____	Date _____, ____
Purchaser Signature: _____	Date _____, ____

PROPOSED RULES

Property Address/Description: _____

[Note: In this form, "property" refers only to dwelling unit(s) and not sheds, detached garages or other buildings.]

Regarding the property identified above, do you know of any problem (malfunction or defect) with any of the following:

	Yes*	No	No Repr- sentation
1. FOUNDATION, SLAB, FIREPLACES/CHIMNEYS, FLOORS, WINDOWS (INCLUDING STORM WINDOWS AND SCREENS), DOORS, CEILINGS, INTERIOR AND EXTERIOR WALLS, ATTACHED GARAGE, PATIO, DECK OR OTHER STRUCTURAL COMPONENTS including any modifications to them?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Siding is: <input type="checkbox"/> Masonry <input type="checkbox"/> Wood <input type="checkbox"/> Composition/Hardboard <input type="checkbox"/> Vinyl <input type="checkbox"/> Synthetic Stucco <input type="checkbox"/> Other _____			<input type="checkbox"/>
b. Approximate age of structure? _____			<input type="checkbox"/>
2. ROOF (leakage or other problem)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Approximate age of roof covering? _____			<input type="checkbox"/>
3. WATER SEEPAGE, LEAKAGE, DAMPNES OR STANDING WATER in the basement, crawl space or slab?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. ELECTRICAL SYSTEM (outlets, wiring, panel, switches, fixtures etc.)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. PLUMBING SYSTEM (pipes, fixtures, water heater, etc.)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. HEATING AND/OR AIR CONDITIONING?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Heat Source is: <input type="checkbox"/> Furnace <input type="checkbox"/> Heat Pump <input type="checkbox"/> Baseboard <input type="checkbox"/> Other _____			<input type="checkbox"/>
b. Cooling Source is: <input type="checkbox"/> Central Forced Air <input type="checkbox"/> Wall/Window Unit(s) <input type="checkbox"/> Other _____			<input type="checkbox"/>
c. Fuel Source is: <input type="checkbox"/> Electricity <input type="checkbox"/> Natural Gas <input type="checkbox"/> Propane <input type="checkbox"/> Oil <input type="checkbox"/> Other _____			<input type="checkbox"/>
7. WATER SUPPLY (including water quality, quantity and water pressure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Water supply is: <input type="checkbox"/> City/County <input type="checkbox"/> Community System <input type="checkbox"/> Private Well <input type="checkbox"/> Other _____			<input type="checkbox"/>
b. Water pipes are: <input type="checkbox"/> Copper <input type="checkbox"/> Galvanized <input type="checkbox"/> Plastic <input type="checkbox"/> Other _____ <input type="checkbox"/> Unknown			<input type="checkbox"/>
8. SEWER AND/OR SEPTIC SYSTEM?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Sewage disposal system is: <input type="checkbox"/> Septic Tank <input type="checkbox"/> Septic Tank with Pump <input type="checkbox"/> Community System <input type="checkbox"/> Connected to City/County System <input type="checkbox"/> City/County System available <input type="checkbox"/> Straight pipe (wastewater does not go into a septic or other sewer system [note: use of this type of system violates state law]) <input type="checkbox"/> Other _____			<input type="checkbox"/>
9. BUILT-IN APPLIANCES (RANGE/OVEN, ATTACHED MICROWAVE, HOOD/FAN, DISHWASHER, DISPOSAL, etc.)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. PRESENT INFESTATION, OR DAMAGE FROM PAST INFESTATION OF WOOD DESTROYING INSECTS OR ORGANISMS which has not been repaired?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

PROPOSED RULES

11. DRAINAGE, GRADING OR SOIL STABILITY OF LOT?
12. OTHER SYSTEMS AND FIXTURES: CENTRAL VACUUM, POOL, HOT TUB, SPA, ATTIC FAN, EXHAUST FAN, CEILING FAN, SUMP PUMP, IRRIGATION SYSTEM, TV CABLE WIRING OR SATELLITE DISH, OR OTHER SYSTEMS?
- Also regarding the property identified above, including the lot, other improvements, and fixtures located thereon, do you have any**
13. ROOM ADDITIONS OR OTHER STRUCTURAL CHANGES ?
14. ENVIRONMENTAL HAZARDS (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination)?
15. COMMERCIAL OR INDUSTRIAL NUISANCES (noise, odor, smoke, etc.) affecting the property?
16. VIOLATIONS OF ZONING ORDINANCES, RESTRICTIVE COVENANTS OR OTHER LAND-USE RESTRICTIONS, OR BUILDING CODES INCLUDING THE FAILURE TO OBTAIN PROPER PERMITS FOR ROOM ADDITIONS OR OTHER STRUCTURAL CHANGES(S)?
17. UTILITY OR OTHER EASEMENTS, SHARED DRIVEWAYS, PARTY WALLS OR ENCROACHMENTS FROM OR ON ADJACENT PROPERTY?
18. LAWSUITS, FORECLOSURES, BANKRUPTCY, TENANCIES, JUDGMENTS, TAX LIENS, PROPOSED ASSESSMENTS, MECHANICS' LIENS, MATERIALMENS' LIENS, OR NOTICE FROM ANY GOVERNMENTAL AGENCY that could affect title to the property?
19. OWNERS' ASSOCIATION OR "COMMON AREA" EXPENSES OR ASSESSMENTS?
20. FLOOD HAZARD or that the property is in a FEDERALLY-DESIGNATED FLOOD PLAIN?
21. PRIVATE ROAD(S) OR STREETS adjoining the property?
a. If yes, do you know of an existing owner's association or maintenance agreement to maintain the road or street?
22. ANY NOISE OR SMOKE from low flying aircraft, artillery, small arms fire, bombing, or controlled burns on or from a nearby MILITARY INSTALLATION?

* If you answered "Yes" to any of the above questions, please explain (Attach additional sheets, if necessary):

In lieu of providing a written explanation, you may attach a written report to this Disclosure Statement by a public agency, engineer, land surveyor, geologist, pest control operator, contractor, home inspector or other expert, dealing with matters within the scope of that public agency's functions or the expert's license or expertise.

(b) The form described in Paragraph (a) of this Rule may be reproduced, but the form shall not be altered or amended in any way.

Authority G.S. 47E-4(b); 93A-3(c); 93A-6.

SECTION .1700 – MANDATORY CONTINUING EDUCATION

21 NCAC 58A .1705 ATTENDANCE AND PARTICIPATION REQUIREMENTS

In order to receive any credit for satisfactorily completing an approved continuing education course, a licensee must attend at least 90 percent of the scheduled classroom hours for the course, regardless of the length of the course, and must comply with student participation standards described in Rule .0511 of Subchapter 58E. No credit shall be awarded for attending less than 90 percent of the scheduled classroom hours. The 10 percent absence allowance is permitted for any reason at any time during the course except that it may not be used to skip the last 10 percent of the course unless the absence is for circumstances beyond the licensee's control that could not have been reasonably foreseen by the licensee and is approved by the instructor. With regard to the Commission's 12-hour Broker-In-Charge Course that is taught over two days, a licensee must attend at least 90 percent of the scheduled classroom hours on each day of the course and the 10 percent absence allowance cited above shall apply to each day of the course.

Authority G.S. 93A-3(c); 93A-4A.

SECTION .2000 – ANNUAL REPORTS

21 NCAC 58A .2001 FILING

Each year, the Commission shall compile the reports required by G.S. 93B-2(a) and (b) and shall, no later than October 31, file the reports with the officials and agencies set forth in the statute.

Authority G.S. 93B-2(d).

21 NCAC 58A .2002 ESCROW ACCOUNT

(a) The Commission shall establish an escrow account or accounts with a financial institution or institutions lawfully doing business in this state into which the Commission shall deposit and hold fees tendered during any period of time when, pursuant to G.S. 93B-2(d), the Commission's authority to expend funds has been suspended. The Commission shall keep funds deposited into its escrow account or accounts segregated from other assets, monies, and receipts for the duration of the suspension of the Commission's authority to expend funds.

(b) The Commission may deposit into and maintain in its escrow account such monies as may be required to avoid or eliminate costs associated with the account or accounts.

Authority G.S. 93B-2(d).

SECTION .2100 – BROKERS IN MILITARY SERVICE

21 NCAC 58A .2101 APPLICABILITY

This Section shall apply to every broker whose license is not revoked, suspended, or surrendered, or who is otherwise the subject of a disciplinary order, and who is eligible for an extension of time to file a tax return under the provisions of G.S. 150-249.2 and 26 U.S.C. 7508.

Authority G.S. 93B-15(b).

21 NCAC 58A .2102 POSTPONEMENT OF FEES

(a) A Broker described in 21 NCAC 58A .2101 shall not be required to pay renewal fees accrued during the time to be disregarded described in 26 U.S.C. 7508 until the June 30 immediately following the end of such time. The provisions of 21 NCAC 58A .0504 notwithstanding, during such time and until the June 30 immediately thereafter, the license of a broker other than a provisional broker shall remain on active status. During such time, the license of a provisional broker shall not expire, but shall remain on active status only if the provisional broker remains under the supervision of a broker-in-charge.

(b) All fees postponed by operation of this subsection shall be due and payable on June 30 immediately following the time to be disregarded as described in 26 U.S.C. 7508.

Authority G.S. 93A-3(c); 93B-15(b).

21 NCAC 58A .2103 POSTPONEMENT OF CONTINUING EDUCATION

(a) A broker described by 21 NCAC 58A .2101 shall not be required to complete the continuing education required as a condition of license renewal for any June 30 license expiration date if that date falls during the time to be disregarded described in 26 U.S.C. 7508 until the June 10 immediately following the end of such time to be disregarded. If such time ends on or after May 1, the broker shall have until September 1 of the same year to complete the required continuing education.

(b) If a broker entitled to a postponement of continuing education under this subsection accumulates a deficiency in his or her continuing education of 16 or more hours because of the length of the time to be disregarded under 26 U.S.C. 7508, the broker may satisfy the deficiency by satisfying the requirements of 21 NCAC 58A .1703(c) established for an inactive broker returning to active status.

(c) The license of a broker entitled to postponement of continuing education under this subsection shall not be placed on inactive status for failure to complete continuing education until the deadline for completion set out in Paragraph (a) of this Rule has passed.

Authority G.S. 93A-3(c); 93B-15(b).

21 NCAC 58A .2104 POSTPONEMENT OF POSTLICENSING EDUCATION

A broker described by 21 NCAC 58A .2101 who is a provisional broker shall not be required to complete any post-licensing education required to be completed during the period to be disregarded under 26 U.S.C. 5708 until the 180th day following the ending of such period. The broker's license shall not be placed on inactive status or cancelled for his or failure to complete the required post-licensing education prior to the deadline established in this Rule.

Authority G.S. 93A-3(c); 93B-15(b).

21 NCAC 58A .2105 PROOF OF ELIGIBILITY

It shall be the responsibility of every broker eligible for the postponement of fees and education requirements established by this Section to demonstrate his or her eligibility and the beginning and ending of the time to be disregarded as described in 26 U.S. C. 5708.

Authority G.S. 93A-3(c); 93B-15(b).

SUBCHAPTER 58B – TIME SHARES

SECTION .0400 - TIME SHARE SALES OPERATION

21 NCAC 58B .0401 RETENTION OF TIME SHARE RECORDS

A time share developer and a time share salesperson shall retain or cause to be retained for a period of ~~three~~ five years complete records of every time share sale, rental, or exchange transaction made by or on behalf of the developer. Records required to be retained shall include but not be limited to offers, applications and contracts to purchase, rent or exchange time shares; records of the deposit, maintenance and disbursement of funds required to be held in trust; receipts; notices of cancellation and their covers if mailed; records regarding compensation of salespersons; public offering statements; and any other records pertaining to time share transactions. Such records shall be made available to the Commission and its representatives upon request.

Authority G.S. 93A-51; 93A-54(d).

SUBCHAPTER 58C - REAL ESTATE PRELICENSING EDUCATION

SECTION .0100 – SCHOOLS

21 NCAC 58C .0102 APPLICATION FOR APPROVAL

Schools seeking approval to conduct real estate prelicensing or postlicensing courses must make written application to the Commission upon a form prescribed by the Commission. ~~Schools shall submit a separate application for each separate department under which courses are to be conducted.~~

Authority G.S. 93A-4.

21 NCAC 58C .0103 CRITERIA FOR APPROVAL

(a) After due investigation and consideration, approval shall be granted to a school when it is shown to the satisfaction of the Commission that:

- (1) The school has submitted a complete and accurate application for approval;
- (2) The school is a North Carolina post-secondary educational institution licensed or approved by the State Board of Community Colleges or the Board of Governors of the University of North Carolina or a North Carolina private business or trade school licensed under G.S. 115D-90; ~~and~~

(3) The courses to be conducted comply with the standards described in Section .0300 of this ~~Subchapter-Subchapter; and~~

~~(4) The school has designated one professional-level employee to serve as the director of all the school's real estate prelicensing and postlicensing course offerings and, in that capacity, be responsible for liaison with the Commission and for assuring compliance with all Commission rules relating to the conduct of such courses regardless of where the courses are offered.~~

(b) A North Carolina college or university which grants a baccalaureate or higher degree with a major or minor in the field of real estate, real estate brokerage, real estate law, real estate finance, real estate development, or other similar fields shall request that appropriate real estate and related courses in its curriculum be approved by the Commission as equivalent to the real estate prelicensing education program prescribed by G.S. 93A-4(a). The Commission shall grant such approval and shall exempt such school from compliance with the course standards set forth in Section .0300 of this Subchapter.

Authority G.S. 93A-4.

SECTION .0200 - PRIVATE REAL ESTATE SCHOOLS

21 NCAC 58C .0206 ADMINISTRATION

(a) One person must be designated as the ~~Director~~ director of the school. The ~~Director~~ school director is responsible for personally providing direct and active supervision of all school operations related to the conduct of real estate prelicensing and postlicensing ~~courses and courses, for assuring~~ compliance with all statutory and rule requirements governing the licensing and operation of the ~~school.~~ school, and for liaison with the Commission.

(b) The school director must be possessed of good character and reputation and must satisfy one of the following qualification standards:

- (1) hold a baccalaureate or higher degree in the field of education; or
- (2) have at least two years full-time experience within the past ten years as an instructor or school administrator; or
- (3) possess qualifications which are found by the Commission to be substantially equivalent to those described in Subparagraph (1) or (2) of this Paragraph.

Authority G.S. 93A-4; 93A-33.

SECTION .0300 - PRELICENSING AND POSTLICENSING COURSES

21 NCAC 58C .0302 PROGRAM STRUCTURING AND ADMISSION REQUIREMENTS

(a) The real estate prelicensing education program shall consist of a single course consisting of at least 75 classroom hours of instruction. Schools may establish course admission standards

that require students to demonstrate to the satisfaction of the school that they possess the basic reading, writing and mathematics skills necessary to be successful in the prelicensing course, and these standards may include a requirement to complete additional instruction prior to enrollment.

(b) The real estate postlicensing education program shall consist of three courses, prescribed by the Commission in 21 NCAC 58A .1902, each consisting of at least 30 classroom hours of instruction, which may be taken by students in any sequence.

(c) The prerequisite for enrollment in a postlicensing course is possession of a current North Carolina broker license on provisional status; however, schools may admit an unlicensed individual to a postlicensing course if the individual demonstrates that he or she needs to complete the course for the purpose of qualifying for reinstatement of an expired, canceled, revoked or surrendered license not on provisional status, or may admit any individual regardless of license status if the individual demonstrates that he or she is required to complete the course pursuant to a disciplinary consent order issued by the Commission. A school shall not knowingly enroll an individual in a postlicensing course while the individual is taking another postlicensing course at the same school or a different school if such enrollment would result in the individual being in class for more than 21 classroom hours in any given seven-day period.

Authority G.S. 93A-4(a1); 93A-33.

SUBCHAPTER 58E - REAL ESTATE CONTINUING EDUCATION

SECTION .0300 - ELECTIVE COURSES

21 NCAC 58E .0304 CRITERIA FOR ELECTIVE COURSE APPROVAL

(a) The following requirements must be satisfied in order to obtain approval of a proposed elective course:

- (1) The applicant must submit all information required by the Commission and pay the application fee, if applicable.
- (2) The applicant must satisfy the requirements of Section .0400 of this Subchapter relating to the qualifications or eligibility of course sponsors.
- (3) The subject matter of the course must satisfy the elective course subject matter requirements set forth in Rule .0305 of this Section and all information to be presented in the course must be current and accurate.
- (4) The course must involve a minimum of four classroom hours of instruction on acceptable subject matter. A classroom hour consists of 50 minutes of instruction and 10 minutes of break time.
- (5) The applicant and the continuing education coordinator required by Rule .0405 of this Subchapter must be truthful, honest and of high integrity. In this regard, the Commission may consider the reputation and character of any owner, officer and director of any

corporation, association or organization applying for sponsor approval.

- (6) The proposed instructor(s) for the course must possess the qualifications described in Rule .0306 of this Section.
- (7) The instructional delivery methods to be utilized in the course must either involve live instruction in a traditional classroom setting or comply with the requirements described in Rule .0310 of this Section.
- (8) The applicant must submit an instructor guide that includes:
 - (a) a detailed course outline,
 - (b) the amount of time to be devoted to each major topic and to breaks,
 - (c) the learning objective(s) for each major topic, and
 - (d) the instructional methods and instructional aids that will be utilized in the course. ~~The proposed time allotments must be appropriate for the proposed subject matter to be taught. Unless the applicant can demonstrate that straight lecture is the most effective instructional method for the course, the instructor guide must provide for the use of an appropriate variety of instructional methods and instructional aids intended to enhance student attentiveness and learning. Examples of instructional methods and instructional aids that may be appropriate include, but are not limited to, class discussion, role-playing, in class work assignments, overhead transparencies and video recordings.~~
- ~~(9) The course must include handout materials for students unless the applicant can demonstrate that such materials are either inappropriate or unnecessary for the course. Such materials must be current, accurate, grammatically correct, logically organized and produced in a manner that reflects reasonable quality.~~
- ~~(10) Either the instructor guide or the student materials must describe, in narrative form, the details of the substantive information to be presented in the course. The substantive information to be presented must be provided in sufficient detail to demonstrate that the information is current, accurate, complete, and otherwise appropriate.~~
- (9) The proposed time allotments shown in the instructor guide must be appropriate for the proposed subject matter to be taught. Unless the applicant can demonstrate to the satisfaction of the Commission that straight lecture is the most effective instructional method for the course, the instructor guide

must provide for the use of an appropriate variety of instructional methods and instructional aids intended to enhance student participation, attentiveness, and learning. Examples of instructional methods that may be appropriate include, but are not limited to, instructor-led class discussion, role-playing, and in-class individual or group work assignments. Examples of instructional aids that may be appropriate include, but are not limited to, PowerPoint slides, overhead transparencies, video recordings, and information from the internet displayed on a large screen.

(10) The course must include handout materials for students that provide, in narrative or text form, all the pertinent details of the information to be presented in the course. This requirement may not be satisfied by using only copies of PowerPoint slides or a detailed course outline. All information included in the student materials must be current, accurate, fully explanatory of topics covered, consistent with course learning objectives, grammatically correct, logically organized, and presented in an easy-to-read format. The scope and depth of information presented must be appropriate in view of course learning objectives and subject matter time allotments, and the information presented must, except for instruction on changes in laws, rules, or practices, include substantial coverage of subject matter at a cognitive level higher than that expected of entry-level real estate licensees. The quality of reproduced student materials must be generally comparable to that commonly seen in education materials produced by professional publishers. These standards for student materials also apply, to the extent they are relevant, to student materials other than paper materials such as material to be viewed by computer that are provided for use by students in distance education courses.

(11) If an applicant proposes to use copyrighted materials in the course, such materials must be used in a form approved by the copyright holder. If any copyrighted material is to be duplicated by the applicant for use in the course, the sponsor must have the specific permission of the copyright holder.

(b) Applicants requesting approval of distance education courses must also comply with the requirements described in Rule .0310 of this Section.

Authority G.S. 93A-3(c); 93A-4A.

SECTION .0400 - GENERAL SPONSOR REQUIREMENTS

21 NCAC 58E .0412 DENIAL OR WITHDRAWAL OF APPROVAL

(a) The Commission may deny or withdraw approval of any course or course sponsor upon finding that:

- (1) the course sponsor has made any false statements or presented any false, incomplete, or incorrect information in connection with an application for course or sponsor approval or renewal of such approval;
- (2) the course sponsor or any official or instructor in the employ of the course sponsor has refused or failed to comply with any of the provisions of this Subchapter;
- (3) the course sponsor or any official or instructor in the employ of the course sponsor has provided false, incomplete, or incorrect information in connection with any reports the course sponsor is required to submit to the Commission;
- (4) the course sponsor has engaged in a pattern of consistently canceling scheduled courses;
- (5) the course sponsor has provided to the Commission in payment for required fees a check which was dishonored by a bank;
- (6) an instructor in the employ of the course sponsor fails to conduct approved courses in a manner that demonstrates possession of the teaching skills described in Rule .0509 of this Subchapter;
- (7) any court of competent jurisdiction has found the course sponsor or any official or instructor in the employ of the course sponsor to have violated, in connection with the offering of continuing education courses, any applicable federal or state law or regulation prohibiting discrimination on the basis of disability, requiring places of public accommodation to be in compliance with prescribed accessibility standards, or requiring that courses related to licensing or certification for professional or trade purposes be offered in a place and manner accessible to persons with disabilities;
- (8) the course sponsor or any official or instructor in the employ of the course sponsor has been disciplined by the Commission or any other occupational licensing agency in North Carolina or another ~~jurisdiction;~~ jurisdiction;
- (9) the course sponsor or any official or instructor in the employ of the course sponsor has collected money from licensees for a continuing education course, but refuses or fails to provide the promised ~~instruction.~~ instruction; or
- (10) the course sponsor or any person associated with the sponsor has provided to a licensee any false, incomplete, or misleading information relating to real estate licensing or education

matters or the licensee's education needs or license status.

(b) If a licensee who is an approved course sponsor or an instructor in the employ of an approved course sponsor engages in any dishonest, fraudulent or improper conduct in connection with the licensee's activities as a course sponsor or instructor, the licensee shall be subject to disciplinary action pursuant to G.S. 93A-6.

Authority G.S. 93A-3(c); 93A-4A.

SECTION .0500 - COURSE OPERATIONAL REQUIREMENTS

21 NCAC 58E .0510 MONITORING ATTENDANCE

(a) Sponsors and instructors must monitor attendance for the duration of each class session to assure that all students reported as satisfactorily completing a course according to the criteria in 21 NCAC 58A .1705 have attended at least 90 percent of the scheduled classroom hours. Students shall not be admitted to a class session after 10 percent of the scheduled classroom hours have been conducted. The 10 percent absence allowance is generally permitted for any reason at any time during the course; however sponsors and instructors shall not permit students to use the 10 percent absence allowance to avoid the last 10 percent of the course or to leave the course early unless the absence is for circumstances beyond the student's control that could not have been reasonably foreseen by the student and is approved by the instructor. With regard to the Commission's 12-hour Broker-In-Charge Course that is taught over two days, students must attend at least 90 percent of the scheduled classroom hours on each day of the course to receive any credit for the course, and the 10 percent absence allowance restrictions cited above shall apply to each day of the course. Students shall not be allowed to sign a course completion card, shall not be issued a course completion certificate, and shall not be reported to the Commission as having completed a course unless the student fully satisfies the attendance requirement. Sponsors and instructors may not make any exceptions to the attendance requirement for any reason.

(b) Sponsors must assure that adequate personnel, in addition to the instructor, are present during all class sessions to assist the instructor in monitoring attendance and performing the necessary administrative tasks associated with conducting a course. A minimum of one person, including the instructor, for every 50 students registered for a class session shall be utilized for this purpose.

Authority G.S. 93A-3(c); 93A-4A.

SECTION .0600 – BROKER-IN-CHARGE ANNUAL REVIEW

21 NCAC 58E .0601 PURPOSE AND APPLICABILITY

This Section describes the special continuing education course for brokers-in-charge prescribed by the Commission in 21 NCAC 58A .0110(e) and the continuing education course

sponsors and instructors who are permitted to conduct the course.

Authority G.S. 93A-2; 93A-3(c); 93A-4.1; 93A-4.2.

21 NCAC 58E .0602 COURSE DESCRIPTION

The Broker-In-Charge Annual Review Course is a four-hour special continuing education course for brokers-in-charge that must be taken initially by a broker-in-charge during the first full license year following the license year in which the broker was designated as a broker-in-charge and must subsequently be taken each license year thereafter in order for the broker-in-charge to maintain broker-in-charge eligibility. The subject matter of this course shall be determined by the Commission, which shall produce course materials for use by course sponsors. The Commission shall modify the subject matter from year to year as it deems appropriate. All course materials developed by the Commission for use in the Broker-In-Charge Annual Review Course that are subject to the protection of federal copyright laws are the property of the Commission. Violation of the Commission's copyright with regard to these materials by a sponsor or instructor approved to conduct the course shall be grounds for disciplinary action by the Commission.

Authority G.S. 93A-2; 93A-3(c); 93A-4.1; 93A-4.2.

21 NCAC 58E .0603 AUTHORITY TO CONDUCT COURSE

Only continuing education update course sponsors approved under Section .0100 of this Subchapter and update course instructors approved under Section .0200 of this Subchapter are authorized to conduct the Broker-In-Charge Annual Review Course. This authority is automatic for approved update course sponsors and instructors and no separate request for approval is required. Loss of approval to sponsor or instruct an update course automatically terminates the authority to sponsor or instruct the Broker-In-Charge Annual Review Course. Any action by a sponsor or instructor that occurs in connection with conducting the Broker-In-Charge Annual Review Course shall be considered the same under Commission rules as if the action had occurred in connection with conducting an update course. No persons or entities other than approved update course sponsors and instructors will be approved to conduct this course.

Authority G.S. 93A-3; 93A-3(c); 93A-4.1; 93A-4.2.

21 NCAC 58E .0604 COURSE OPERATIONAL REQUIREMENTS

Authorized sponsors and instructors must provide students a copy of the course materials developed by the Commission and must conduct the course in accordance with the prescribed course materials and the Commission's operational requirements for continuing education courses described in Sections .0400 and .0500 of this Subchapter.

Authority G.S. 93A-2; 93A-3(c); 93A-4.1; 93A-4.2.

Note from the Codifier: The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th day.

This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

TITLE 04 – DEPARTMENT OF COMMERCE

Note: These temporary rules were adopted under the procedure set out in G.S. 150B-21.1B. Adoption of rules to implement the American Recovery and Reinvestment Act.

Rule-making Agency: North Carolina Department of Commerce

Rule Citation: 04 NCAC 01H .0401-.0404

Effective Date: December 23, 2009

Received by Codifier for entry into the NCAC on December 15, 2009. See G.S. 150B-21.1B.

Reason for Action: The North Carolina Department of Commerce ["Commerce"] finds that these rules are necessary to implement the American Recovery and Reinvestment Act of 2009 ["ARRA"], enacted February 13, 2009, and its implementing regulations, as well as G.S. 150B-21.1B, enacted August 29, 2009. Section 1401 of the ARRA, codified as Sections 1400U-1 through 1400U-3 of the Internal Revenue Code of 1986, as amended, authorized the issuance of Recovery Zone Facility Bonds and Recovery Zone Economic Development Bonds by state and local governments to foster investment in economic development projects. Under ARRA, each state received an allocation of authority to issue such bonds during 2009 and 2010. If such bonds are not issued within short timelines mandated by federal requirements, the opportunity will be lost. As timing is critical, the Agency is adopting these rules pursuant to G.S. 150B-21.1B, which provides mechanism for the adoption of temporary rules for ARRA-related funds. In any event, the Agency finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and immediate adoption of the rules is required by the foregoing. To the extent, if any, that such may be necessary, the Agency requests the Commission to waive any 210-day requirement G.S. 150B-21.1(a2) or other law upon consideration of the degree of public benefit, the lack of control by the Agency, the need for a waiver, and other factors.

CHAPTER 01 - DEPARTMENTAL RULES

SUBCHAPTER 01H - PRIVATE ACTIVITY BOND VOLUME CAPACITY PROGRAM

SECTION .0400 – RECOVERY ZONE BONDS

04 NCAC 01H .0401 BACKGROUND

Section 1401 of The American Reinvestment and Recovery Act, enacted February 13, 2009, codified as Sections 1400U-1 through 1400U-3 of the Internal Revenue Code of 1986, as amended authorized the issuance of Recovery Zone Facility Bonds and Recovery Zone Economic Development Bonds by state and local governments to foster investment in economic development projects. Under ARRA, each state received an allocation of authority to issue such bonds during 2009 and 2010. ARRA provided that the states were to allocate the issuing authority to large municipalities (defined in ARRA as cities with a population over 100,000) and counties based on the decline in employment between December 2007 and December 2008 relative to the decline in employment in the state for the same period. In Notice 2009-50, published June 12, 2009, the U.S. Treasury Department set out the allocations to the states, and also calculated the suballocations to large municipalities and the counties within each state. The Notice directs the states to reallocate issuing authority to the extent it is not used by a county or large municipality to which it was originally allocated, and provides that such reallocations are to be made by the state in any reasonable manner as it shall determine in good faith in its discretion.

Session Law 2009-140 enacted by the North Carolina General Assembly on June 16, 2009, provides that the Committee will have responsibility for managing the allocation and reallocation of authorizations for issuance of Recovery Zone Bonds.

History Note: Authority G.S. 143-433.6(c); 143-433.8; 143-433.9(a); 150B-21.1B; S.L. 2009-140; S.L. 2009-475; Emergency Adoption Eff. October 30, 2009; Temporary Adoption Eff. December 23, 2009.

04 NCAC 01H .0402 DEFINITIONS

(a) "Allocation" means the initial authorization for the State or a unit of local government to issue Recovery Zone Facility Bonds or Recovery Zone Economic Development Bonds pursuant to ARRA. North Carolina received \$627,231,000 in Allocation for Recovery Zone Facility Bonds and \$418,154,000 in Allocation for Recovery Zone Economic Development Bonds for 2009 and 2010; the Allocations to counties and Large Municipalities in the State are found in the Notice.

(b) "ARRA" means the American Recovery and Reinvestment Act, H.R. 1, as amended.

(c) "Code" means the Internal Revenue Code of 1986, as amended.

(d) "Committee" means the North Carolina Federal Tax Reform Allocation Committee created by Executive Order No. 37.

(e) "Department" means the North Carolina Department of Commerce, which provides administrative support for the Committee.

(f) "Large Municipality" means any one of the cities of Cary, Charlotte, Durham, Fayetteville, Greensboro, High Point, Raleigh or Winston-Salem.

(g) "Notice" means Notice 2009-50, published by the U.S. Treasury Department on June 12, 2009.

(h) "Notice of Intent" means a notice of intent to issue Recovery Zone Facility Bonds or Recovery Zone Economic Development Bonds on a form provided by the Department, which shall include the following:

- (1) name of Recipient receiving Allocation
- (2) name of unit of local government that will issue the Recovery Zone Bonds
- (3) type of Recovery Zone Bonds to be issued
- (4) description of area designated as Recovery Zone
- (5) description of project to be financed
- (6) dollar amount of the bond issue and amount of Allocation to be used and amount of Allocation (if any) remaining after such issuance
- (7) any Reallocation requested by the Recipient for the project
- (8) if applicable, that the Recipient does not intend to use some or all of its Allocation, and is waiving such Allocation (or if less than all, the portion of Allocation being waived). In connection with any such waiver, the Recipient may designate a project being undertaken by another unit of local government using Recovery Zone Bonds, and request that the Committee reallocate the waived Allocation to such unit of local government in connection with such project.
- (9) such other information as may be prescribed by the Department.

(i) "Reallocation" means authorization for the State or a unit of local government to issue Recovery Zone Facility or Recovery Zone Economic Development Bonds received as a result of action by the Committee to reallocate original Allocation.

(j) "Recipient" means any county or Large Municipality that received an Allocation.

(k) "Recovery Zone" means any area within the jurisdiction of the Recipient, designated as a "recovery zone" in accordance with Code Section 1400U-1(b).

(l) "Recovery Zone Bonds" means Recovery Zone Economic Development Bonds and Recovery Zone Facility Bonds.

(m) "Recovery Zone Economic Development Bonds" means Recovery Zone Economic Development Bonds issued pursuant to Code Section 1400U-2, which in general are governmental bonds issued by a qualified issuer for economic development purposes (as defined in Section 1400U-2) that provide for a refundable tax credit paid to the issuer of the bonds in an amount equal to 45% of the taxable interest payable to investors in such bonds.

(n) "Recovery Zone Facility Bonds" means Recovery Zone Facility Bonds issued pursuant to Code Section 1400U-3, which in general are a type of private activity, exempt facility bond that permit financing of any trade or business other than certain prohibited businesses enumerated in Section 1400U-3(c)(2).

History Note: Authority G.S. 143-433.6(c); 143-433.8; 143-433.9(a); 150B-21.1B; S.L. 2009-140; S.L. 2009-475; Emergency Adoption Eff. October 30, 2009; Temporary Adoption Eff. December 23, 2009.

04 NCAC 01H .0403 PROCEDURES

(a) Under ARRA and the Notice, most (but not all) large municipalities and counties received an Allocation. To the extent a Recipient does not utilize such Allocation, the Committee is authorized to reallocate that Allocation to the State or to a unit of local government in any reasonable manner as it shall determine in good faith in its discretion.

(b) Each Recipient that wishes to use its Allocation must indicate its intention to use its Allocation in one of the following ways:

- (1) On or before December 15, 2009, the Recipient (or the unit of local government designated as the issuer of such bonds) must either:
 - (A) issue the Recovery Zone Bond, or
 - (B) file a Notice of Intent with the Department, Attention: Commerce Finance Center, by hand or overnight delivery at 301 N. Wilmington Street, 4th Floor, Education Building, Raleigh, North Carolina 27603, or by U.S. mail to 4318 Mail Service Center, Raleigh, North Carolina 27699-4318, accompanied by one or more resolutions from the governing body of the Recipient (A) designating the Recovery Zone, (B) designating the unit of local government that will issue the Recovery Zone Bonds, if different from the Recipient, (C) identifying the type of Recovery Zone Bonds to be issued and (D) identifying the project or projects to be financed with the Recovery Zone Bonds and the principal amount of bonds to be issued.
- (2) Any Recovery Zone Bond for which a Notice of Intent has been filed shall either be issued or have made substantial progress towards issuance no later than April 15, 2010. "Substantial progress toward issuance" means such issue of bonds has been approved by the Local Government Commission or placed on the agenda of the Local Government Commission for approval at a meeting in May, 2010.
- (3) A Recipient may at any time file a Notice of Intent (i) waiving its Allocation (which may include a designation of a project in another jurisdiction) or (ii) requesting a Reallocation.
- (4) In the event that any Recipient fails either to issue Recovery Zone Bonds or to file a Notice of Intent on or before December 15, 2009, the Recipient's Allocation (or portion thereof) for

which Recovery Zone Bonds were not issued or no Notice of Intent filed shall be deemed waived. Furthermore, if any Recipient files a Notice of Intent as required by section (b)(1) above but such bonds are not issued or the unit of government fails to make substantial progress towards issuance of such bonds by the dates indicated in section (b)(2) above, the Allocation represented by such bonds shall be deemed waived.

- (5) Following the issuance of any Recovery Zone Bond, the issuer of such bond shall promptly deliver a copy of the report required to be filed with the Internal Revenue Service (e.g. the form 8038 for Recovery Zone Facility Bonds and the form 8038G for Recovery Zone Economic Development Bonds) to the address indicated in (b)(1)(B) above, and the Department will maintain a list of all Recovery Bonds issued and all Allocations used, waived, and available for full or partial Reallocation.

History Note: Authority G.S. 143-433.6(c); 143-433.8; 143-433.9(a); 150B-21.1B; S.L. 2009-140; S.L. 2009-475; Emergency Adoption Eff. October 30, 2009; Temporary Adoption Eff. December 23, 2009.

04 NCAC 01H .0404 REALLOCATION

The Committee is directed to reallocate to another unit of local government (which is not required to be a Recipient) all or any part of any Allocation waived or deemed waived by Recipient in any reasonable manner as it shall determine in good faith in its discretion. In making such Reallocations, the Committee will consider the following in addition to other facts it deems reasonable and appropriate, in good faith, in its discretion:

- (1) The overall good of the State and the people of North Carolina.
- (2) Relative economic need and benefit to the unit of local government and the area or region affected by the following:
 - (a) Whether the unit of local government is in competition with another state for project benefits such as jobs and tax base;
 - (b) Whether the availability of the Reallocation is a crucial part of attracting a new company or keeping an existing company in place;
 - (c) Whether the requested Reallocation will benefit a project for which a Recipient or other unit of local government is already issuing Recovery Zone Bonds;
 - (d) Whether the requested Reallocation will benefit a project that was designated by a Recipient in connection with a previous waiver of its Allocation pursuant to 04 NCAC 01H .0402(h)(8).

- (3) The ability of the unit of local government or company benefiting from the Recovery Zone Bond to obtain financing and close the issue in a timely manner, including demonstration of a commitment from a bank or other financial institution to purchase or underwrite the Recovery Zone Bonds.

History Note: Authority G.S. 143-433.6(c); 143-433.8; 143-433.9(a); 150B-21.1B; S.L. 2009-140; S.L. 2009-475; Emergency Adoption Eff. October 30, 2009; Temporary Adoption Eff. December 23, 2009.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Rule-making Agency: *Commission for Public Health*

Rule Citation: *10A NCAC 41C .0901-.0907*

Effective Date: *January 1, 2010*

Date Approved by the Rules Review Commission: *December 17, 2009*

Reason for Action: *This temporary rule adoption is necessary in order to implement House Bill 1151, which was ratified on August 11, 2009. This legislation requires the Commission for Public Health to adopt rules to implement legislation establishing a new EPA-authorized state-administered lead-based paint removal program. These rules will improve the safety of the public at large by reducing the chemical dangers caused by lead-based paints. These rules need to be effective when the legislation becomes effective on January 1, 2010.*

CHAPTER 41 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 41C - OCCUPATIONAL HEALTH

SECTION .0900 – LEAD-BASED PAINT HAZARD MANAGEMENT PROGRAM FOR RENOVATION, REPAIR AND PAINTING

10A NCAC 41C .0901 GENERAL

(a) In addition to the definitions found in 40 CFR Part 745 Subpart E and Subpart L and ~~G.S. 13A-453.12~~ ~~G.S. 130A-453.12~~ G.S. 130A-453.12 the following definitions shall apply throughout this Section:

- (1) "Accredited training course" means a lead training course accredited by the Program.
- (2) "Accredited training provider" means a training provider who is accredited by the Program, and who provides accredited training courses.
- (3) "Program" means the Lead-Based Paint Hazard Management Program for Renovation,

Repair and Painting within the Division of Public Health.

(b) Residential Property Renovation and Lead-Based ~~paint~~ Paint Activities, 40 CFR Part 745 Subpart E and Subpart L, is hereby incorporated by reference, including any subsequent amendments and editions. This document is available for inspection at the Division of Public Health, 1915 Mail Service Center, Raleigh, North Carolina 27499-1915. A copy of this document may be obtained in writing from the US Government Printing Office, P.O. Box 979050, St Louis, MO 63197-9000, at a cost of sixty-one dollars (\$61.00).

History Note: Authority G.S. 130A-453.21; Temporary Adoption Eff. January 1, 2010.

10A NCAC 41C .0902 CERTIFICATION OF INDIVIDUALS

(a) No person shall perform lead-based paint renovation activities for compensation in target housing and child-occupied facilities until that person has been certified by the Program in the ~~appropriate~~ applicable certification category. Certification is not required for a trained renovation worker as defined by G.S. 130A-453.12(b)(7).

(b) An applicant for certification shall successfully complete applicable, ~~discipline specific~~ training courses accredited by the Program pursuant to Rule .0904 of this Section. Successful completion includes attendance of at least 95 percent of the course, passing the course exam with a minimum score of 70 percent, and successful completion of the hands-on skills assessment pursuant to 40 CFR 745, Subpart L. An applicant for initial certification shall also meet the applicable, discipline-specific, certification requirements in Paragraphs (c) and (d) of this Rule:

(c) To obtain dust sampling technician certification or renewal of certification, the applicant shall meet the following:

- (1) An applicant for initial certification shall have successfully completed an accredited initial dust sampling technician training course within the 12 months immediately preceding application.
- ~~(2) An applicant who completed an accredited initial dust sampling technician training course prior to the effective date of this Rule and applies for certification prior to July 1, 2010, shall have successfully completed training within 48 months of application;~~
- ~~(3)~~(2) An applicant shall submit a completed dust sampling technician certification application with the following information to the Program:
 - ~~(A) a completed dust sampling technician certification application with the following information:~~
 - ~~(i)(A)~~ (i)(A) full name of the applicant;
 - ~~(ii)(B)~~ (ii)(B) address, including city, state, zip code, and telephone number;
 - ~~(iii)(C)~~ (iii)(C) date of birth, sex, height, and weight;
 - ~~(iv)(D)~~ (iv)(D) name, address, including city, state, zip code, and telephone number of certified renovation firm;

- ~~(v)(E)~~ training agency attended; name of training provider;
- ~~(vi)(F)~~ name of training course completed; and
- ~~(vii)(G)~~ dates of course attended;
- ~~(B)(H)~~ one current-color photograph of the applicant; and
- ~~(C)(I)~~ confirmation of completion of accredited initial and refresher training courses, as applicable, from the training agency provider. The confirmation shall be in the form of an original certificate of completion of the accredited training course, or an original letter from the training agency provider, on training agency provider letterhead, confirming completion of the course; and course.
- ~~(D) applicable certification fees as required by G.S. 130A-453.17-~~

~~(4)(3)~~ Initial dust sampling technician certification shall expire 12 months expires on the last day of the twelfth month after training was taken, on the last day of the month taken. Certification received pursuant to Subparagraph (c)(2) of this Rule shall expire 12 months after the date of application, on the last day of the month.

~~(5)(4)~~ An applicant for renewal of dust sampling technician certification shall have successfully completed the required an accredited initial or refresher training course, or initial training course if no approved refresher training exists, course within ~~60~~ 48 months prior to applying for certification renewal, and shall meet the requirements of Paragraphs (b) and (c) of this Rule. All renewal certifications will expire 12 months from the date of application on the last day of the month expire on the last day of the 12th month from the date of certification, or on the last day of the month 60 months after the date of training, whichever comes first. If a person fails to obtain the required training within ~~60~~ 48 calendar months of the date of last training, that person may ~~be re-certified~~ renew certification only by successful completion of an accredited dust sampling technician initial course and by meeting the requirements of Paragraphs (b) and (c) of the Rule.

(d) To obtain certification as a certified renovator or to renew certification, the applicant shall meet the following:

- (1) An applicant for renovator certification shall have successfully completed an accredited initial renovator training course prior to application. If initial training was completed more than 60 months prior to application, the applicant shall have successfully completed an accredited refresher course for the specific

- discipline at least every 60 months from the date of completion of initial ~~or refresher~~ training.
- (2) An ~~application~~ applicant shall submit a completed renovator certification application with the following information to the Program:
- (A) ~~a completed renovator certification application with the following information:~~
 - (i)(A) full name of the applicant;
 - (ii)(B) address, including city, state, zip code, and telephone number;
 - (iii)(C) date of birth and sex;
 - (iv)(D) name, address, including city, state, zip code, and telephone number of certified renovation firm;
 - (v)(E) name, address, including city, state, zip code, and telephone number of training provider that provided the training;
 - (vi)(F) name of training course completed and language in which it was taught;
 - (vii)(G) date(s) of course completion and exam; ~~and~~
 - (viii) ~~course completion certificate number;~~
 - (H) confirmation of completion of accredited initial and refresher training courses, as applicable from the training provider. The confirmation shall be in the form of a copy of an original certificate of completion of the accredited training course, or letter from the training provider, on training provider letterhead, confirming completion of the course; and
 - (B)(I) one current color photograph of the applicant; applicant.
- (3) ~~Renovator certification shall expire 60 months after training was taken, on the last day of the month.~~
- (4)(3) An applicant for renewal of renovator certification shall have successfully completed the required accredited refresher training course within no more than 60 months prior to applying for certification renewal, and shall meet the requirements of Paragraphs (b) and (d) of this Rule. ~~All renewal certifications will expire 60 months from the date of application on the last day of the month, or on the last day of the month 60 months after the date of training, whichever comes first.~~ If a person fails to obtain the required training within 60 calendar months of the date of last training, that person may be ~~re-certified~~ renew certification only by successful completion of an accredited renovator initial course and by meeting the requirements of Paragraphs (b) and (d) of this Rule.

- (e) All certified persons shall be assigned a unique certification number by the Program.
- (f) ~~In accordance with G.S. 130A-23, the Program may revoke, suspend or deny certification or recertification for any violation of G.S. 130A, Article 19B or the rules in this Section, or upon finding that its issuance was based upon incorrect or inadequate information.~~ A person whose certification or recertification certification renewal is revoked, suspended or denied because of fraudulent misrepresentations or because of violations that create a significant public health hazard threat as defined in G.S. 130A-475(d), shall not reapply for certification or recertification certification renewal before twelve months after the effective date of the revocation, suspension, or denial and shall repeat the initial training course and other requirements as set out in Paragraphs (b), ~~and (c), and (d)~~ of this Rule.
- (g) The Program may ~~also~~ revoke, suspend or deny certification or recertification certification renewal upon a finding that the certified person has violated any requirement referenced in the following provisions with regard to renovation activities, as determined by the agencies which administer these Rules:
- (1) Department of Labor Rules found at Chapter 7, Title 13 of the North Carolina Administrative Code;
 - (2) Department of Transportation Rules found at Title 19A of the North Carolina Administrative Code;
 - (3) Solid Waste Management Rules found at Chapter 13, Title 15A of the North Carolina Administrative Code; and
 - (4) NC Childhood Lead Poisoning Prevention Program requirements found at G.S. 130A, Article 5, Part 4.
- (h) ~~The Program may also revoke, suspend or deny certification or recertification upon a finding that the certified person has been convicted or found guilty in any jurisdiction of the United States, of a crime involving lying, cheating, or stealing, or of any other violation while engaged in environmental remediation activity, which resulted in significant harm or the substantial threat of significant harm to human health or the environment. A plea of nolo contendere shall be considered a conviction for the purposes of this section. A certified copy of the final order, decree, judgement or decision by a court or regulatory agency with lawful authority to issue such order, decree, judgement or decision shall be prima facie evidence of such conviction.~~
- (i) ~~The Program may also revoke, suspend or deny certification or recertification upon a finding that the certified person failed to notify the Program in writing within 30 days of pleading guilty or nolo contendere or being convicted of a crime involving lying, cheating, or stealing or of any other violation while engaged in environmental remediation activity which resulted in significant harm or the substantial threat of significant harm to human health or the environment.~~
- (j) ~~A person whose certification is revoked, suspended or denied for reasons specified in .0902(h) or (i) shall not reapply for certification or recertification before three years after the effective date of the revocation, suspension, or denial and shall repeat the initial training course and other requirements as set out in paragraphs (b), (c) and (d) of this Rule.~~

History Note: Authority G.S. 130A-453.14; 130A-453.15; 130A-453.21; 130A-23; Temporary Adoption Eff. January 1, 2010.

10A NCAC 41C .0903 CERTIFICATION OF RENOVATION FIRMS

~~(a) All firms who conduct lead-based paint renovation activities for compensation in target housing and child-occupied facilities shall become certified by the Program prior to performing lead-based paint renovation activities. The Program shall issue a certificate of approval to firms meeting the requirements in Paragraphs (b) and (c) of this Rule.~~

~~(b) To become certified the A firm applying for certification shall submit a completed firm certification application provided by the Program. Program for evaluation. The application shall include:~~

- ~~(1) The name, address, including city, state, and zip code, and telephone number of the firm;~~
- ~~(2) A statement that attests that all individuals to be used by the firm as renovators and dust sampling technicians are certified by the Program;~~
- ~~(3) A statement that attests that the firm will perform lead-based paint renovation activities in accordance with these the Rules of this Section and all applicable local, State, and Federal requirements, including all applicable record keeping, record retention, information distribution, and reporting requirements;~~
- ~~(4) A disclosure of any action by US EPA or a US EPA authorized program involving violations, suspension, revocations, or modifications of a firm's activities; activities or the activities of employees performing a renovation on behalf of a firm;~~
- ~~(5) A list of renovators and dust sampling technicians currently employed by the firm to perform lead-based paint renovation activities, and their Program certification numbers; and~~
- ~~(6) The original signature, title, and printed name of an official of the firm.~~
- ~~(7) Applicable certification fees as required by G.S. 130A-453.17.~~

~~(c) All certifications shall expire on the last day of the twelfth month after the certification is issued in accordance with G.S. 130A-453.15(a) and can may be renewed annually by submitting a completed application provided by the Program. Program for evaluation.~~

~~(d) In accordance with G.S. 130A-23, the Program may revoke, suspend or deny certification or recertification for any violation of G.S. 130A, Article 19B or the rules in this Section, or upon finding that its issuance was based upon incorrect or inadequate information. A firm whose certification is revoked, suspended or denied because of fraudulent misrepresentations or because of violations that create a significant public health hazard threat as defined in G.S. 130A-475(d) shall not reapply for certification or recertification renewal of certification before 12 months after the effective date of the revocation, suspension, or denial and shall comply with the requirements for firm certification as set out in~~

Paragraphs (a), (b), and (c) of this Rule. The Program may revoke, suspend or deny certification or ~~recertification~~ certification renewal upon a finding that a certified firm, or an individual performing a renovation on behalf of the firm, has violated any requirement referenced in Rule .0902(g) of this Section. Firm certification may be revoked, suspended or denied upon revocation of certification by US EPA or ~~an a US EPA~~ authorized program.

~~(e) The Program may also revoke, suspend or deny certification or recertification upon a finding that the certified firm, or an individual performing a renovation on behalf of the firm, has been convicted or found guilty in any jurisdiction of the United States, of a crime involving lying, cheating, or stealing, or of any other violation while engaged in environmental remediation activity, which resulted in significant harm or the substantial threat of significant harm to human health or the environment. A plea of nolo contendere shall be considered a conviction for the purposes of this section.~~

~~A certified copy of the final order, decree, judgement or decision by a court or regulatory agency with lawful authority to issue such order, decree, judgement or decision shall be prima facie evidence of such conviction.~~

~~(f) The Program may also revoke, suspend or deny certification or recertification upon a finding that the certified firm, or a person performing a renovation on behalf of a firm, failed to notify the Program in writing within 30 days of pleading guilty or nolo contendere or being convicted of a crime involving lying, cheating, or stealing or of any other violation while engaged in environmental remediation activity which resulted in significant harm or the substantial threat of significant harm to human health or the environment.~~

~~(g) A firm whose certification is revoked, suspended or denied for reasons specified in .0902(e) or (f) shall not reapply for certification or recertification before 36 months after the effective date of the revocation, suspension, or denial and shall comply with the requirements as set out in Paragraph (b) of this Rule.~~

History Note: Authority G.S. 130A-453.14; 130A-453.15; 130A-453.21; 130A-23; Temporary Adoption Eff. January 1, 2010.

10A NCAC 41C .0904 ACCREDITATION OF TRAINING COURSES

(a) Pursuant to Rule .0902 of this Section, applicants for certification and certification renewal are required to successfully complete training courses accredited by the Program. Training courses:

- (1) Taught in locations other than North Carolina and accredited by US EPA or by a state with a US EPA authorized program shall be deemed accredited for certification purposes of the Program;
- (2) Taught in North Carolina and accredited by a state, tribe, or territory that has a written reciprocating agreement with the Program shall meet the requirements of Paragraphs (b), (c), (e), (h), and (i) of this Rule to be accredited by the Program;

- (3) Taught in North Carolina, other than those covered in Subparagraphs ~~(1) and (2)~~ and (4) of this Paragraph, shall meet the requirements of this ~~Rule.~~ Rule:
- (4) Taught in North Carolina prior to August 1, 2010, and accredited by US EPA or by a state with a US EPA authorized program shall be deemed accredited for certification purposes of the Program.

(b) A training provider may apply for initial and refresher training course accreditation for ~~any of~~ the following disciplines: renovator and dust sampling technician. Training providers applying for course accreditation shall submit a completed training course application to the Program for review and approval, pursuant to Paragraph (e) of this Rule. Once a training course is accredited, any changes in curriculum, hands-on exercises, ~~training manager, principal instructor,~~ examination, or quality control plan from the original course accreditation application shall be submitted and approved by the Program prior to implementation.

(c) For all courses, the training provider shall administer a closed book examination. Initial courses shall include a hands-on skills assessment. Initial and refresher course examinations shall consist of a minimum of 25 multiple choice questions.

(d) Training courses shall be evaluated for accreditation purposes by the Program for course administration, course length, curriculum, training methods, ~~instructors' qualifications,~~ instructors' teaching effectiveness, technical accuracy of written materials and instruction, examination, and training certificate. The evaluation shall be conducted using 40 CFR Part 745 Subpart L.

(e) Training course providers shall submit the following for evaluation ~~and accreditation~~ by the Program:

- (1) A completed application on a form provided by the Program, along with supporting documentation. The form and supporting documentation shall include the following:
 - (A) name, address including city, state, and zip code, and telephone number of the training provider, and name and signature of the contact person, training manager, and principal instructor;
 - (B) course title, location, and the language in which the course is to be taught;
 - (C) course agenda;
 - (D) a copy of all written instructional material to be used;
 - (E) learning or performance objectives for each topic to be taught;
 - (F) a copy or description of all audio/visual materials to be used;
 - (G) a description of each hands-on training activity and skills assessment, including criteria for determining student proficiency;
 - (H) a description of instructional facilities and equipment; and

- (I) a copy of a sample exam with correct answers marked and exam ~~blueprint;~~ blueprint.
- ~~(1)(2)~~ (2) a A sample course certificate with the following information:
 - ~~(i)(A)~~ (i)(A) name and address, including city, state, and zip code of the student;
 - ~~(ii)(B)~~ (ii)(B) training course title specifying "initial" or "refresher" of training course completed;
 - ~~(iii)(C)~~ (iii)(C) inclusive dates of course and applicable examination;
 - ~~(iv)(D)~~ (iv)(D) a statement that the student successfully completed the course and hands-on skills assessment and passed the required examination;
 - ~~(v)(E)~~ (v)(E) unique certificate number;
 - ~~(vi)(F)~~ (vi)(F) location of student photo on certificate;
 - ~~(vii)(G)~~ (vii)(G) printed name and signature of the training course manager and printed name of the principal instructor;
 - ~~(viii)(H)~~ (viii)(H) name, address including city, state, and zip code, and telephone number of the training provider;
 - ~~(ix)(I)~~ (ix)(I) training course location; and
 - ~~(x)(J)~~ (x)(J) for training courses taught in languages other than English, the certificate shall indicate the language of the course; ~~and~~

~~(K)(3)~~ (3) a A list of accredited lead training courses ~~currently being provided for certification.~~ offered for certification;

~~(2)(4)~~ (4) A list of instructors who will teach in North Carolina and their qualifications in accordance with Paragraph (f) of this Rule; and

~~(3)(5)~~ (5) A copy of the course quality control plan that meets the requirements of 40 CFR 745 Subpart L ~~Subsection .225(e)(9); and Subsection .225(c)(9).~~

~~(4)~~ (4) ~~Applicable course accreditation fees as required by G.S. 130A-453-17.~~

~~(f) All instructors and training managers shall be approved by the Program. Any person seeking approval as an instructor or training manager for courses covered under these Rules and taught in North Carolina, shall meet the following requirements:~~

~~(1) Training managers and instructors shall meet the requirement of 40 CFR 745 Subpart L .225(e), except that guest instructors who teach work practice topics and hands on training exercises shall meet the training requirements for principal instructor.~~

~~(2) Principal instructors and guest instructors who teach work practice topics or hands on training exercises shall meet the training requirements for certification, pursuant to Rule .0902 of this Section, for the discipline in which instructor approval is sought; and~~

~~(3)~~ Training managers and instructors shall submit to the Program a completed application with the following information:

- ~~(A)~~ name, address including city, state and zip code, and telephone number of the applicant;
- ~~(B)~~ name, address including city, state, and zip code, and telephone number of the training provider that is employing the applicant; and
- ~~(C)~~ confirmation of completion of an accredited initial or refresher training course from the training provider. The confirmation shall be in the form of a copy of the original certificate of completion of the accredited training course or must include the following information: the course title, dates of instruction, names of instructors, name, address, and telephone number of the training provider.

~~(e)(f)~~ An application for course accreditation by the Program shall be processed as follows:

- (1) The program shall review the application and supporting documentation and advise the applicant of any deficiencies. If the deficiencies are not corrected within ~~one year~~ 12 months from the date of application, the application and any supporting documentation ~~may~~ shall be returned to the applicant and the applicant shall ~~be required to~~ re-submit a completed application. Approval of submitted documentation does not constitute course accreditation;
- (2) If the submitted documentation meets all applicable requirements of this Rule, the Program shall notify the applicant of this and also advise the applicant that it may contact the Program to schedule ~~and an~~ on-site audit. The on-site audit shall be of a class of at least two student attendees and taught in North Carolina;
- (3) If the Program determines, as a result of the on-site audit, that the training course meets all applicable requirements of this Rule, it shall issue course accreditation. If the course does not meet these requirements, the Program shall notify the applicant of the deficiencies and advise the applicant that it may request one additional on-site audit, which shall be held no more ~~that~~ than six months from the date of the first audit; and
- (4) If the Program determines, as the result of the second audit, that the training course meets all applicable requirements of this Rule, it shall issue course accreditation. If the course does not meet all these requirements, the Program shall notify the applicant of the deficiencies, return all the application materials, and advise

the applicant that it may not reapply for course accreditation for the audited course for a period of six months from the date of the last audit.

~~(h)(g)~~ Training course providers shall perform the following in order to maintain accreditation of all initial and refresher courses:

- (1) Issue a certificate of training meeting the requirements of ~~Part (e)(1)(J)~~ Subparagraph (e)(2) of this Rule to any student who successfully completes the required training and the hands-on skills assessment, and passes the applicable examination;
- (2) Submit to the Program written notice of intention to conduct a training course for North Carolina lead certification purposes, if the course is to be taught in North Carolina. Notices for training courses shall be postmarked or received 10 working days before the training course begins. If the training course is canceled, the training course provider shall notify the Program at least one working day prior to the ~~schedule~~ scheduled start date. Notification of intent to conduct a training course shall be made using a form provided by the Program and shall include the following:
 - (A) training provider name, address including city, state, and zip code, telephone number, and contact person;
 - (B) training course title;
 - (C) inclusive dates of course and applicable exam;
 - (D) start and completion times;
 - (E) location of the course facility and directions to the course ~~facility if the site is not routine for the training provider;~~ facility;
 - (F) language in which the course is taught; and
 - (G) signature of the training manager;
- (3) Notify the Program, in writing, at least 10 working days prior to the scheduled course start date, of any changes to course length, curriculum, training methods, training manual or materials, instructors, examination, training certificate, training course manager or contact person;
- (4) Submit to the Program information and documentation for any course accredited pursuant to this Rule if requested by the Program;
- ~~(5)~~ ~~Ensure that all training managers and instructors are approved by the Program;~~
- ~~(6)(5)~~ Ensure that all training courses covered under this Rule meet the requirements of 40 CFR Part 745 Subpart L, Subsection .225(c), (d), and (e) and the following requirements:

- (A) the instructor must follow the curriculum that was approved by the Program, US EPA, or a state, tribe, or territory with whom the Program has a reciprocity agreement. The schedule may be adjusted, but all curriculum elements shall be covered;
 - (B) all initial and refresher training courses shall have a maximum of 30 students;
 - (C) a day of training shall include at least six and one-half hours of direct instruction, including classroom and hands-on training;
 - (D) students' work time and instruction time shall not exceed 12 hours in a 24-hour period;
 - (E) a training course shall be completed within a two-week period;
 - (F) instructor ratio for hands-on training shall be no more than 10 students per instructor;
 - (G) all course materials shall be in the language in which the course is being taught;
 - (H) each training course shall be discipline specific;
 - (I) students shall be allowed to take an examination no more than twice for each course. Each exam used for retesting ~~will~~ shall be different from the previous exam. After two failures, the student shall retake the full course before being allowed to retest;
 - (J) training providers shall provide examination security to prevent student access to the examination materials before and after the exam. Training providers shall take measures to preclude cheating during the exam, such as providing space between students, prohibiting talking, and monitoring students throughout the exam; and
 - (K) training providers shall provide a written policy for administration of oral exams.
- (7)(6) Verify, by photo identification, the identity of any student requesting training;
- (8)(7) ~~For each course accredited by the Program, and taught in North Carolina, the training provider shall submit~~ Submit a completed renewal application on a form provided by the Program for each course accredited by the Program, and taught in North Carolina, for which the training provider is seeking renewal; Effective January 1, 2011, a renewal application shall be submitted prior to the next

~~course offering and annually thereafter. If an annual training course renewal lapses, the provider shall submit a renewal application prior to offering the course again in North Carolina; and~~

(9)(8) Conduct work practice and worker protection demonstrations and hands-on exercises presented in all training courses covered under this Rule ~~shall be conducted~~ in accordance with Rule .0906 of this Section and 29 CFR 1926.62, which is hereby incorporated by reference, including any subsequent amendments and editions.

(+)(h) Training course providers shall permit Program representatives to attend, evaluate and monitor any training course, take the course examination, and have access to records of training courses without charge or hindrance to the Program for the purpose of evaluating compliance with these Rules. The Program shall perform periodic and unannounced on-site audits of training courses.

(+)(i) In accordance with G.S. 130A-23, the Program may suspend, revoke, or deny accreditation for a training course for any violation of G.S. 130A, Article 19B or ~~these~~ the rules of this Section and shall revoke accreditation upon revocation of accreditation by the US EPA or by any state with a US EPA authorized accreditation program. The Program shall also revoke course accreditation for all courses taught by a training provider upon a finding that the training course provider has issued one or more certificates to an individual who did not actually attend the course, ~~either initial or refresher,~~ successfully complete the hands-on exercises, and pass the examination. When course accreditation is revoked for improper issuance of certificates, the training course provider ~~shall~~ is not be eligible for reaccreditation for a period of 36 months from the date of revocation.

(k) ~~The Program may also revoke, suspend or deny accreditation of all courses taught by a training provider upon a finding that the training provider or one or more of its principals has been convicted or found guilty in any jurisdiction of the United States, of any crime involving lying, cheating, or stealing, or of any other violation while engaged in environmental remediation activity, which resulted in significant harm or the substantial threat of significant harm to human health or the environment there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this section. A certified copy of the final order, decree, judgement or decision by a court or regulatory agency with lawful authority to issue such order, decree, judgement or decision shall be prima facie evidence of such conviction.~~

History Note: Authority G.S. 130A-453.16; 130A-453.21; 130A-23; Temporary Adoption Eff. January 1, 2010.

10A NCAC 41C .0905 ACCREDITATION OF TRAINING PROVIDERS

(a) ~~All training providers who offer lead training courses pertaining to lead-based paint renovation in North Carolina for~~

certification purposes shall be accredited by the Program before offering training courses.

~~(b)(a)~~ To become accredited, training providers shall meet the following requirements:

~~(1) Training providers having no prior approvals or accreditations shall:~~

~~(A) Employ a training manager who meets the requirements of 40 CFR 745 Subpart L Subsection .225(e), and~~

~~(B)(1) Submit a completed application on a form provided by the Program including:~~

~~(i)(A) the name, address including city, state and zip code, and telephone number of the training provider;~~

~~(ii)(B) a statement that all courses taught in North Carolina for certification will comply with all of the requirements of these Rules; the rules in this Section;~~

~~(iii)(C) a statement that the training provider is responsible for maintaining the validity and integrity of the hands-on skills assessment to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics;~~

~~(iv)(D) a statement that the training provider is responsible for maintaining the validity and integrity of the course examination to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics;~~

~~(v)(E) A completed application documentation for the training manager, pursuant to Rule .0904 of this Section with documentation for meeting the requirements of 40 CFR 745 Subpart L Subsection .225 (e); Section; and~~

~~(vi)(F) the original signature, title, and printed name of an official of the training provider.~~

~~(2) Training Providers accredited by US EPA or by a state with a US EPA authorized program shall meet the following requirements:~~

~~(A) provide the information required by Subparagraph (b)(1) of this Rule; and~~

~~(B) submit a copy of the original US EPA certificate of accreditation for the training provider to the Program.~~

~~(3) Submit applicable fees as required by G.S. 130A-453.17.~~

~~(e)(b)~~ In accordance with G.S. 130A-23, the Program may suspend, revoke, or deny accreditation of a training provider for any violation of G.S. 130A, Article 19B or ~~these~~ the rules of this Section and shall revoke accreditation upon revocation of accreditation by the US EPA or by any state with a US EPA

authorized accreditation program. A training provider whose course accreditation has been revoked by the Program shall ~~is~~ not be eligible for accreditation for a period of ~~one year~~ 12 months from the date of revocation. The Program shall also revoke a training provider's accreditation upon a finding that the training course provider has falsified training documents or issued one or more certificates to an individual who did not actually attend the course, ~~either initial or refresher,~~ complete the hands-on exercises, and pass the examination. When accreditation is revoked for falsification of documents or improper issuance of certificates, the training course provider shall not be eligible for reaccreditation for a period of ~~three years~~ 36 months from the date of revocation.

~~(d) The Program may also revoke, suspend or deny accreditation of a training provider upon a finding that the training provider or one or more of its principals has been convicted or found guilty in any jurisdiction of the United States, of any crime involving lying, cheating, or stealing, or of any other violation while engaged in environmental remediation activity, which resulted in significant harm or the substantial threat of significant harm to human health or the environment there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this section. A certified copy of the final order, decree, judgement or decision by a court or regulatory agency with lawful authority to issue such order, decree, judgement or decision shall be prima facie evidence of such conviction.~~

~~(e) The Program may also revoke, suspend or deny training provider accreditation upon a finding that the training provider or one or more of its principals failed to notify the Program in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty of a crime involving lying, cheating, or stealing or of any other violation while engaged in environmental remediation activity which resulted in significant harm or the substantial threat of significant harm to human health or the environment.~~

~~(f) A training provider whose accreditation is revoked, suspended or denied for reasons specified in .0904(e) or (p) shall not reapply for course accreditation before three years after the effective date of the revocation, suspension, or denial.~~

History Note: Authority G.S. 130A-453.16; 130A-453.21; 130A-23; Temporary Adoption Eff. January 1, 2010.

10A NCAC 41C .0906 STANDARDS FOR CONDUCTING LEAD-BASED PAINT RENOVATION ACTIVITIES

All lead-based paint renovation activities performed for compensation in target housing and child-occupied facilities shall be conducted in accordance with 40 CFR 745 Subpart E, Subsections .85 and .90.

History Note: Authority G.S. 130A-453.18; 130A-453.21; Temporary Adoption Eff. January 1, 2010.

10A NCAC 41C .0907 STANDARDS FOR RECORDS RETENTION, INFORMATION DISTRIBUTION, AND REPORTING REQUIREMENTS

(a) All certified renovation firms shall comply with the records retention, information distribution, and reporting requirements related to lead-based paint renovation activities, in accordance with 40 CFR 745 Subpart E, Subsections .84 and .86.

(b) All certified renovation firms using USEPA-recognized test kits prior to conducting renovation activities in target housing and child-occupied facilities must provide in writing to the person who contracted for the renovation the identifying information as to the manufacturer and model of the test kits used, a description of the components that were tested including their locations, and the test kit ~~results to the person who contracted for the renovation.~~ results. This information must be provided prior to the start of the renovation activities.

(c) All accredited training providers shall comply with the training program recordkeeping requirements in accordance with 40 CFR 745 Subpart L, Subsection .225(i).

History Note: Authority G.S. 130A-453.19; 130A-453.21; Temporary Adoption Eff. January 1, 2010.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 32 – MEDICAL BOARD

Rule-making Agency: *North Carolina Medical Board*

Rule Citation: *21 NCAC 32U .0101*

Effective Date: *December 29, 2009*

Date Approved by the Rules Review Commission: *December 17, 2009*

Reason for Action: *To enable pharmacists to administer the influenza vaccine (including 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~~ except that as a result of the H1N1 influenza pandemic of 2009, the pharmacist may administer both seasonal and H1N1 influenza vaccine to patients aged 14 years or older. This temporary authority to administer influenza vaccine to patients between the ages of 14 and 18 shall expire pursuant to G.S. 150B-21.1(d).
- (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;
 Temporary Amendment Eff. December 29, 2009.*

CHAPTER 46 – BOARD OF PHARMACY

Rule-making Agency: *North Carolina Board of Pharmacy*

Rule Citation: *21 NCAC 46 .2507*

Effective Date: *December 29, 2009*

Date Approved by the Rules Review Commission: *December 17, 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*

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 except that as a result of the H1N1 influenza pandemic of 2009, the pharmacist may administer both seasonal and H1N1 influenza vaccine to patients aged 14 years or older. This temporary authority to administer influenza vaccine to patients between the ages of 14 and 18 shall expire pursuant to G.S. 150B-21.1(d).
 - (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; Temporary Amendment Eff. December 29, 2009.*

TITLE 23 – DEPARTMENT OF COMMUNITY COLLEGES

Rule-making Agency: *North Carolina State Board of Community Colleges*

Rule Citation: *23 NCAC 02D .0329*

Effective Date: *December 29, 2009*

Date Approved by the Rules Review Commission: *December 17, 2009*

Reason for Action: *The General Assembly created Session Law 2009-451, effective July 1, 2009 and signed by Governor Perdue August 7, 2009. Session Law 2009-451 specifically directed the State Board of Community Colleges to adopt emergency rules for the implementation of this new law. Pursuant to Section 8.17(b): "The State Board of Community Colleges shall adopt emergency rules in accordance with G.S. 150B-21.1A for the 2009-2011 fiscal biennium to grant community colleges the flexibility to transfer funds as necessary to minimize the impact of budget reductions on the educational program, including the elimination of State funding for maintenance of plant." To comply with the new law, the State Board has completed the emergency rule process and has a proposed temporary rule. The State Board needs to pursue the temporary rule-making process to comply with Session Law 2009-451 and G.S. 150B-21.1A.*

CHAPTER 02 - COMMUNITY COLLEGES

SUBCHAPTER 02D - COMMUNITY COLLEGES:
FISCAL AFFAIRS

SECTION .0300 - BUDGETING: ACCOUNTING: FISCAL
MANAGEMENT

23 NCAC 02D .0329 MAINTENANCE OF PLANT
FLEXIBILITY

(a) Notwithstanding any other provision of law, a community college that received State funds for maintenance of plant pursuant to G.S. 115D-31.2 for the 2008-2009 fiscal year may use non-instructional State funds allocated to it through the institutional support allotment for maintenance of plant for the 2009-2010 and 2010-2011 fiscal years.

(b) The amount of these funds used for the 2009-2010 fiscal year for maintenance of plant shall not exceed the total amount of maintenance of plant funds received for the 2008-2009 fiscal year. The amount of these funds used for the 2010-2011 fiscal year for maintenance of plant shall not exceed 50 percent of the amount of maintenance of plant funds received for the 2008-2009 fiscal year. This Rule is effective for the 2009-2011 fiscal biennium.

*History Note: Authority G.S. 115D-5; S.L. 2009-451, s. 8.17(b);
Emergency Adoption Eff. September 30, 2009;
Temporary Adoption Eff. December 29, 2009.*

RULES REVIEW COMMISSION

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

January 21, 2010 February 18, 2010
March 18, 2009 April 15, 2010

RULES REVIEW COMMISSION

December 17, 2009

MINUTES

The Rules Review Commission met on Thursday, December 17, 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, John Lewis, Dan McLawhorn, Curtis Venable 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:

Anne Kissel	Carolinas Center for Hospice and End of Life Care
Nick Fountain	Young Moore
Patrick Knowlson	DENR/Division of Air Quality
Christina Apperson	NC Medical Board
Stephen Lair	Home Instead Senior Care
Nadine Pfeiffer	DHHS/Division of Health Service Regulation
Judy Brunger	Carolinas Center for Hospice and End of Life Care
Mary Giguere	Department of Health and Human Services
Kathie Smith	Association of Home and Hospice Care of NC
Mike Abraczinskas	DENR/Division of Air Quality
Jennifer Robertson	Board of Licensed Professional Counselors
Glenda Artis	DHHS/Division of Aging and Adult Services
Sharon Acree	NC Hearing Aid Dealers and Fitters Board
Anca Grozav	Office of State Budget and Management
Azzie Conley	DHHS/Division of Health Service Regulation
Alyssa Barkley	NC Restaurant and Lodging Association
Renee Montgomery	Association for Home and Hospice Care
Nancy Pate	Department of Environment and Natural Resources
Ashley G. Bell	American Cancer Society
Ann Christian	Substance Abuse Professional Practice Board
Barden Culbreth	Substance Abuse Professional Practice Board

APPROVAL OF MINUTES

The meeting was called to order at 9:02 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 November 19, 2009 meeting. There were none and the minutes were approved as distributed.

FOLLOW-UP MATTERS

12 NCAC 09B .0203 – Criminal Justice Education and Training Standards Commission. No rewritten rule has been submitted and no action was taken.

15A NCAC 13B .0835, .0836, .0841, .0842 – Commission for Public Health. No rewritten rules have been submitted and no action was taken.

21 NCAC 18B .0804, .0805, .1101, .1102 – Board of Examiners for Electrical Contractors. The Commission approved the rewritten rules submitted by the agency.

LOG OF FILINGS

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

All permanent rules were approved unanimously with the following exceptions:

15A NCAC 02D .0540: Environmental Management Commission - The Commission approved this rule. The Commission has received at least 10 letters of objection so this rule is subject to legislative review and a delayed effective date.

21 NCAC 16B .0501; 16C .0501: Board of Dental Examiners - These rules were withdrawn by the agency and re-filed for the next month's meeting.

21 NCAC 22L .0101: Hearing Aid Dealers and Fitters Board - The Commission objected to this rule based on lack of statutory authority and ambiguity. In (k), it is not clear what is meant by "accepted professional practice" and "professionally acceptable." Since the context of the rule indicates that it is not conduct that would subject the party to discipline, there does not appear to be any authority for the Board to rebuke the party for the conduct. This objection applies to existing language in the rule.

21 NCAC 53 .0603: Board of Licensed Professional Counselors - The Commission objected to this rule based on ambiguity. Paragraphs (d) and (f) contradict Paragraph (c). Paragraph (c) requires continuing education to be provided by one of the listed organizations. Paragraphs (d) and (f) allow it to be obtained in a different manner. It is not clear what the actual requirement is. In (f)(2), (3) and (5), it is not clear how the number of content hours to be awarded is determined.

Commissioners Crisp, Funderburk, Gray, Lewis, McLawhorn, and Walker voted for the motion to object to 21 NCAC 53 .0603 and to approve the remainder of the rules from the Board of Licensed Professional Counselors. Commissioner Venable voted against the motion.

21 NCAC 68 .0509: Substance Abuse Professional Practice Board - The Commission objected to this rule based on ambiguity. It is unclear what type of "professional relationship" is included within (a). It is unclear whether this is referring to the relationship of counselor and client or whether it is referring to the business relationship and arrangements of a substance abuse counseling practice. If it goes beyond the substance abuse counseling relationship, it is unlikely the board has that authority. It is unclear what is meant by "sexual exploitation" in (c). Neither "sexual exploitation" nor "exploitation" is defined in either the statutes or rules. "Sexual activity," the term previously used and being changed to "exploitation" by this amendment is defined in the board's rules. "Sexual contact" is a term used in this rule and is a previously defined term. In (c)(5) line 33 it is unclear what is meant by "sexual intimacies." Since this is a new term being introduced in this rule it presumably has a meaning that is different from the other terms that have been used: sexual activity, sexual contact, and sexual exploitation.

21 NCAC 68 .0511: Substance Abuse Professional Practice Board - The Commission objected to this rule based on ambiguity. It is unclear what is meant or required by (b). It is unclear what is meant or required by the obligation to "consider" the financial ability of the client to "meet the financial cost" for the services. It is unclear whether that means the counselor is simply required to be aware of

how the costs affect the client or actually base the fee on the client's ability to pay. Counsel does not believe the board has the authority to require the counselor to set rates based on "ability to meet the financial cost" of the professional services.

TEMPORARY RULES

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

All temporary rules were unanimously approved by the Commission.

Prior to the review of a matching set of rules concerning administration of vaccines from the Medical Board and the Board of Pharmacy, Commissioner Lewis recused himself and did not participate in any discussion or vote concerning these rules because he is a member of the Medical Board.

The meeting recessed for a short break at 10:23 a.m. The meeting reconvened at 10:29 a.m.

COMMISSION PROCEDURES AND OTHER BUSINESS

The Commission discussed proposed amendments to Article 5 of the Bylaws drafted by Commissioner McLawhorn. Commissioner McLawhorn suggested that the proposed amendments be emailed to the interested persons' listserv for comment. This matter will be discussed again at the January meeting.

The Commission discussed the procedure for handling objected and rewritten rules. Staff will draft proposed changes to the Commission's rules, a waiver form and the process for which the waiver will be handled.

The Commission discussed its role in the fiscal analysis process for rules that have had changes since publication. Anca Grozav from OSBM answered questions.

Commissioner McLawhorn congratulated Molly Masich on her 30th anniversary with state government. The Commission expressed its appreciation for her many years of excellent service.

The meeting adjourned at 10:45 a.m.

The next scheduled meeting of the Commission is Thursday, January 21 at 9:00 a.m.

Respectfully Submitted,

Dana Vojtko
Publications Coordinator

**LIST OF APPROVED PERMANENT RULES
December 17, 2009 Meeting**

MEDICAL CARE COMMISSION

<u>Definitions</u>	10A NCAC 13J .0901
<u>Personnel</u>	10A NCAC 13J .1003
<u>In-Home Aide Services</u>	10A NCAC 13J .1107
<u>Definitions</u>	10A NCAC 13J .1501
<u>Scope of Services</u>	10A NCAC 13J .1502
<u>Agency Management and Supervision</u>	10A NCAC 13J .1503
<u>Supervision and Competency of Companion, Sitter, and Resp...</u>	10A NCAC 13J .1504
<u>Additional Staffing Requirement for Hospice Inpatient Units</u>	10A NCAC 13K .1202

PUBLIC HEALTH, COMMISSION FOR

<u>General Provisions</u>	10A NCAC 39C .0101
<u>Exemption of Cigar Bars</u>	10A NCAC 39C .0102
<u>Posting Signs</u>	10A NCAC 39C .0103

SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Background Investigation</u>	12 NCAC 10B .0305
<u>Basic Law Enforcement Training Course for Deputies</u>	12 NCAC 10B .0502
<u>Minimum Training Requirements</u>	12 NCAC 10B .2005
<u>In-Service Training Program Specifications</u>	12 NCAC 10B .2006
<u>Sheriff/Agency Head Responsibilities</u>	12 NCAC 10B .2007

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Lead</u>	15A NCAC 02D .0408
<u>Particulates from Fugitive Dust Emission Sources</u>	15A NCAC 02D .0540
<u>Toxic Air Pollutant Guidelines</u>	15A NCAC 02D .1104
<u>Applicability</u>	15A NCAC 02D .1402
<u>Emission Rates Requiring a Permit</u>	15A NCAC 02Q .0711

COASTAL RESOURCES COMMISSION

<u>AECS Within Ocean Hazard Areas</u>	15A NCAC 07H .0304
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ELECTRICAL CONTRACTORS, BOARD OF EXAMINERS FOR

<u>Scope of SP-FA/LV License</u>	21 NCAC 18B .0804
<u>Exemption of Certain Low Voltage Wiring Systems</u>	21 NCAC 18B .0805
<u>Continuing Education Requirements: Listed Qualified Individ...</u>	21 NCAC 18B .1101
<u>Minimum Requirements for Course Sponsor Approval</u>	21 NCAC 18B .1102

LICENSED PROFESSIONAL COUNSELORS, BOARD OF

<u>Professional Ethics</u>	21 NCAC 53 .0102
<u>Professional Disclosure Statement</u>	21 NCAC 53 .0204
<u>Counseling Experience</u>	21 NCAC 53 .0205
<u>Graduate Counseling Experience</u>	21 NCAC 53 .0206
<u>Supervised Professional Practice</u>	21 NCAC 53 .0208
<u>Qualified Clinical Supervisor</u>	21 NCAC 53 .0209
<u>Individual Clinical Supervision</u>	21 NCAC 53 .0210
<u>Group Clinical Supervision</u>	21 NCAC 53 .0211
<u>Face to Face Supervision Defined</u>	21 NCAC 53 .0212
<u>Mental Health Professional</u>	21 NCAC 53 .0213
<u>Applications</u>	21 NCAC 53 .0301
<u>Transcripts</u>	21 NCAC 53 .0302
<u>Examination</u>	21 NCAC 53 .0305
<u>Reporting of Scores</u>	21 NCAC 53 .0306
<u>Receipt of Applications</u>	21 NCAC 53 .0308

RULES REVIEW COMMISSION

<u>Agreement to Abide by NCBLPC Ethical Standards</u>	21	NCAC 53	.0309
<u>Rule of Procedure</u>	21	NCAC 53	.0401
<u>Alleged Violations</u>	21	NCAC 53	.0403
<u>Formal Complaints</u>	21	NCAC 53	.0404
<u>Disciplinary Actions</u>	21	NCAC 53	.0405
<u>Application Fee</u>	21	NCAC 53	.0501
<u>Examination Fee</u>	21	NCAC 53	.0502
<u>Fund Suspension</u>	21	NCAC 53	.0504
<u>Failure to Secure Sufficient Continuing Education/Renewal...</u>	21	NCAC 53	.0604
<u>Licensed Professional Counselor Associate</u>	21	NCAC 53	.0701
<u>Supervised Practice for Licensed Professional Counselor A...</u>	21	NCAC 53	.0702
<u>Licensed Professional Counselor Supervisor</u>	21	NCAC 53	.0801

SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD

<u>Registration Process for Board Credential</u>	21	NCAC 68	.0202
<u>Supervised Practicum for Certified Substance Abuse Counse...</u>	21	NCAC 68	.0204
<u>Certified Substance Abuse Counselor Certification</u>	21	NCAC 68	.0205
<u>Certification or Licensure Period</u>	21	NCAC 68	.0207
<u>Continuing Education Required for Counselor, Criminal Jus...</u>	21	NCAC 68	.0208
<u>Conversion</u>	21	NCAC 68	.0210
<u>Process for Clinical Supervisor Certification</u>	21	NCAC 68	.0211
<u>Process for Residential Facility Director Certification</u>	21	NCAC 68	.0212
<u>Continuing Education Approval Policy</u>	21	NCAC 68	.0213
<u>University Substance Abuse Specialty Curricula</u>	21	NCAC 68	.0214
<u>Verification</u>	21	NCAC 68	.0215
<u>Background Investigation</u>	21	NCAC 68	.0216
<u>Supervised Practicum for Criminal Justice Addictions Prof...</u>	21	NCAC 68	.0217
<u>Notice to Applicant of Failure to Satisfy Board</u>	21	NCAC 68	.0220
<u>Applicant Hearing</u>	21	NCAC 68	.0221
<u>Ethics Inquiry</u>	21	NCAC 68	.0222
<u>Standards Committee Action</u>	21	NCAC 68	.0223
<u>Credentialing Status Denied if Serving Sentence</u>	21	NCAC 68	.0224
<u>Purpose and Scope</u>	21	NCAC 68	.0501
<u>Competence</u>	21	NCAC 68	.0503
<u>Legal Standards and Ethical Standards</u>	21	NCAC 68	.0504
<u>Education and Training Standards</u>	21	NCAC 68	.0505
<u>Client Welfare</u>	21	NCAC 68	.0507
<u>Confidentiality</u>	21	NCAC 68	.0508
<u>Responsibility of Supervisor to Supervisee</u>	21	NCAC 68	.0512

**LIST OF APPROVED TEMPORARY RULES
December 17, 2009 Meeting**

PUBLIC HEALTH, COMMISSION FOR

<u>General</u>	10A	NCAC 41C	.0901
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RULES REVIEW COMMISSION

<u>Certification of Individuals</u>	10A NCAC 41C .0902
<u>Certification of Renovation Firms</u>	10A NCAC 41C .0903
<u>Accreditation of Training Courses</u>	10A NCAC 41C .0904
<u>Accreditation of Training Providers</u>	10A NCAC 41C .0905
<u>Standards for Conducting Lead-Based Paint Renovation Acti...</u>	10A NCAC 41C .0906
<u>Standards for Records Retention, Information, Distributio...</u>	10A NCAC 41C .0907

MEDICAL BOARD

<u>Administration of Vaccines by Pharmacists</u>	21 NCAC 32U .0101
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PHARMACY, BOARD OF

<u>Administration of Vaccines by Pharmacists</u>	21 NCAC 46 .2507
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COMMUNITY COLLEGES, BOARD OF

<u>Maintenance of Plant Flexibility</u>	23 NCAC 02D .0329
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AGENDA
RULES REVIEW COMMISSION
Thursday, January 21, 2010 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. Criminal Justice Education and Training Standards Commission – 12 NCAC 09B .0203 (Bryan)
 - B. Commission for Public Health – 15A NCAC 13B .0835, .0836, .0841, .0842 (DeLuca)
 - C. Hearing Aid Dealers and Fitters Board – 21 NCAC 22L .0101 (Bryan)
 - D. Board of Licensed Professional Counselors – 21 NCAC 53 .0603 (Bryan)
 - E. Substance Abuse Professional Practice Board – 21 NCAC 68 .0509, .0511 (DeLuca)
 - IV. Review of Log of Permanent Rule filings for rules filed between November 23, 2009 and December 21, 2009 (attached)
 - V. Review of Temporary Rules
 - VI. Review of 2010 State Medical Facilities Plan
 - VII. Commission Business
 - Next meeting: February 18, 2010
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Commission Review
Log of Permanent Rule Filings
November 23, 2009 through December 21, 2009

MENTAL HEALTH, COMMISSION FOR

The rules in Chapter 26 are from the Mental Health, Developmental Disabilities and Substance Abuse Services Commission.

The rules in Subchapter 26F concern controlled substances including schedules of controlled substances (.0100).

<u>Schedule II</u> Amend/*	10A NCAC 26F .0103
<u>Schedule V</u> Amend/*	10A NCAC 26F .0106

INSURANCE, DEPARTMENT OF

The rules in Chapter 5 deal with fire and rescue services division.

The rules in Subchapter 5A include general provisions (.0100); state volunteer fire department (.0200); firemen's relief fund (.0300); administration of other funds (.0400); initial certification/re-inspection fire departments (.0500); volunteer fire department fund (.0600); volunteer rescue/EMS fund (.0700); and cigarette fire-safety standards (.0800).

<u>Cigarette Fire-Safety Standards</u> Adopt/*	11 NCAC 05A .0801
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The rules in Subchapter 5D concern pyrotechnics.

<u>Definitions</u> Adopt/*	11 NCAC 05D .0101
<u>Display Operator's Identification Badges</u> Adopt/*	11 NCAC 05D .0102
<u>Display Operator's Permit</u> Adopt/*	11 NCAC 05D .0103
<u>Assistant Display Operator's Permit</u> Adopt/*	11 NCAC 05D .0104
<u>Assistant Display Operator's Certification</u> Adopt/*	11 NCAC 05D .0105
<u>Application for Permit</u> Adopt/*	11 NCAC 05D .0106
<u>Examination</u> Adopt/*	11 NCAC 05D .0107
<u>Application for Reciprocity</u> Adopt/*	11 NCAC 05D .0108
<u>Permit Renewal</u> Adopt/*	11 NCAC 05D .0109
<u>Fees</u> Adopt/*	11 NCAC 05D .0110
<u>Notification to OSFM</u> Adopt/*	11 NCAC 05D .0111
<u>Replacement and Duplicate Permit</u> Adopt/*	11 NCAC 05D .0112
<u>Report of Theft or Loss of Pyrotechnics</u> Adopt/*	11 NCAC 05D .0113
<u>Report of Injury or Property Damage</u> Adopt/*	11 NCAC 05D .0114
<u>Inspections</u> Adopt/*	11 NCAC 05D .0115

The rules in Subchapter 11C concern analysis and examinations including general provisions (.0100); investments (.0200); health maintenance organizations (.0300); mortgage guaranty insurance (.0400); reinsurance (.0500); and premiums in the course of collection (.0600).

<u>Foreign HMO: Successful Operation</u>	11 NCAC 11C .0308
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Repeal/*

The rules in Chapter 12 cover life and health insurance including general provisions applicable to all rules and all life and health insurance policies (.0100 - .0300); general life insurance provisions (.0400); general accident and health insurance provisions (.0500); replacement of insurance (.0600); credit insurance (.0700); medicare supplement insurance (.0800); long-term care insurance (.1000); mortgage insurance consolidations (.1100); accelerated benefits (.1200); small employer group health coverage (.1300); HMO and point-of-service coverage (.1400); uniform claim forms (.1500); retained asset accounts (.1600); viatical settlements (.1700); and preferred provider plan product limitations (.1800).

Health Insurance Risk Pool Notice Language Requirements 11 NCAC 12 .0331
Adopt/*

Use of Senior-Specific Certifications and Professional De... 11 NCAC 12 .0461
Adopt/*

The rules in Chapter 14 concern admission requirements including formation of domestic insurance company (.0200); description of forms (.0400); admission of a foreign or alien insurance company (.0500); surplus lines (.0600); and federal risk retention act entities (.0700).

Foreign Company Must Have Conducted Successful Business 11 NCAC 14 .0504
Repeal/*

Waivers of Three-Year Net Income Requirement 11 NCAC 14 .0505
Repeal/*

PRIVATE PROTECTIVE SERVICES BOARD

The rules in Subchapter 7D cover organization and general provisions (.0100); licenses and trainee permits (.0200); security guard patrol and guard dog service (.0300); private investigator and counterintelligence (.0400); polygraph (.0500); psychological stress evaluator (PSE) (.0600); unarmed security guard registration (.0700); armed security guard firearm registration permit (.0800); trainer certificate (.0900); recovery fund (.1000); training and supervision for private investigator associates (.1100); courier (.1200); and continuing education (.1300).

Records 12 NCAC 07D .0109
Amend/*

Private Investigator's Use of a Badge 12 NCAC 07D .0405
Adopt/*

Definitions 12 NCAC 07D .1301
Adopt/*

Required Continuing Education Hours 12 NCAC 07D .1302
Adopt/*

Accreditation Standards 12 NCAC 07D .1303
Adopt/*

Non-resident Licensee Continuing Education Credits 12 NCAC 07D .1304
Adopt/*

Recording and Reporting Continuing Education Credits 12 NCAC 07D .1305
Adopt/*

Non-compliance 12 NCAC 07D .1306
Adopt/*

Credit for CE Courses 12 NCAC 07D .1307
Adopt/*

ALARM SYSTEMS LICENSING BOARD

The rules in Chapter 11 are from the N.C Alarm Systems Licensing Board and cover the organization and general provisions (.0100); license applications and requirements (.0200); registration of employees of licensees (.0300); the recovery fund (.0400); and continuing education for licensees (.0500).

<u>Fees for Licenses</u> Amend/*	12 NCAC 11 .0203
<u>Fees for Registration</u> Amend/*	12 NCAC 11 .0302

ENVIRONMENTAL MANAGEMENT COMMISSION

The rules in Chapter 2 concern environmental management and are promulgated by the Environmental Management Commission or the Department of Environment and Natural Resources.

The rules in Subchapter 02N concern underground storage tanks including general considerations (.0100); program scope and interim prohibition (.0200); UST systems: design, construction, installation, and notification (.0300); general operating requirements (.0400); release detection (.0500); release reporting, investigation, and confirmation (.0600); release response and corrective action for UST systems containing petroleum or hazardous substances (.0700); out-of-service UST systems and closure (.0800); and performance standards for UST system or UST system component installation or replacement completed on or after November 1, 2007 (.0900).

<u>General Requirements</u> Amend/*	15A NCAC 02N .0901
<u>Tanks</u> Amend/*	15A NCAC 02N .0903

COASTAL RESOURCES COMMISSION

The rules in Chapter 7 are coastal management rules.

The rules in Subchapter 7H are from the CRC and are the state guidelines for areas of environmental concern including introduction and general comments (.0100); the estuarine system (.0200); ocean hazard areas (.0300); public water supplies (.0400); natural and cultural resource areas (.0500); development standards (.0600); general permits for construction or maintenance of bulkheads and the placement of riprap for shoreline protection in estuarine and public trust waters (.1100); piers, docks and boat houses in estuarine and public trust waters (.1200); boat ramps along estuarine shorelines and into estuarine and public trust waters (.1300); wooden groins in estuarine and public trust waters (.1400); excavation within or connecting to existing canals, channels, basins, or ditches in estuarine waters, public trust waters, and estuarine shoreline AECs (.1500); aerial and subaqueous utility lines with attendant structures in coastal wetlands, estuarine waters, public trust waters and estuarine shorelines (.1600); emergency work requiring a CAMA or a dredge and fill permit (.1700); beach bulldozing landward of the mean high-water mark in the ocean hazard AEC (.1800); temporary structures within the estuarine and ocean hazard AECs (.1900); general permit for authorizing minor modifications and repair to existing pier/mooring facilities in estuarine and public trust waters and ocean hazard areas (.2000); marsh enhancement breakwaters for shoreline protection in estuarine and public trust waters (.2100); general permits for construction of freestanding moorings in established waters and public trust areas (.2200); general permits for replacement of existing bridges and culverts in estuarine waters, estuarine shorelines, public trust areas and coastal wetlands (.2300); general permit for placement of riprap for wetland protection in estuarine and public trust waters (.2400); emergency general permit, to be initiated at the discretion of the secretary of the Department of Environment and Natural Resources for replacement of structures, the reconstruction of primary or frontal dune systems, and the maintenance excavation of existing canals, basins, channels, or ditches, damaged, destroyed, or filled in by hurricanes or tropical storms, provided all replacement, reconstruction and maintenance excavation activities conform to all current standards (.2500); general permit for construction of wetland, stream and buffer mitigation sites by the North Carolina Ecosystem Enhancement Program or the North Carolina Wetlands Restoration Program (.2600); and general permit for the construction of riprap sills for wetland enhancement in estuarine and public trust waters (.2700).

<u>Coastal Shorelines</u> Amend/**	15A NCAC 07H .0209
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SECRETARY OF STATE, DEPARTMENT OF THE

The rules in Chapter 6 are from the Securities Division.

The rules in Subchapter 6B concern general provisions.

<u>Senior Designation as Dishonest or Unethical Practice</u>	18 NCAC 06B .0201
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Adopt/*

DENTAL EXAMINERS, BOARD OF

The rules in Chapter 16 cover the licensing of dentists and dental hygienists.

The rules in Subchapter 16B concern licensure examination for dentists including examination required (.0100); qualifications (.0200); application (.0300); Board conducted examinations (.0400); licensure by credentials (.0500); limited volunteer dental license (.0600); instructor's license (.0700); and temporary volunteer dental license (.0800).

Dental Licensure by Credentials 21 NCAC 16B .0501
Amend/*

The rules in Subchapter 16C are dental hygienist licensure rules including general provisions (.0100); qualifications (.0200); application (.0300); Board conducted examinations (.0400); and licensure by credentials (.0500).

Dental Hygiene Licensure by Credentials 21 NCAC 16C .0501
Amend/*

**Commission Review
Log of Temporary Rule Filings
January 7, 2010**

*Approval Recommended, **Objection Recommended, ***Other

HHS - HEALTH SERVICE REGULATION, DIVISION OF

The rules in Chapter 14 concern services provided by the Division of Health Service Regulation.

The rules in Subchapter 14C are Certificate of Need regulations including general provisions (.0100); applications and review process (.0200); exemptions (.0300); appeal process (.0400); enforcement and sanctions (.0500); and criteria and standards for nursing facility or adult care home services (.1100); intensive care services (.1200); pediatric intensive care services (.1300); neonatal services (.1400); hospices, hospice inpatient facilities, and hospice residential care facilities (.1500); cardiac catheterization equipment and cardiac angioplasty equipment (.1600); open heart surgery services and heart-lung bypass machines (.1700); diagnostic centers (.1800); radiation therapy equipment (.1900); home health services (.2000); surgical services and operating rooms (.2100); end stage renal disease services (.2200); computed tomography equipment (.2300); immediate care facility/mentally retarded (ICF/MR) (.2400); substance abuse/chemical dependency treatment beds (.2500); psychiatric beds (.2600); magnetic resonance imaging scanner (.2700); rehabilitation services (.2800); bone marrow transplantation services (.2900); solid organ transplantation services (.3000); major medical equipment (.3100); lithotripter equipment (.3200); air ambulance (.3300); burn intensive care services (.3400); oncology treatment centers (.3500); gamma knife (.3600); positron emission tomography scanner (.3700); acute care beds (.3800); gastrointestinal endoscopy procedure rooms in licensed health service facilities (.3900); and hospice inpatient facilities and hospice residential care facilities (.4000).

Information Required of Applicant 10A NCAC 14C .1202
Amend/*

Information Required of Applicant 10A NCAC 14C .1402
Amend/*

Performance Standards 10A NCAC 14C .1403
Amend/*

Performance Standards 10A NCAC 14C .1703
Amend/*

Information Required of Applicant 10A NCAC 14C .1902
Amend/*

Information Required of Applicant 10A NCAC 14C .2102
Amend/*

Performance Standards 10A NCAC 14C .2103
Amend/*

RULES REVIEW COMMISSION

<u>Support Services</u> Amend/*	10A NCAC 14C .2104
<u>Staffing and Staff Training</u> Amend/*	10A NCAC 14C .2105
<u>Facility</u> Amend/*	10A NCAC 14C .2106
<u>Information Required of Applicant</u> Amend/*	10A NCAC 14C .2202
<u>Performance Standards</u> Amend/*	10A NCAC 14C .2203
<u>Definitions</u> Amend/*	10A NCAC 14C .2701

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

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

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
NC Alcoholic Beverage Control Commission v. Ciro Maya Maya, T/A Carolina Sports Arena	08 ABC 2411	Overby	06/29/09	
N.C. Alcoholic Beverage Control Commission v. Du Cong Phan T/A Good Food Market	09 ABC 0565	May	05/18/09	
North Carolina Alcoholic Beverage Control Commission v. Mayra Leticia Rodriguez, T/A La Perla Del Pacifico	09 ABC 0975	Gray	07/28/09	
N.C. Alcoholic Beverage Control Commission v. Roberta White Bridges T/A Christina Restaurant and Catering	09 ABC 1899	May	07/28/09	
NC Alcoholic Beverage Control Commission v. La Tienda Mexicana Corp. T/A Tienda La Unica	09 ABC 4379	Brooks	09/17/09	
NC Alcoholic Beverage Control Commission v. Uwem Eyo Equan, T/A Sahara Restaurant and Lounge	09 ABC 4682	May	11/13/09	
NC Alcoholic Beverage Control Commission v. KAM Properties Inc. T/A Grays Creek Superette	09 ABC 4686	Gray	10/19/09	
<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	
Spencer's Incorporated of Mount Airy, NC d/b/a Ararat Rock Products Company and Jim Crossingham, III v. North Carolina Highway Patrol	08 CPS 3399	May	08/25/09	24:11 NCR 908
Apex PTO & Trailer, Inc. Morris F. Purdy v. NC Dept. of Crime Control & Public Safety, Division of State Highway Patrol, Carrier Enforcement Section	09 CPS 0010	Lassiter	08/17/09	
Peggy Gulley, Gulley's Backhoe Service v. Crime Control and Public Safety	09 CPS 0085	Overby	06/04/09	
Peter Thomas, Southeast Forest Works, LLC v. NC State Highway Patrol	09 CPS 1257	Gray	05/19/09	
Allen Bender, AB's Gravel Driveways, LLC v. North Carolina State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 1259	Gray	06/29/09	
Bruce E. Tyndall v. NC Dept. of Crime Control & Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 1494	Webster	07/29/09	
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	
Alexander Rybak v. NC DMV, State Highway Patrol	09 CPS 1834	Brooks	08/11/09	
Shelby T. Wallace v. Motor Carrier Enforcement, NC State Highway Patrol	09 CPS 1840	Brooks	08/11/09	
Rowland L. Simmons v. North Carolina State Highway Patrol	09 CPS 2087	Brooks	05/19/09	
Covenant Trucking Company, Inc. v. NC Dept. of Crime Control & Public Safety	09 CPS 2361	Cella	08/11/09	
SEKO-Charlotte, Inc. v. NC State Highway Patrol	09 CPS 2380	May	07/28/09	
James Christian Laubach and the Auto Barn, Inc. v. NC State Highway Patrol	09 CPS 2385	Mann	07/28/09	
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	

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Allen Robinson v. NCSHP	09 CPS 2449	Overby	06/17/09
Walter D. Cochran v. NC Dept. of Crime Control and Public Safety	09 CPS 2458	Cella	08/14/09
Gregory Vett Arnold v. NC State Highway Patrol	09 CPS 2509	Gray	08/25/09
Jeffrey Andrew Kennedy v. NC State Highway Patrol, Citation and Notice of Assessment	09 CPS 2511	May	07/09/09
George M. Gause v. NC Dept. of Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 2551	Webster	09/30/09
Rowland L. Simmons v. North Carolina State Highway Patrol	09 CPS 2885	May	06/11/09
Derik Core V. NCHP	09 CPS 3500	Overby	07/29/09
Randy Stewart v. State Highway Patrol	09 CPS 3646	Brooks	10/09/09
D&D Auto Transport, Jimmy Donald v. NC State Highway Patrol	09 CPS 3690	Cella	10/30/09
Jennifer Elizabeth Bollinger v. NC Dept. of Crime Control & Public Safety, Division of Victims Compensation Commission	09 CPS 3765	Gray	10/07/09
CL Hill Hauling, LLC, Christopher Hill v. NC Dept. of Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 3784	Gray	09/08/09
KJ Logistics, LLC v. NC State Highway Patrol	09 CPS 3876	Gray	09/08/09
Jorge Rodriguez v. Secretary of Crime Control & Public Safety	09 CPS 3921	Gray	09/10/09
TMC Transportation Inc. v. NC State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 3996	Lassiter	09/17/09
Douglas Harris v. NC Dept. of Crime Control and Public Safety	09 CPS 4023	Brooks	11/23/09
Antonio LeGrande v. Victim Compensation Service Division	09 CPS 4065	Lassiter	10/07/09
Andrew S. McJunkin v. NC Victim and Justice Services	09 CPS 4206	Brooks	10/07/09
Shirley Wilson v. State Highway Patrol	09 CPS 4332	Gray	10/07/09
Darryl Tyrone Davis, D&G Excavating Services	09 CPS 4363	Gray	10/07/09
Ronald William Duke v. NC State Highway Patrol	09 CPS 4366	Lassiter	10/13/09
Triad Solutions, Inc., Gene Petty v. NC State Highway Patrol Motor Carrier Enforcement Division	09 CPS 4455	Brooks	10/20/09
Chrystal N. Clark v. NC Victims Compensation Commission v. Respondent	09 CPS 4451	Lassiter	10/15/09
Lowell Thomas Blue v. NC State Highway Patrol	09 CPS 4509	Gray	10/07/09
Lindsey Carol Bollinger v. NC Dept. of Crime Control & Public Safety, Division of Victims Compensation Services	09 CPS 4514	May	09/27/09
Palmetto Sealing Co., Inc. v. NC Secretary of Crime Control and Public Safety	09 CPS 4632	Gray	11/30/09
Eddy L. Cheek v. NC Dept. of Crime Control & Public Safety, State Highway Patrol	09 CPS 4633	May	10/09/09
Yurry Demyanchvk v. RR Sheets, NC State Highway Patrol	09 CPS 4799	Lassiter	09/29/09
Piedmont Cheerwine Bottling Co. v. NC Dept. of Crime Control and Public Safety	09 CPS 4852	Brooks	11/09/09
Phillip J. Evans v. Highway Motor Carrier	09 CPS 4953	Overby	10/28/09
Atlantic Constructio Services, Inc., Frederick George Lempe II v. NC Dept. of Crime Control and Public Safety	09 CPS 5161	Lassiter	12/01/09
CMT Trucking Inc. Charles M. Tyson v. NC Dept. of Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 5446	Gray	12/16/09

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
MedExpress Pharmacy LTD. v. NC Dept. of Health and Human Services and NC Dept. of Administration	08 DHR 1566	Elkins	11/30/09	
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Bethlehem Center of Charlotte v. Child and Adult Care Food Program, Division of Public Health, NC Dept. of Health and Human Services	08 DHR 2284	Brooks	05/26/09	
Edward A. Patterson v. Division of Child Development	08 DHR 2364	Webster	06/02/09	
Choices Group Home Inc., Victor Vega v. N.C. Department of Health and Human Services	08 DHR 2404	Gray	07/16/09	
MJKM, LLC d/b/a Pueblo Supermarket v. NC Dept. of Health and Human Services, Division of Public Health, Women and Children's Health Section	08 DHR 2443	Gray	09/03/09	
Jasper Tyson v. Dept. of Health and Human Services, Division of Health Service Regulation, Health Care Personnel Registry	08 DHR 2444	May	05/21/09	
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
Edward Royal, Dept. of Health and Human Services, Division of Health Service Regulation, Health Care Personnel Registry	08 DHR 2698	Overby	05/27/09	
Abundant Life Child Care Center, Tiffany D. Monroe v. Division of Child Development, June Locklear, Brenda Faircloth	08 DHR 2954	Elkins	06/03/09	
Outreach Home v. NC Dept. of Health and Human Services, Division of Health Service Regulation, Mental Health Licensure and Certification Section	08 DHR 2981	Gray	09/17/09	
L&J Group Homes, Inc. v. NC DHHS/Div. of Health Service Regulation, Mental Health	08 DHR 3108	Lassiter	10/06/09	
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Kathy Dunning Bright v. Health Care Personnel Registry	09 DHR 0057	Overby	08/04/09	
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Sonya C. Ragland, Joseph K. Ragland, Barbara Washington, and The Seed of Abraham Learning Center v. NC Dept. of Health and Human Services	09 DHR 1261	Gray	06/08/09
Sonya C. Ragland, Joseph K. Ragland, Barbara Washington, and The Seed of Abraham Learning Center v. NC Dept. of Health and Human Services	09 DHR 1262	Gray	06/08/09
Sonya C. Ragland, Joseph K. Ragland, Barbara Washington, and The Seed of Abraham Learning Center v. NC Dept. of Health and Human Services	09 DHR 1263	Gray	06/08/09
Sonya C. Ragland, Joseph K. Ragland, Barbara Washington, and The Seed of Abraham Learning Center v. NC Dept. of Health and Human Services	09 DHR 1264	Gray	06/08/09
Genesis Family Health Care Inc. c/o James Collins v. NC Dept. of Health and Human Services, Division of Medical Assistance	09 DHR 1413	Gray	08/18/09
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 C	09 DHR 1482	May	06/19/09
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Yolanda Portillo v. N.C. Department of Health and Human Services	09 DHR 1558	Webster	07/17/09
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Sharay C. Vinson v. North Carolina Department of Health and Human Services, Division of Health Service Regulation	09 DHR 1884	Brooks	07/10/09
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Chreatha Alston v. NC Dept. of Health and Human Services	09 DHR 1980	Elkins	08/06/09
Vickie Hovis Abernethy v. Third Party Recovery	09 DHR 1984	Brooks	08/24/09
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
Bernice Taylor v. NC Dept. of Health and Human Services, Division of Health Service Regulation, Health Care Personnel Registry	09 DHR 2297	May	08/07/09
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Charlene M. Hatfield v. NC Dept. of Health and Human Services, Division of Health Service Regulation	09 DHR 2503	Gray	08/31/09
Helen Webb v. Department of Health and Human Dept. of Child Dept	09 DHR 2589	Webster	07/17/09
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Brenda V. Patterson v. State Department of Social Services	09 DHR 2655	Webster	07/17/09
Rose Boyd v. NC Dept. of Health and Human Services	09 DHR 2706	Brooks	08/17/09
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
Melonie L. Keith, John David Keith v. Central Billing DHHS Controllers Office	09 DHR 2779	Webster	10/22/09
Sharon M. Hill v. NC Department of Health and Human Services	09 DHR 2809	Lassiter	07/27/09
Cipriano Mendez Chiquito v. NC Dept. of Health and Human Services, Division of Public Health	09 DHR 2824	May	08/12/09
Trinia E. McCorkle v. North Carolina Department of Health and Human Services	09 DHR 2829	Brooks	07/10/09
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Rickie Annas v. NC Dept. of Health and Human Services, Division of Health Service Regulation, Health Care Personnel Registry	09 DHR 2962	Brooks	08/10/09
Berta Spencer v. NC Dept. of Health and Human Services	09 DHR 3000	Cella	10/07/09
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
Keshea Montgomery v. Randolph County Dept. of Health and Human Services	09 DHR 3012	Mann	08/27/09
Shawanda Ann Barnes V. Cherry Hospital	09 DHR 3076	Lassiter	09/28/09
St. Francis of Charlotte, Inc. Francis Ford Provider #83022329B and 83022329H v. NC Dept. of Health and Human Services, Div. of Medical Assistance	09 DHR 3101	Brooks	09/23/09
Edward A. Patterson v. Division of Child Development	09 DHR 3113	Webster	07/17/09
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Ernest Hines v. Cherry Hospital	09 DHR 3266	Gray	09/17/09
Sandra Wright v. Division of Child Development	09 DHR 3434	Elkins	08/24/09
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Amanda L. Brewer v. DHHS	09 DHR 3541	Elkins	08/21/09
Kenneth and Kimberly Thomason v. NC Dept. of Health and Human Services	09 DHR 3592	Gray	10/08/09
Tommy G. Davis v. NC Dept. of Revenue	09 DHR 3647	Gray	09/02/09
Heather C. Briggs v. NC Dept. of Health and Human Services, Division of Health Service Regulation	09 DHR 3651	May	07/29/09
Dr. Ann Markiewioz, Gaston Memorial Hospital v. The Carolinas Center for Medical Excellence	09 DHR 3660	Webster	09/28/09
Julian E. Cameron, Jr. DDS v. NC Dept. of Health and Human Services, Division of Medical Assistance	09 DHR 3663	Gray	08/12/09
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TLC Adult Home, Sonja Hazelwood v. NC Dept. of Health and Human Services, Division of Health Service Regulation	09 DHR 3776	Gray	09/16/09
Lesia Hammonds DBA Sampsons Family Care Home v. NC Dept. of Health and Human Services, Division of Health Service Regulation, Adult Care Licensure Section	09 DHR 3872	Gray	11/13/09
Alvester Miller, III v. NC Dept. of Health and Human Services	09 DHR 4003	Overby	10/26/09
Omnicare of Hickory, Jackie Knight	09 DHR 4069	Brooks	10/07/09
Charles D. Harris v. NC Dept. of Health and Human Services, Division of Health Service Regulation, Health Care Personnel Registry Section	09 DHR 4107	Brooks	10/29/09
St. Mary's Home Care Agency v. NC Dept. of Health and Human Services	09 DHR 4170	Gray	10/23/09
Higher Development, LLC Robert Waters v. Division of Medical Assistance	09 DHR 4235	Overby	10/15/09
Vickie Blair v. Office of Administrative Hearings	09 DHR 4236	May	09/27/09
Leilani Michelle Adames v. Linda Waugh, RN, BSN HCPR Investigator Health Care Personnel Registry Investigations	09 DHR 4275	May	09/22/09
Erica M. Small v. NC Dept. of Health and Human Services, Division of Health Service Regulation, Health Care Personnel Registry Section	09 DHR 4299	Brooks	09/11/09
Elite Care Service, Inc. Barsheem Chapman Executive Director v. NCDHHS Division of Health Service Regulation	09 DHR 4331	Gray	10/19/09
Rebecca Leigh Sadowski v. Dept. of Health and Human Services, Division of Health Service Registry	09 DHR 4362	May	08/26/09
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Erie R. Washington v. Dept. of Health and Human Services	09 DHR 4399	May	10/01/09
Erica Moore v. Dept. of Health and Human Services, Division of Health Service Regulation	09 DHR 4429	Brooks	10/09/09
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Roberta Latasha Wilson v. DHHS	09 DHR 4687	Overby	12/02/09
Ward Life Outreach of Cape Fear v. Division of Health Service Regulation Health Care Personnel Registry	09 DHR 4711	Gray	11/18/09
A Positive Life, Inc. v. NC Dept. of Health and Human Services, Division of Health Service Regulation, Mental Health Licensure and Certification Section	09 DHR 4956	Lassiter	10/22/09
James Phifer, Executor of the Estate of Sarah Geneva Phifer and Robert Wilford Phifer v. NC Dept. of Health and Human Services, Division of Medical Assistance	09 DHR 5063	Brooks	12/07/09
Sushila Shrestha v. Dept. of Health and Human Services, Division of Health Service Regulation	09 DHR 5087	Elkins	12/14/09
Charlene Gray v. Dept. of Health and Human Services	09 DHR 5154	Overby	11/04/09
Brenda Faye Simmons v. NC Dept. of Health and Human Services, Division of Health Service Regulation, Health Care Personnel Registry	09 DHR 5364	May	11/23/09
Victoria Darnette Edwards v. Dept. of Health and Human Services, Division of Health Service Regulation	09 DHR 5623	Brooks	12/11/09
Devon J. Artis v. NC Dept. of Health and Human Services, Health Care Personnel Registry Section	09 DHR 5667	May	11/16/09
Pastor Carolyn J. Fernandez and Pastor Jesse Fernandez v. Alexis d. Underwood and The Guilford Center	09 DHR 6106	Brooks	12/07/09

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Meherrin Indian Tribe, a/k/a Meherrin Tribe of North Carolina and Meherrin Tribe of North Carolina, a/k/a Meherrin Indian Tribe v. NC State Commission of Indian Affairs	08 DOA 2068	Morrison	06/15/09
Meherrin Tribe of North Carolina by and through Douglas Patterson v. North Carolina Commission of Indian Affairs	09 DOA 2367	Morrison	06/15/09
Battlecat Productions, Inc., D/B/A Battlecat Marine v. East Carolina University and State of NC Dept. of Purchase and Contract	09 DOA 4788	Gray	10/08/09
NC Indian Cultural Center, Inc. v. NC State Commission of Indian Affairs	09 DOA 4809	Overby	11/19/09

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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
Sebastian X. Moore v. Theodis Beck (NC Dept. of Correction) et al	09 DOC 4749	Webster	11/03/09
Charles W. Johnson v. Supt. David Mitchell and Mt. View Administrative Authority	09 DOC 4883	May	11/03/09

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Danny Earl Keel v. NC Criminal Justice Education and Training Standards Commission	07 DOJ 1711	Cella	07/30/09	
Tamika Richardson v. North Carolina Sheriff's Education and Training Standards Commission	08 DOJ 2403	Elkins	05/07/09	24:07 NCR 437
Bruce A. White v. NC Sheriff's Education and Training Standards Commission	08 DOJ 2490	Brooks	08/14/09	
Weston Samuels v. NC Dept. of Justice, Campus Police Program	08 DOJ 3312	Elkins	08/24/09	
Jackie Marie Daniels v. N.C. Criminal Justice Education and Training Standards Commission	09 DOJ 0218	Elkins	07/24/09	
Darlene Fure v. NC Criminal Justice Education and Training Standards Commission	09 DOJ 0466	Lassiter	07/22/09	
Tyrone Scott v. North Carolina Private Protective Services Board	09 DOJ 0658	Gray	05/28/09	
Ronald Wynn v. NC Criminal Justice Education and Training Standards Commission	09 DOJ 0949	Overby	07/15/09	
Donald Koons, Jr. v. NC Criminal Justice Education and Training Standards Commission	09 DOJ 0956	Gray	07/27/09	
Peggy Sue Shipp v. NC Criminal Justice Education and Training Standards Commission	09 DOJ 1782	Webster	08/28/09	
Jaime Patrick Clayborne v. Department of Justice Company Police Program	09 DOJ 1949	Webster	05/27/09	
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Ross Patton Gilmore v. North Carolina Alarm Licensing Board	09 DOJ 2452	Morrison	06/04/09	
William Marquis Davis v. NC Private Protective Services Board	09 DOJ 2506	Morrison	06/04/09	
John D. Dykes v. NC Dept. of Justice Company Police Program	09 DOJ 2639	May	06/18/09	
Jimmie Ray Edmondson, Jr. v. NC Criminal Justice Education and Training Standards Commission	09 DOJ 2823	Lassiter	08/04/09	
Edward A. Patterson v. Attorney General Office	09 DOJ 2840	Webster	07/17/09	
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Elizabeth Marie Lancaster v. NC Private Protective Services Board	09 DOJ 3189	Webster	11/13/09	
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Richard Lee Powers, Sr. and Richard Lee Powers, Jr. v. Private Protective Services Board	09 DOJ 3488	Morrison	12/15/09	
Richard Lee Powers, Sr. and Richard Lee Powers, Jr. v. Private Protective Services Board	09 DOJ 3489	Morrison	12/15/09	
Cindy Smith Ojeda v. NC Sheriff's Education and Training Standards Commission	09 DOJ 3643	Brooks	12/07/09	
Anthony Lyle Gentry v. NC Sheriff's Education and Training Standards Commission	09 DOJ 3865	Gray	08/05/09	
Edward A. Patterson v. Attorney General Office	09 DOJ 4025	Webster	08/28/09	
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Amanda Watson Whitaker v. NC Sheriff's Education and Training Standards Commission	09 DOJ 4126	Overby	10/02/09	
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Luther Daniel Stidham v. NC Criminal Justice Education and Training Standards Commission	09 DOJ 4219	May	10/01/09	
Antonio Garcia v. NC Sheriff's Education and Training Standards Commission	09 DOJ 4365	Gray	10/07/09	
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Duane J. Thomas v. NC Dept. of Labor, NC Board of Funeral Service, Forest Lawn Mortuary 09 DOL 4348 May 11/02/09

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

DEPARTMENT OF STATE TREASURER

Queen N. Thompson v. NC Office of State Treasurer 05 DST 0037 Brooks 12/01/09
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
Queen N. Thompson v. NC Office of State Treasurer 09 DST 3682 Brooks 12/01/09
Linda Duane Stalvey v. NC Dept. of Treasury 09 DST 4073 May 11/09/09

EDUCATION, STATE BOARD OF

John R. Hall v. State Board of Education Licensure 08 EDC 1750 Brooks 07/09/09
John David Erwin v. NC Dept. of Public Instruction 08 EDC 1827 Brooks 05/27/09
Michelle Sara Rodriguez v. National Board Certification Appeals Panel/Division of Talent Management and Development 08 EDC 3219 Brooks 08/21/09
Courtney M. Sears, Petitioner v. Department of Public Instruction Licensure Section 08 EDC 3644 Morrison 06/08/09
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Sandra Chesser v. State Board of Education 09 EDC 4435 May 10/01/09
Ashley Chrisp v. NC Dept. of Public Instruction 09 EDC 5160 Brooks 10/23/09

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Robert Taylor, Grier Fleischauer, Sue Bankes, and Carol Faley v. NC Dept. of Environment and Natural Resources, Division of Coastal Management and TP, Inc. 07 EHR 1765 Gray 06/19/09 24:11 NCR 881
The Town of Franklin Government of NC v. NC Dept. of Environment and Natural Resources, Division of Water Quality and Duke Energy Carolinas, LLC 07 EHR 2201 Brooks 09/24/09

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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	
Olde Beau General Partnership v. NC Dept. of Environment and Natural Resources, Division of Land Resources	09 EHR 0122	Gray	08/18/09	24:11 NCR 983
Saint Gobain Containers, Inc. v. NC Dept. of Environment and Natural Resources, Division of Air Quality	09 EHR 1616	Overby	10/23/09	
John C Campbell Folk School, John M Clarke, Bldgs & Ground Mgr v. NCDENR Public Water Supply Section	09 EHR 1852	Overby	06/03/09	
Doug Jernigan v. NC Dept. of Environment and Natural Resources, Division of Air Quality	09 EHR 3118	Elkins	10/16/09	
Appalachian Stove Fab, Inc., James Rice v. Western North Carolina Regional Air Quality Agency	09 EHR 3785	Gray	08/06/09	
Woodfield Gardens Apartments, Loretta Sims, v. NC Dept. of Environment and Natural Resources, Division of Envir Health	09 EHR 4330	May	10/09/09	
Kyle D. Page v. NC Dept. of Environment and Natural Resources	09 EHR 4623	Gray	10/07/09	
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Sidney Bruton, III v. NC Dept. of Environment and Natural Resources, Division of Air Quality	09 EHR 5351	Gray	11/05/09	

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John Randolph Ingram v. NC Teachers' and State Employees' Comprehensive Major Medical Plan	08 INS 2952	Gray	09/08/09	
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Lucy J. Lagnese v. NC State Health Plan	09 INS 2812	Brooks	08/14/09	
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Patricia Sharp v. NC State Health Plan Blue Cross/Blue Shield	09 INS 3192	Gray	08/31/09	

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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
Edward Alan Roper v. Broughton Hospital, Dept. of Health and Human Services	07 OSP 2186	Brooks	05/18/09	
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Janice F. Stokes v. NC Dept. of Correction, Division of Community Corrections	08 OSP 2150	Gray	11/16/09	
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Sharon Annette Mercer v. N.C. Division of Motor Vehicles	08 OSP 2293	Webster	08/14/09	24:07 NCR 447
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Jody Lynn Hinson v. N.C. Department of Crime Control and Public Safety, N.C. Highway Patrol	08 OSP 2409	Overby	06/03/09	
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Charles Nathan v. Robeson Co. DSS Foster Care Unit	09 OSP 3543	Elkins	10/08/09	
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Clifton Cox v. Caswell Center	09 OSP 4241	Overby	10/29/09
Virginia (Gin) Ivey Leggett v. Pathways LME	09 OSP 4498	Lassiter	08/31/09
Tina McMillian v. Employment Security Commission of NC	09 OSP 4568	Gray	11/20/09
Ruby H. Cox v. Tim Davis, Employment Security Commission	09 OSP 4774	Overby	10/05/09
Argy R. Crowe v. Charlotte Mecklenburg Schools/UI	09 OSP 4786	Lassiter	10/20/09
Thomas E. Freeman, Jr. v. The people associated with NC Dept. of Health and Human Services and Whitaker School	09 OSP 4795	Overby	09/18/09
Harriette E. Smith v. UNC General Administration	09 OSP 5189	Elkins	10/30/09

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Robert Lee Evans v. NC Office of Administrative Hearings	09 SOS 2300	Lassiter	06/03/09	
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Stanley Young v. The Notary Public Section	09 SOS 4001	Brooks	09/18/09	
Jeremy Glen Blow v. NC Office of the Secretary of State	09 SOS 4245	Overby	09/14/09	
Martha C. Graybeal v. NC Dept. of the Secretary of State Certification Filing Division	09 SOS 4273	Brooks	10/07/09	
Brandi Alexis Meeker v. Dept. of the Secretary of State	09 SOS 4580	Overby	10/29/09	
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Bobbie Perlow v. UNC Hospitals	09 UNC 1606	Brooks	07/15/09
Nicole Bryant v. UNC Hospitals	09 UNC 2022	Lassiter	06/16/09
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Mary Ann Strickland v. UNC Hospitals	09 UNC 2712	Overby	06/04/09
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Darice Witherspoon v. UNC Hospitals	09 UNC 3428	Gray	07/30/09
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John C. Presley v. UNC Hospitals	09 UNC 4020	Gray	07/21/09
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